

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

O.P.No.342 of 2016

M/s Ponraj Transports,
Represented by its Proprietor Mr.P.Ponraj,
Old No.422, New No.440, P.H.Road,
First Floor, Maduravoyal, Chennai-600 095. ..Petitioner

Vs.

- 1.The Territory Manager,
M/s Bharat Petroleum Corporation Ltd.,
Industrial & Commercial,
No.1, Ranganathan Garden,
Office 11th Main Road,
Anna Nagar, Chennai-600 040.
- 2.Mr.Raman Malik,
Sole Arbitrator,
Chief Manager Sales (Retail) South,
M/s Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Garden,
Office 11th Main Road,
Anna Nagar, Chennai-600 040. .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award of the second respondent dated 31.12.2015 insofar as in not allowing the claim petition in full, consequently, allow the claim petition filed by the petitioner before the second respondent.

For Petitioner : Mr.K.Rajasekaran

For respondents : Mr.V.Anantha Natarajan for R1
Mr.V.G.Sureshkumar for R2

ORDER

The petitioner was given a contract by the respondent to transport Black Oils and entered into an agreement on 13.02.2013 for a period of two years. On inspection on 07.07.2014, two abnormalities were found in the tanker lorry belonging to the petitioner and the same are as under.

<i>Compt.</i>	<i>Observation</i>
M2	Hollow hole is found on the partition plate of the compartment and is found welded.
M3	Hollow hole is found on the partition plate.

2. Thereafter, a show cause notice was issued to the petitioner as to why the contract should not be terminated for the violation of the conditions. The petitioner gave its reply stating that lorry was purchased by the petitioner from the used vehicles market and thus, the said holes/welding was not noticed by it at that time. The petitioner did not have any knowledge of the aforesaid deviations noted in the tanker lorry. Not satisfied with the reply given, an order of termination was passed. The following are the reasons given for cancellation:

1. The violations noted with regard to the fittings in the subject tank lorry is of serious nature.
2. The aforesaid tank lorry has been operating with us during the previous contract also, which was valid till Jan. 2013. As per our records, the lorry was last calibrated on 17.03.2014, which is contrary to all your submissions.
3. As per the agreement between BPCL and yourself, it is your duty to provide tank lorries as prescribed by BPCL and as per the existing laws of the land in this regard. It is the responsibility of the transporter to provide tank lorry with standard fittings including properly calibrated tank to BPCL.
4. Tampering with the standard fittings, as noted above, in the truck, clearly indicates violation of contractual terms and provisions covered under ITDG.
5. The incidents pointed out in our letter referred above amount to malpractice/irregularity as per clause 8.2.1(k) and (o) of ITDG and is liable to attract penalty as prescribed therein which reads as follows:
 - * Tampering with standard fittings of TT including the sealing, security locks, security locking system, calibration, vehicle mounted unit or its fittings/fixtures.

6. * Irregularities under W & M Act.

In the light of the above, we hereby terminate the contract with forfeiture of the security deposit and black list all your tank lorries in the subject contract as listed below, on industry basis for a period of 2 years effective from the date of this order. The black listing shall be applicable for EXMI loads also from all our supply locations.”

3. The petitioner invoked arbitration clause. An application was filed under Section 9 of the Arbitration and Conciliation Act, 1996, before this Court, in which, an Advocate Commissioner was appointed, who noted the physical features qua the violation. Objections were also filed by the first respondent.

4. The learned Arbitrator did not agree with the Report and thereafter, proceeded to pass an Award against the petitioner except return of security deposit. The photographs filed by the first respondent were relied upon.

5. The learned counsel appearing for the petitioner would contend that the Report of the Advocate Commissioner ought to have been taken into consideration. The Report was signed by the Officials of the first respondent. The photographs have not been taken into consideration. Thus, the award requires interference.

6. The learned counsel appearing for the first respondent would submit that inasmuch as the Report of the Advocate Commissioner being a piece of evidence, no interference is required, especially, in the light of the specific stand taken by the petitioner itself.

7. The Report of the Advocate Commissioner can at best be a piece of evidence appreciated by the adjudicating Authority. An admission made by the party is best form of evidence. Unfortunately, in the case on hand, the petitioner itself made a tacit admission by way of reply to the show cause notice issued by the first respondent. In the reply, the petitioner did admit that at the time of purchase, the abnormalities were there. It was not open to the petitioner to turn around to contend to the contrary. To put it differently, the petitioner ought not to have taken a specific stand before the learned Arbitrator that it did not have any knowledge of the aforesaid deviations and the irregularities pointed were

not noticed. Therefore, taking into that into consideration the Report filed by the Advocate Commissioner, for which, an objection filed by the first respondent and the materials considered by the learned Arbitrator, this Court does not find any merit in this original petition warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, the original petition stands dismissed. No costs.

24.01.2018

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M.M.SUNDRESH,J.



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