

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO. 270 OF 2014

M/s.New Bal Roadlines

...Petitioner

vs

Bharat Petroleum Corporation Ltd.

...Respondent

Mr.Rakesh Agrawal for Petitioner.

Mr.Nikjhil Sakhardande with Nikhil Ratti Kapoor I/b. The Law Point for
Respondent No.1.

CORAM : S.C.GUPTE, J.

DATE : 14 FEBRUARY 2019

P.C. :

Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by a sole arbitrator in the matter of reference arising out of a transportation agreement between the parties. The Petitioner was given a tank truck contract for carriage of Aviation Turbine Fuel ('ATF') for the Respondent corporation. The Petitioner's claims arise out of this contract. The Petitioner formulated about 5 claims. These were as follows :

(a) Toll (Pathkar)/Naka billing for the period from 1.8.2010 to 20.9.2011 in the sum of Rs.32,24,227/-;

(b) Financial loss on account of business not being provided from April to September 2011 in the sum of Rs.42,88,323/-;

(c) Loss on account of tanker which met with an accident –

detention charges of Rs.1,29,000/- and recovery against shortage of 20,160 litres of product in the sum of Rs.11,69,683/-;

(d) Loss due to blacklisting of trucks from 1.7.2011 to 30.6.2013, i.e. 23 months at the rate of Rs.57,820/- per month aggregating to Rs.13,29,860/-;

(e) Late awarding of contract by 18 months for the sum of Rs.2,85,54,858/-.

By his impugned award, the learned arbitrator allowed the claim of detention charges partly, but rejected all other claims of the Petitioner.

3 Learned Counsel for the Petitioner submits that the relevant clause in the agreement regarding toll (pathkar) required the Respondent to reimburse the toll charges to the Petitioner. Learned Counsel submits that the arbitrator's award in this behalf rejecting the Petitioner's claim for reimbursement of toll tax was contrary to the agreement. Though the draft agreement included in the tender documents contained a clause for reimbursement of entry/transit/bridge/toll tax, etc. payable by the carrier for transporting petroleum products (clause 6(b)(ii)), in the signed agreement between the parties this particular clause was cancelled. The learned arbitrator has not only considered the final signed agreement between the parties but has also considered negotiations between the parties leading upto the signing of that final agreement. The learned arbitrator considered a letter of the Respondent corporation on 16 July 2010 along with the letter of intent dated 12 July 2010 stating clearly that

the rates were inclusive of toll/entry/escort charges. The learned arbitrator accordingly accepted the Respondent's contention that during the meeting held on 24 April 2010, the parties had discussed and agreed that toll tax would not be reimbursed. The letter of 16 July 2010 was accordingly issued to the Petitioner. This clearly is a possible view based on a reasonable construction of the agreement as also evidence led by the parties before the learned arbitrator. The award is supported by evidence. It, thus, cannot be said to be an impossible view, or a view which no fair or judiciously minded person is expected to take, or a view that would shock the conscience of the court. The award on this claim accordingly does not merit any interference.

4 So far as the financial loss on account of loss of business is concerned, there is hardly any material placed before the learned arbitrator in support of the claim and no fault can be found with the impugned award to the extent it does not award this claim of financial loss.

5 On the loss on account of accident of a tanker forming part of claim (c) above, learned Counsel for the Petitioner submits that the detention charges were awarded only for a period of 30 days and not for the entire period of detention, which was for a period of 45 days. The arbitrator has considered the contentions of the parties with regard to the accident, detention of tank lorry and recovery. Though it is not in dispute that the total period of detention was of 45 days, the arbitrator has accepted the Respondent corporation's contention that the material carried by the tank lorry being a sensitive product, namely, ATF, it needed to be tested before disposal instructions could be given. The learned arbitrator

did not find fault with the submission in principle; he treated the same to be fair. Yet, at the same time, he considered the period of 45 days on account of such testing to be inordinately long. The arbitrator was of the view that 15 days period for testing of the product would be a reasonable period and granted detention charges for detention beyond 15 days. No fault can be found with the arbitrator's view in this behalf. It is indeed a possible view on a reasonable construction of the material placed before the learned arbitrator. There is nothing shocking or injudicious about such view.

6 On the other aspect of claim (c), namely, recovery against shortage of product, there is no material placed before the arbitrator in support of this claim and no fault can be found with the arbitrator's rejection of the claim.

7 As for rejection of claim (d), the award exhibits want of reasons. The Petitioner's contention before the arbitrator was that a particular tanker was blacklisted by the Respondent on industry basis for a period of two years from 1.7.2011 to 1.7.2013. The Petitioner's submission was that as per clause 8.2.2.5 of the tender conditions, suspension could only be made for one month on the occurrence of the first instance of breach. It was submitted that blacklisting of the tanker for two years on the occurrence of the first instance was contrary to the contract and accordingly, compensation for about 23 months should be granted to the Petitioner. On the other hand, the Respondent replied that the entire investigation was duly carried out and after going through such investigation, the committee had taken a decision to blacklist the tank lorry

for two years. It was submitted that principles of natural justice were duly complied with. The Respondent relied on joint inspection report and ITD Guidelines in this behalf. Apropos of these rival cases set up by the parties, the learned arbitrator appears to have simply proceeded to hold that “according to me no fault could be found in blacklisting the tank lorries”. The award further observes that the decision was taken after following due procedure by the competent authority and suitable consideration of all available material. These statements do not satisfy the mandate of the award having to be informed by reasons. The arbitrator was expected to discuss clause 8.2.2.5 and its mandate as against the Respondent's case of blacklisting of the tank lorry for two years and give his finding on the subject. It is no good to simply state that he finds the blacklisting to be in order and the decision to have been taken after due procedure or after consideration of material. There is no clue as to what was the due procedure followed and what material was considered. Want of reasons is a serious defect going to the root of the award. It is in breach of Sections 28 and 31 of the Arbitration and Conciliation Act, 1996 and accordingly, is to be treated not only as a patent illegality appearing on the face of the award but also a contravention of fundamental policy of Indian law. This part of the award, accordingly, cannot be sustained.

8 On late awarding of contract by a period of 18 months, there is hardly any material placed before the learned arbitrator either for establishing a breach of contract on the part of the Respondent or to justify the quantum of damages claimed. Hence, no interference with the award is merited in this behalf.

9 Accordingly, the arbitration petition is allowed partly by setting aside the impugned award dated 13 September 2013 so far as it relates to Claim (d) being loss due to blacklisting of truck on industry basis from 1.7.2011 to 30.6.2013, i.e. 23 months at the rate of Rs.57,820/- per month amounting to Rs.13,29,860/-. No order as to costs.

(S.C. GUPTE, J.)