

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13308 OF 2017

ORDER:

Heard Sri K.Venumadhav, learned counsel for the petitioner and Sri B.Mayur Reddy, learned Standing counsel for respondents.

This writ petition is filed seeking the following relief :-

“.....Writ of Mandamus declaring the action of respondent No.1 in issuing the termination letter dated 03.02.2017 terminating the transport agreement, dated 13.3.2015 of 3 tankers of the petitioner bearing Nos.03 X 2727, AP 16 TV 0241 and AP 16 TX 1839, without considering the explanation submitted by the petitioner, dated 4-12-2016 to the show cause notice issued by the respondent no.1, dated 8-11-2016, without giving any opportunity of the hearing to the petitioner and without assigning any valid reasons, even though either the petitioner or his driver has not committed any default in transporting the Diesel to the retail outlet of the respondents, is nothing but arbitrary, illegal, null and void and violative of principles of natural justice.....”

It has been contended by the petitioner that he is the owner of the 3 tankers of Ashok Leyland and stood as a successful bidder in the tender floated by the respondents for transportation of petroleum products to various places during 2015 and accordingly entered into an agreement for a period of 5 years i.e. from 01.03.2015 to 13.03.2020. Petitioner further contends that on 03.10.2016, while the petitioner was transporting petroleum products belonging to respondents from Gulburgah to the retail outlet as directed by the respondents, it

was alleged by the retail outlet owner that the quantity of diesel is less than the prescribed quantity and based on the complaint made by the retail outlet owner, his tanker was subjected to inspection and during the course of inspection, it has been revealed that there is shortage of 50 litres of diesel. Thereafter, the respondents have issued a show cause notice on 08.11.2016 asking him to submit explanation as to why action should not be initiated against him. Pursuant to the said show cause notice, he had submitted a detailed explanation on 04.12.2016. Thereafter, the respondents have terminated the contract of the petitioner on 03.02.2017 besides blacklisting the petitioner. Petitioner further contends that before blacklisting him, the respondents ought to have issued a specific show cause notice asking him to explain as to why he should not be blacklisted.

Therefore, learned counsel for the petitioner contends that appropriate orders be passed in the writ petition setting aside the impugned orders dated 03.02.2017 and also blacklisting of the petitioner. He further contends that the tenure of contract ends by 13.03.2020 and even prior to the said date, petitioner suffered termination and blacklisting due to which, it may not be possible to renew the contract. However, the case of the petitioner be considered for future transport contracts in accordance with law and let the respondents consider the case of the petitioner for refunding of security deposit which was forfeited while terminating the contract.

Learned Standing counsel appearing for the respondents contends that on inspection, it was found that petitioner has a

duplicate key, there was violation of route and also shortage of 50 litres of diesel and as per the contract, if there is any shortage of petroleum products in the tank, it is the responsibility of the transporter who has to make good of the same. Since it was found that petitioner has a duplicate key, violated the route and there was shortage of diesel, respondents have issued a show cause notice after hearing the petitioner. He further contends that the respondents have specifically quoted the clauses under which they could take action against the petitioner. Hence, there is no necessity to give a specific show cause notice to the petitioner before blacklisting him. Therefore, he contends that there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel appearing for the respective parties is of the considered view that as the respondents have not issued any specific show cause notice while blacklisting the petitioner, the impugned orders of blacklisting the petitioner are liable to be set aside and accordingly they are set aside. Since the tenure of the contract of the petitioner is upto 13.0.2020, there cannot be a direction to continue the petitioner as transport contractor. Therefore, this Court is not setting aside the orders of termination of contract. Further, the respondents are directed to permit the petitioner to participate in the future contracts and also consider the case of the petitioner for release of security deposit which was forfeited in pursuance of the impugned order.

With the above direction, this writ petition is disposed of.

No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 03-03-2020
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