

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1101 of 2021

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M/s Shree Ram Fuel Centre a Proprietorship firm having its Place of Business at BRO GATE number 10, Mosadpur, P.O.-Tilrath, District-Begusarai through its Proprietor namely Kanchan Kumari female aged about 34 Years Wife of Sandeep Singh, resident of Ward No.11, P.O.-Tilrath, Telar, District-Begusarai.

... .. Petitioner/s

Versus

1. **The Bharat Petroleum Corporation Ltd.** Company incorporated Under the Companies Act, 1956 having its Registered Office at Bharat Bhawan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai-400001 through its Chairman.
2. The General Manager, Bharat Petroleum Corporation Ltd. Regional Office, Kolkata.
3. The Deputy General Manager, Transport, (Retail) East, Bharat Petroleum Corporation Ltd. Eastern Regional Office, Kolkata.
4. The Deputy General Manager Operations I/C (Retail) East, Eastern Regional Office, Bharat Petroleum Corporation Ltd. Kolkata.
5. The Chief Manager, Transport, Bharat Petroleum Corporation Ltd. Regional Office, Kolkata.
6. The Senior Manager Operations I/C, Bharat Petroleum Corporation Ltd. Barauni TOP, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Adv
		Mr. Alok Kumar Jha, Adv
For BPCL	:	Mr. Sanjay Singh, Sr. Adv
	:	Mr. Rudrank Shivam Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 17-12-2021

The writ petition has been filed by the petitioner firm dealing in business of transportation of petroleum products for the oil marketing companies.



The relief prayed for is issuance of a writ of *certiorari* quashing a decision communicated through letter dated 20.08.2020 by the Deputy General Manager, Transport (DGM, Transport), whereby and where-under the said respondent no. 3 has blacklisted tank lorry bearing registration no. BR09 GA 5576 for a period of two years, with immediate effect. A penalty of Rs. one lakh including GST @ 18% on penalty has also been decided to be imposed.

The decision is expressed to be under various terms and conditions of the transport agreement and clause 8.1 of the Industry Transport Discipline Guidelines (ITDG). The authority has allowed the petitioner firm to operate other tank lorry in accordance with the statutory requirements and prescribed safety standards; and other applicable terms, conditions and norms. The impugned letter dated 20.08.2020 also reiterates the consequences of suspension of contract and blacklisting in the event, the petitioner firm's tank lorry or crew indulge in any such activity prejudicial to the business of the Corporation in future directly or indirectly, whether inside or outside the premises.

Brief facts as per writ petition are that the tank lorry, in question, was loaded with 24 KL HSD (High Speed



Diesel) on 07.07.2020 at the *Barauni TOP*, being the loading location. The same was en route to *M/s. Monte Carlo Limited*, at *Barjora*. The same reached the customer's premises on 18.07.2020. Since the supply reached the destination after about eleven days, the consignee (*M/s. Monte Carlo Limited*) refused to accept the same. The tank lorry was thus diverted to Railway Consumer Depot (RCD) Katihar by creating a new invoice on 23.07.2020. On arrival at this customer's premises, quality check was undertaken before decantation of the HSD on 26.07.2020 by customer. In the quality check, a mismatch in density of HSD was observed.

A show-cause dated 26.07.2020, was issued by the *Barauni TOP* calling an explanation from the petitioner for the above acts. Petitioner replied to the show-cause, wherein it was emphasised that the lab report had found the product to be HSD and that variation in density may have occurred due to mistake in testing. He thus requested for the tank lorry to be decanted. As per pleading in the writ petition, the petitioner requested for sampling afresh of the product in question. The Corporation accordingly fixed fresh sampling on 27.07.2020, under due intimation to the petitioner vide email which is evident from Annexure-7 of the writ petition.



Thereafter, samples were collected and tested in presence of authorised representative of the petitioner and duly signed by all the persons which is evident from Annexure-8 of the writ petition. It is petitioner's specific case that there was no complain at all that the security locking system and seal put by the corporation was in any way tempered or interfere with.

To ensure that the mismatch was not based on residual product of the last load, some quantity was taken out from the top, some from bottom line of the tank lorry and some composite samples were drawn from the chambers to ensure proper assessment. From Annexure-8, it is also evident that sample re-testing was done at a temperature of 15°C. However, there was no change in the result. Similar samples were taken out from all the five compartments of the tank lorry in question in presence of the lorry driver, petitioner's representative, namely, Mr. Sujit Singh, representative of RCD Katihar (the consignee), as well as BPCL representative, which is evident from the fact that Annexure-8 bears their signatures. Samples were sent for testing to the BPCL laboratories along with retention samples from the supply location (*Barauni TOP*).

The lab report results were as follows:



- 1. Tank lorry samples of chamber 1, 3, 4 & 5 are meeting requirement of HIGH SPEED DIESEL(VI) w.r.t tests carried out as per IS 1460-2017 (Latest Revision).*
- 2. The results of density and total sulphur are beyond permissible/reproducibility limit of corresponding supply location sample.*
- 3. Chamber 02 is failing in meeting requirement of HIGH SPEED DIESEL (VI).*
- 4. Further the density variations in chamber 1, 2, 3 & 4 of lorry and invoice density is beyond permissible limits. Chamber 05 density is matching with invoice.*
- 5. The corresponding HSD retention samples of supply location met the specification of HSD BSVT.*

Thereafter, petitioner was served with the impugned letter dated 20.08.2020, blacklisting tank lorry in question and imposing a penalty of Rs. 1 lakh including GST @18% on penalty.

The counsel for the petitioner has raised two submissions for consideration in the course of hearing today.

Firstly, he has submitted that it is nobody's case that there was any interference with the security locking



system of the tank lorry in question. The second submission is that no show-cause was issued to her pursuant to the sampling which was done and the blacklisting of the tank lorry in question has been done straight away without complying with the Principles of Natural Justice. Under these circumstances, the petitioner cannot be held liable for the variation in density observed during sampling.

The petitioner has also raised an issue in the writ petition that density sampling of the samples collected on 27.07.2020 was done at temperature ranging between 30°C to 32°C and not at the required temperature as per ITDG, i.e. 15°C.

Learned counsel for BPCL, on the other hand, has submitted that the petitioner is a firm dealing in transportation of Motor Spirit and High Speed Diesel (MS and HSD) for general public consumption. The ITDG issued by the oil industry as per advice of the Ministry of Petroleum and Natural Gas (MOP&NG) provides a uniform mechanism in the larger public interest for ensuring supply of quality MS and HSD to the public by transporters like the petitioner. The ITDG has been made applicable as per the Letter of Intent (Annexure-2) dated 29.10.2018 issued by the respondent



Corporation. The ITDG also forms part of the contract entered into by the petitioner with the Corporation for transportation of MS and HSD. The relevant extract of the LOI dated 29.10.2018 (Annexure-2) in the case is being reproduced :

*All terms and conditions stipulated in the Notice Inviting Tender, Guidelines for Tenderers. Tender Terms & Conditions, Declarations, Transport Agreement, **Industry Transport Discipline Guidelines** and other documents furnished along with the Tender and related correspondence shall form part of the contract. (emphasis mine)*

This court exercising judicial review under Article 226 of the constitution of India, may therefore confine its judicial review to see whether the decision making process is as per the ITDG or not. The ITDG provides a uniform, non-discretionary and non-arbitrary procedure which is applicable across the oil making companies throughout the country. Procedural fairness is implicit in the ITDG. The petitioner by virtue of the Letter of Intent dated 29.10.2018 and the Transport Agreement is conscious of, and has agreed to application of the ITDG to his transport business operations, without demur.



Learned counsel for the Corporation thereafter has submitted that the issue, raised in the pleadings regarding sample being collected at a temperature other than what is prescribed in the ITDG, is a self serving statement based on an after thought. Not even a chit of paper has been produced to show that he had made any such objections at the time of sampling or even till issuance of the impugned letter dated 20.08.2020. In fact petitioner's authorised representative has signed the sampling report (Annexure-8) wherein it has specifically been mentioned that sampling was done at 15°C.

In so far as the other submission raised by the petitioner that the security seals were intact, he has drawn attention of the Court towards the prescribed procedure as contained in the ITDG. As per the same, on arrival of the tank lorry at the consignee destination, if the security locking system is found O.K then as per clause 4.1.2.1. the procedure under 4.1.3 is to be followed which is as follows:

4.1.3 Density Checking

On arrival of TT, dealer/ customer shall check the density @ 15 deg C of product from each compartment. If the variation is found to be within +/- 3 kg/cum as compared with the invoice density, steps



as mentioned in clause 4.1.4 to be followed.

However, if variation in the observed density is beyond +/- 3kg/ cum, the TT shall not be uploaded and action shall be taken as mentioned in 4.5.1.

In the instant case from the pleadings, it is apparent that sampling has been done as per this clause in presence of authorized representative of the petitioner without any objection being raised on 27.07.2020. The samples were drawn from various compartments of the tank lorry in question in presence of a driver, petitioner/representative and others. The samples were sent to the lab for testing in accordance with the procedure prescribed in the ITDG. As per the procedure prescribed in clause 4.2, 4.3 and 4.4 of the ITDG, since the lab report results confirmed that density and total sulphur were beyond permissible/reproducibility unit of corresponding supply location sample, action was required to be taken as outlined in clause 8 of the ITDG. The petitioner's firm came within clause 8.1 (a)(ii) and as such being the first incident was liable to be dealt with as per the stipulations contain there which are being reproduced:

II. Carriers on multiple TTS

On the first incident (during the



tenure of the contract) of adulteration, the particular TT shall be blacklisted on Industry basis along with the TT crew. In case of second incident of adulteration, the whole contract comprising of all the TTs belonging to the concerned carrier shall be terminated and the concerned carrier & their all TTs shall be black listed on industry basis. However, if the complicity of the carrier is detected in case of adulteration of the first incident, then the whole contract comprising of all the TTs belonging to the concerned carrier shall be terminated and the concerned carrier & their all TTs shall be black listed on industry basis.

b. Disposal of the contaminated product shall be done as directed by the company.

c. Cost of product as determined by the company shall be recovered from the carrier.

d. Incidental expenses and any other expenses sustained by the concerned Oil Company for disposal of the contaminated product shall also be recovered from the transporter.



e. Transportation charges, octroi, toll taxes, other levies shall not be paid for the futile trip to the dealer/ direct customer or receiving location as well as for the subsequent trip for delivering the adulterated/ contaminated product the concerned Oil Company's nominated location for disposal of the product.

Having considered the submissions advanced by the parties this court finds that the entire procedure prescribed in the ITDG has been followed. Admittedly, samples were drawn in presence of the petitioner, the density was found to be at variance and there is no objection raised by the petitioner at the time of sampling regarding any non compliance with the prescribed procedure for sampling. The fact that the samples have failed therefore cannot be disputed by the petitioner. The consequences that have followed such failure of sampling are strictly as per procedure prescribed in the ITDG. There is no infirmity in the decision making process as per the averments in the writ petition.

There is no allegation that the seals were found to be tampered or broken. The plea that the security seals were intact therefore, is of no relevance as in the instant case



authorities have proceeded on the presumption that the seals were intact as per procedure prescribed for such circumstance as contained in clause 4.1.2.1 which mandates density checking as per clause 4.1.3 only if the security locking system is found OK, as in the instant case. If on the other hand the security locking system was to be found tampered, then as per the same clause 4.1.2.1 it would have been construed as a malpractice.

The plea that show-cause was not issued to the petitioner, is untenable as the density samples had already failed in presence of the petitioner/representative on 27.07.2020, when it was sent for lab testing as per the procedure contained in the ITDG to which she has raised no objection till issuance of the impugned letter dated 20.08.2020. Petitioner's authorised representative has signed on the sample testing report (Annexure-8) without any demur. Having regard to inherent procedural fairness ensured by testing samples in presence of the transporter and his driver, subsequent plea of there being no show-cause therefore is nothing but an after thought by the petitioner, having no relevance.

Under these circumstances, this Court is of the



opinion that the plea regarding non-compliance with the Principles of Natural Justice in the instant case is not tenable. The tank lorry samples had already failed in presence of petitioner/her representative on 27.07.2020 and no objection whatsoever was raised by the petitioner. It is in her presence that the samples were collected, sealed and sent for testing to the laboratory, failure of the tank lorry samples in the density test was thus a *fait accompli*. The action has been taken strictly as per the ITDG. The facts and circumstances, therefore, are such that no prejudice can be said to have been caused to the petitioner for non-issuance of a show cause prior to the impugned order of blacklisting.

Facts being so, this Court would observe that the law regarding applicability of the Principles of Natural Justice has been examined from many aspects by several decisions of the Hon'ble Apex Court. By now it is settled that there may be situations where opportunity of fair hearing or no opportunity of fair hearing would make no difference as it would not be likely to change the ultimate conclusion reached by the decision maker. This is one such case. The fact that the authority, before issuing the impugned order of black-listing the tank lorry had proceeded for testing of the tank lorry



samples in presence of the petitioner/her representative and the fact that it has failed in her presence, without any demur observing the procedure prescribed under the ITDG, is clear from the averments made in the writ petition and submissions advanced by the parties. This Court, therefore, relies upon paragraph 39 of a judgement of the Hon'ble Apex Court in the case of *Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519*, paragraph 39 of which is considered relevant in the facts and circumstances of the present case; and is thus being reproduced:

“39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social



goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corpn. [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that: (WLR p. 1595 : All ER p. 1294)

“... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”

Relying on these comments,



Brandon L.J. opined in Cinnamond v. British Airports Authority [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that: (WLR p. 593 : All ER p. 377)

“... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.”

In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.”

In the facts and circumstances taken note of hereinabove, the High Court exercising jurisdiction under Article 226 of the Constitution of India would limit its review to the decision making process which in the instant case cannot be flawed in any manner. There is no legal basis or scope otherwise, for this Court to interfere in the matter in exercise of judicial review by sitting in appeal over the decision communicated under letter dated 20.08.2020.



The writ petition is accordingly dismissed.

(Madhuresh Prasad, J)

Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

SUMIT/-

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