

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP 9687 of 2020 (O&M)

Date of Decision: November 27, 2020

Perfect Oil Carrier and othersPetitioners
Versus
Union of India and others Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Naresh Kaushal, Advocate
for the petitioners.

Mr. Sudhir Nar, Advocate
for respondent No.1.

None for respondent No.2-State.

Mr. Ashish Kapoor, Advocate
for respondents No. 3 and 4.

FATEH DEEP SINGH, J. (Oral)

Petitioners in all, numbering 15, who are carrying on business of transportation of petroleum products primarily from Ambala Terminal/Depot have all come up in this civil writ petition under Articles 226/227 of the Constitution of India seeking writ by way of *certiorari* and *mandamus* to quash the

order by way of message dated 26.06.2019 (Annexure P-7) sent by respondents No. 3 and 4 whereby supply of retail outlet (in short '**the RO's**') was shifted from Ambala Terminal/Depot to Panipat Terminal/Depot w.e.f. 27.6.2020. The claim is that these respondents may not disturb the functioning of this lifting from Ambala point and be allowed to operate from Ambala Terminal/Depot of Indian Oil Corporation Limited (in short '**the IOCL**') keeping in view that the supply to Air Force authorities at Ambala, Chandigarh, Mohali, Dehradun, Sarsawa, Shimla and Kulu is still being carried on from that place. The claim has been based on the averments that the Ambala Terminal/Depot is running since the year 1980 catering to the needs of the surrounding places where more than 600 trucks and 2000 workers are attached and employed in the business of transportation. It is further claimed that on account of this shifting irreparable loss and inquiry is likely to be caused to the petitioners by such a shifting based on this impugned order/message dated 26.06.2020 (Annexure P-7). The contentions are that Ambala is a strategic location from all angles including defence. The Haryana State Pollution Control Board (in short '**the Board**') had renewed the licence till March 2024 and further the Joint Chief Controller of Explosive North Circle Faridabad too had after scrutiny acknowledging the

shifting measures as well operational requirements has renewed the licence. Much stress has been laid that without issuing any show cause notice or taking the petitioners into confidence the impugned move has come about and which is highly opaque and against the principles of law and no due process of law has been followed and under the ploy of Covid- 19 situation had sought compassion and magnanimity by the respondents as their businesses are likely to be affected.

Only reply on behalf of respondents No. 2, 3/4 has been filed whereby preliminary objections have been taken that there was nothing to invoke the extra ordinary jurisdiction of this Court nor the petitioners are entitled to any relief having concealed material facts as they entered into **Bulk Petroleum Products Road Transport Agreement** (in short '**the Agreement**') in writing are governed by the stipulation made therein whereby in case of any dispute, the matter could be referred to sole Arbitrator who shall be the Director (Marketing) of the Indian Oil Corporation.

On merits, it has been averred whereby denial has been made to each and every contention of the petition. It is pleaded that though the Terminal/Depot at Ambala is on major pipeline Station of Mathura Jalandhar pipeline (MJPL) from where pumping supplies are being done to various locations at

far off places including Jammu and Kashmir, Leh and Ladakh and Himachal Pradesh etc. for defence use as well as stocking. The answering respondents have claimed that because of over population as the place have become densely populated resulting in traffic chaos as well as anticipated threat to the residents, they have taken these steps and which were within the competence of the answering respondents in view of the provision in the agreement and, therefore, termed the claim of the petitioners to be illegal and unsustainable.

Going through the lengthy arguments that have come about by Mr. Naresh Kaushal, Advocate for the petitioners, Mr. Sudhir Nar, Advocate for respondent No.1 and Mr. Ashish Kapoor, Advocate for respondents No. 3 and 4 on perusal of the records.

It is duly conceded by the two sides that the **Bulk Petroleum Products Road Transport Agreement** has been written down and signed between the individual transporter (petitioners in the present case) and IOCL of which clause 2(b) is reproduced as under:

“In the event of re-sitement/change of loading location of the Company, Tank Trucks attached to the old loading location would get automatically attached to the re-sited/changed loading location

and the applicable transportation rate will be the existing rate applicable to the transporter at his base location or the L1 rate of the new location, whichever is higher”.

and which agreement also stipulates terms and conditions under which the business is to be carried on between the transporter and the oil company.

Section 10 of the Indian Contract Act 1872 (in short '**the Act**') ensures that all agreements are contracts if they are made by free consent of parties competent to contract for a lawful consideration and with a lawful object and are not specifically declared to be void. The agreement placed on the records Annexure R-2/1 which is duly signed by the transporter and the IOCL on a stamp paper and duly attested by a notary public to the mind of this Court is a perfect contract which assigns the purpose to it and there is nothing illustrative that it is an outcome of undue influence or there is any mistaken belief as to matter of fact and, therefore, by virtue of Section 37 of the Act an obligation is put upon a party to a contract to undergo its obligation. Since there is an express provisions empowering the IOCL to shift the terminal point of supply and which it had done after sending a message (Annexure P-7), it cannot be taken on the face of it to be violative of the provisions of law or the

contract between the parties rather it is a pure exercise of option by the IOCL.

Besides this under the **Clause 15** of this agreement, the agreement would be valid for a period of 03 years from the effective date given in the LOI/work order and sole discretion vests with the IOCL to extend the same up to more years on the same terms and conditions. Furthermore, the IOCL reserves the rights to terminate this agreement by giving 02 months advance notice without being liable to give any reason or pay any compensation.

Clause 16 of this agreement ensures that all questions/disputes and differences arising under order or in relation to this agreement shall be referred to sole Arbitrator who would be an officer of the IOCL which would be nominated by the Director (Marketing) of the IOCL.

Since in the present case a dispute had arisen between the transporters and the IOCL regarding shifting of oil terminal from where the places are to be given for retail outlets from Ambala to Panipat in Haryana and Sangrur in Punjab which is perfectly in consonance with clause 2(b) and which clearly caters to the fact that on resited loading location there would be adjustment of the rate for the new location granting rates whichever is higher and, therefore, adequately looks after

the economic concerns of the petitioners so that they are not put to any economic hazard. Non invocation of the arbitrary clause by the transporters is certainly a distressing feature in their case which goes to their detriment.

The agreement vests in the answering respondents unbridled powers for re-location of the terminal site and none for the side of the petitioners could enlist and illustrate how the impugned order dated 26.06.2020 (Annexure P-7) is unfair, illegal or has resulted in inequality by virtue of Article 14 of the Constitution of India. To the mind of this Court, the authorities acting prudently based on the likelihood of traffic hazard and over population of the area of the terminal had left it only for defence and aeronautical purposes this outlet distribution point and, therefore, is even otherwise a valid classification and there is no resultant discrimination which could infringe Article 14 of the Constitution of India. No doubt by virtue of Article 21 of the Constitution right to life having been given a wider amplitude includes within its sweep right to self preservation which is in itself sacred, precious and inviolable besides the fact this provision to ensure that there is right to life with human dignity but it could not be highlighted by any means how and by what means this impugned message infringes Article 21 of the Constitution of India.

The instant petition is untenable, premature and without exhausting the remedies enshrined in the agreement does not sustain and as such stands dismissed.

November 27, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No