

19.06.2021
Item No.4
Court No.11
K.B.

**MAT 569 of 2021
with
CAN 1 of 2021**

**Indian Oil Corporation and Another
-Vs-
B. S. Enterprise & Others.**

(Via Video Conference)

Mr. Amit Kumar Nag
Mr. Swarajit Dey
.... For the appellants.

Mr. Dipankar Pal
.... For the Respondents.

This is an appeal arising out of an order dated 5th May, 2021 passed by the Learned Single Judge thereby directing the appellants/Oil Company (Indian Oil Corporation Ltd.) to fix a date for inspection of the vehicles and the spot for inspection. It was also directed by the Learned Single Judge to intimate the date of such inspection to the writ petitioners. In addition thereto, the Officer-in-Charge, of Kanksa Police Station was directed to make necessary police assistance at the locale to ensure that the petitioners could produce the vehicles for inspection by the Oil Company at the designated place.

It is submitted on behalf of the appellants/Oil Company that the tender was floated for selection of

transporters to carry bulk petroleum products. The writ petitioners were selected as one of the successful bidders.

In terms of the said tender the writ petitioners were required to produce the tank trucks (TT) within a specified period from the date of issuance of letter of acceptance (LOA).

It is the further case of the appellants that in spite of such condition was stipulated in the contract documents, the writ petitioners could not produce the tank trucks within the specified time after issuance of the letter of acceptance and the term expired on 4th of April, 2021.

It is contended during the course of argument that in view of failure on the part of the writ petitioners to produce tank trucks at Rajbandh Terminal for issuance of work order the writ petitioners are not entitled to be appointed as transporters in terms of the said contract.

In support of the such submission advanced on behalf of the appellants reliance has been placed on two judgements of the Apex Court – one reported in *(1994) 3 SCC 552* and another reported in *(2015) 15 SCC page 588* on the proposition that since the issue is relating to commercial dispute in connection with a tender therefore, the writ petition is not maintainable.

Per contra, Mr. Pal, learned Advocate representing the writ petitioners has submitted that as per the terms and conditions of the contract his clients made two attempts to produce the tank trucks within the stipulated

time from the date of issuance of letter of acceptance i.e. upto 5th April, 2021. Resistance was put up by the local miscreants outside Rajbandh Terminal. Tank trucks as per requirement could not be produced before the concerned authorities of the appellants and there was forcible prevention on the part of the local miscreants preventing and impeding the writ petitioners to produce the vehicles. Such obstruction put up by the local miscreants led to filing of complaint with the local police station but that could not yield any result.

In this regard, the writ petitioners issued e-mail letter to the appellants dated 3rd April, 2021 requesting the authorities for extension of time and fixation of date and place for production of tank trucks as per the requirement.

It has also been submitted by the learned Advocate representing the writ petitioners that pursuant to a letter dated 8th April, 2021 issued on behalf of the Oil Company asking to show-cause the writ petitioners replied to the said letter dated 8th April, 2021 vide letter dated 12th April, 2021 explaining the situation which ultimately prevented the writ petitioners to produce the trucks at the designated place. After preferring such letter by the writ petitioners dated 12th April, 2021, there was no response on the part of the Oil Company which is denied by the Oil Company at the time of hearing the present appeal.

We have heard the learned Advocates appearing for the appellants as well as the writ petitioners.

We have considered the relevant facts wherefrom it reveals that the writ petitioners were selected one of the successful bidders in terms of the tender and as per the requirement, they were required to produce the tank trucks at the designated site which could not be produced due to coercive action by the local miscreants preventing the writ petitioners to comply the same.

The writ petitioners preferred e-mail letter dated 3rd April, 2021 before the Oil Company for extension of time to produce the tank trucks at different site at Budge Budge which was not accepted by the Oil Company compelling the writ petitioners to approach this Court in order to enable them to act in terms of the tender upon production of the tank trucks.

Considering the rival submissions of the respective parties, we are not in agreement with the submissions made on behalf of the appellants that the issue relates to commercial disputes and as such the writ petition is not maintainable. Writ petitioners approached this Court for extension of time to produce tankers as they could not produce tankers within time due to resistance by the local miscreants, if necessary with the help of police assistance. The two Apex Court judgments (cited by the appellants) are on the proposition that in matter governed by contract authority need not adhere to principle of natural justice and is not amenable to writ jurisdiction. The

principle enunciated by the Apex Court in those two judgments does not apply in the present case.

It also appears from perusal of the order passed by the learned Single Judge that there was no specific submission made on behalf of the appellants with regard to the maintainability of the writ petition considering the issue involved in the present case.

In view of our anxious consideration made on the facts of the present case and upon taking note of the submissions made on behalf of the parties to this appeal, it appears to us that though the writ petitioners were selected as successful bidders for transporting the petroleum products they could not comply with the terms and condition of the contract due to forcible prevention made by the local miscreants; writ petitioners were prevented from production of trucks due to the obstruction made by the local miscreants on the date of production of the vehicles.

Contemporaneously, they approached the local police authorities for providing necessary assistance and also approached the appellants/Oil Company to grant them opportunity to produce the tank trucks at a different site upon extending the time.

In the backdrop of the above discussion, this Court finds no merit in the arguments advanced on behalf of the appellants.

The Hon'ble Single Bench correctly directed the writ petitioners/the present respondents to this appeal to

execute the production of the tank trucks with police assistance.

For the above reasons, the appeal and the connected applications are dismissed and the impugned order of the learned Single Judge stands affirmed.

With the consent of the parties, the appeal and the connected application are treated as on the day's list and are decided by this common order.

Since no Affidavits are invited, the allegations made in the appeal shall be deemed not to have been admitted.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Saugata Bhattacharyya, J.)

(Subrata Talukdar, J.)