

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13072 of 2017

=====

M/s Diamond Carriers, a partnership firm having its office at Baruni Oil Refinery, Gate No. 10, Mosadpur, P.O. Tilrath, P.S.- Barauni, District- Begusarai, through one of its partner namely Ajay Kumar, S/o Sri Sitaram Singh, resident of village- Mosadpur, P.O.- Tilrath, P.S. Barauni, District- Begusarai.

.... Petitioner

Versus

1. The Indian Oil Corporation Ltd. Company incorporated under the Companies Act, 1956, having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East) Mumbai- 400051.
2. The General Manager (Operations) Bihar State Office, Indian Oil Corporation (Marketing Division), Lok Nayak Jai Prakash Bhawan Dak Bunglow Chowk, Patna- 800001.
3. The Chief Refinery Coordinator, Indian Oil Corporation , Barauni Terminal, Begusarai.
4. The Area Sales Officer, Indian Oil Corporation, Muzaffarpur.
5. The Area Sales Officer, Indian Oil Corporation, Saharsa.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Gautam Kumar Kejriwal, Adv.
For the Respondents : Mr. Anil Kumar Sinha, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 16-05-2018

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the letter bearing ref. no. BSO/OPS/317/6 dated 18.07.2017 issued by the respondent General Manager (Operations), Indian Oil Corporation at Patna by which six of the petitioner's tank trucks (hereinafter referred to as the "TT") have been blacklisted, apart from imposition of a total penalty of Rs. 9,00,000/- (Nine Lacs).



3. The short facts according to the petitioner-firm are that it successfully participated in a tender issued by the respondent-Corporation for transportation of bulk petroleum products and accordingly deployed its fleet of TT for the purpose. While performing its obligations in terms of the contract, on 23.09.2016, the petitioner received a show cause notice with regard to two of its TT bearing registration no. BR 09H 4655 and BR 09 H 4653 pertaining to invoice no. 688598435 dated 30.06.2016 and invoice no. 689052386 dated 19.07.2016 having not reported at their destination at E.C. Railway-Hajipur Saharsa. On being required to deposit the cost of product not delivered to destination at E.C. Railway-Hajipur Saharsa amounting to Rs. 22,94,443/-, the petitioner made payment partially through demand draft and the remaining amount was recovered by adjustment against running bills. Similarly an amount of Rs. 9,93,301/- relating to the demand for non-delivery of product to Muzaffarpur was also recovered through adjustment against running bills of the petitioner. The respondent-Corporation issued its letter dated 07.06.2017 calling for an explanation from the petitioner with regard to non-delivery of the product sent to E.C. Railway-Hajipur Saharsa sent by TT Nos. BR09H4655 and BR09H4653 under invoice nos. 688598435 and 689052386, and also sent to RCD Muzaffarpur by TT No. BR01GB1453 under invoice nos. 676602867. It also referred to Clause 8.2.2.8 of the Oil Industry Transport Discipline Guidelines (ITDG) which provides for



blacklisting as well as imposition of penalty/damage of Rs. 9,00,000/- in established cases of pilferage case of non-delivery of product. The petitioner was required to appear for personal hearing with an appropriate explanation and representation.

4. The petitioner furnished its detailed reply dated 28.06.2017 (Annexure-13) stating that the proposed action of blacklisting of TT and imposition of damage/penalty of Rs. 9,00,000/- was not maintainable for the reasons enumerated therein. The respondent-Corporation however passed the impugned order dated 18.07.2017 (Annexure-14) whereby six TT of the petitioner were blacklisted and a total penalty of Rs. 9,00,000/- was imposed for three instances of violation of Clause 8.2.2.8 of the ITDG.

5. Mr. Gautam Kejriwal, learned counsel for the petitioner submits that the impugned order of blacklisting of the TT and imposition of penalty is wholly arbitrary and liable to be quashed. It is submitted that the impugned order has been passed in a mechanical manner and without due application of mind. In the petitioner's reply dated 28.06.2017, as many as seven detailed reasons were enumerated why the impugned action was not maintainable but none of these has been considered while passing the impugned order. It is submitted that the order of blacklisting and penalty has been passed despite the fact that full payment has been realized from the petitioner towards cost of product said to have not been delivered.



Moreover, it is stated that the petitioner had no knowledge of non-delivery of the product at the relevant time and thereafter took action against the driver of the TT by filing F.I.R./Complaint. It is also submitted that action has been taken by the Corporation without proper investigation as required under Chapter-8 of the ITDG. It is further submitted that in any event blacklisting of six TT on the basis of three instances of violation is wholly arbitrary and unsustainable, and at the highest there was only one instance of such violation. As such it is submitted that the punishment is excessive and not in accordance with Clause 8.2.2.8 of the ITDG.

6. Mr. Anil Kumar Sinha, learned counsel for the respondents submits that the impugned order dated 18.07.2017 is perfectly legal and valid and does not suffer from any infirmity. Reliance is placed on the counter affidavit to oppose the writ petition. It is pointed out that para 9(c) of the agreement provides that if any shortage in quantity is found at any stage after the Tank Truck leaves the Dispatch Storage Point up to receiving location, the carrier would be responsible irrespective of the reasons, entitling the Corporation to recover the cost of product and transportation charges. In the instant case it is clear that there was shortage of product by way of non-delivery the product at destination and in respect of which the petitioner has duly made requisite payments towards cost of product. It is further stated that the impugned action has been taken against the



petitioner after due investigation in terms of joint reports dated 25.09.2016 and 28.09.2016 (Annexure R1/3 series). Clause 8.2.2.8 of the ITDG was thus clearly attracted and the Corporation was entitled to blacklist the TT and impose penalty as done.

7. Having heard the parties and on consideration of materials on record, this Court is not inclined to interfere in principle with the action taken by the respondents against the petitioner. In terms of the agreement, the respondents were entitled to realize the cost of product on account of non-delivery at destination which has admittedly been paid by the petitioner without demur. Clause 8.2.2.8 of the ITDG enables blacklisting of TT and imposition of penalty.

8. However, the impugned order requires to be interfered with only to the extent that six TT of the petitioner have been blacklisted for as many as three instances of violation, namely first instance on 14.02.2015, second instance on 30.06.2016 and third instance on 19.07.2016. The three instances clearly refer to the dates of the three invoices under which the product was sent through three TT to E.C. Railway-Hajipur Saharsa and RCD Muzaffarpur. This Court is of the view that merely because the goods were sent under three invoices, the respondents have acted arbitrarily in treating these as three separate instances of violation. Admittedly, the Corporation has proceeded against the petitioner only in the present proceeding encompassing the three TT dispatched with the product under three



invoices. In other words, this is the solitary instance of violation by the petitioner for the purposes of Clause 8.2.2.8 of the ITDG.

9. The impugned order dated 18.07.2017 (Annexure-14) shall accordingly stand modified only to the above extent, with its consequential effect.

10. The writ petition stands disposed of with the aforesaid observations and directions.

Md. Ibrarul/BT

(Vikash Jain, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	25.05.2018
Transmission Date	N.A.

