IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.862 of 2018

In

Civil Writ Jurisdiction Case No.13072 of 2017

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1. The Indian Oil Corporation Ltd. Company
2. The General Manager Operations Bihar State Office, Indian Oil Corporation Marketint Division, Lok Nayak Jai Prakash Bhavan Dak Bunglow Chowk
3. The Chief Refinery Coordinator, Indian Oil Corporation , Barauni Terminal, Begusarai.
4. The Area Sales Officer, Indian Oil Corporation, Muzaffarpur.
5. The Area Sales Officer, Indian Oil Corporation, Saharsa.

... ... Appellant/s

Versus

M/s Diamond Carriers, S/o Sri Sitaram Singh, Resident of village- Mosadpur, P.O.- Tilrath, P.S. Barauni, District- Begusarai.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr.Anil Kumar Sinha, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-07-2023

The appellant is the Indian Oil Corporation, who was a respondent before the learned Single Judge. The sole respondent herein was the writ petitioner, who challenged a communication dated 18.07.2017 issued by the 2nd appellant by which six of the petitioner's tank trucks (for brevity “TT_s”) were blacklisted apart from imposition of a total penalty of Rs. 9,00,000/- (Nine Lakhs). The learned Single Judge found that the respondent who had been awarded the work of transportation of bulk petroleum products had defaulted in delivery of the products at the destination, being the E.C. Railway-Hajipur Saharsa. The petitioner was hence, directed to make deposit of the cost of product which he made partially through demand draft and the remaining amounts were recovered by adjustment against running bills. A further non-delivery also resulted in such liability being mulcted on the 1st respondent which was also recovered from the running bills.

2. An explanation was called for from the 1st respondent and as per the Oil Industry Transport Discipline Guidelines (for brevity “ITDG”), the respondent was blacklisted and a penalty of Rs. 9,00,000/- (Nine Lakhs) was imposed. The learned Single Judge found that though there were three incidents of violation on 14.02.2015, 30.06.2016 and 19.07.2016, the appellant had proceeded against the respondent for blacklisting only at one instance, based on the three

defalcations noticed. The learned Single Judge held that there was only one solitary instance of violation and Annexure-14 impugned order stood modified accordingly.

3. We have looked at the documents from the writ petition and we have heard the learned counsel appearing for the Corporation and the respondent. The learned counsel for the Corporation specifically points out three instances in which the defalcation had occurred. In fact, the entire amount due to the Corporation has been recovered and in such circumstance, it cannot be said that there was only one instance in which the respondent was blacklisted. The relevant provision of ITDG is specifically referred to. Learned counsel for the respondent seeks to sustain the order of the learned Single Judge.

4. The ITDG is produced as Annexure- R1/5 with the counter affidavit of the appellant. Clause 8.2.2.8 under 'Penalties upon detection of malpractices or irregularities' specifies 'Established case of pilferage/ non-delivery of product'. For that type of malpractice/ irregularity the penalty at the first instance is blacklisting. Again, the ITDG provides for damages to be recovered from the defaulter in the event of one or successive instances of such blacklisting as per the ITDG. At the first instance of blacklisting of a transporter, damages of Rs.

1,00,000/- (One Lakh) will be imposed and in the second instance, a damage of Rs. 3,00,000/- (Three Lakhs) and in the third instance, a damage of Rs. 5,00,000/- (Five Lakhs) with remaining 25% of the TT_s being blacklisted.

5. In so far as the respondent is concerned Annexure-14 is the only order passed against the respondent at the first instance. True, the order speaks of three incidents of non-delivery of products at the railway station; on 14.02.2015, 30.06.2016 and 19.07.2016. In so far as the defalcation of 14.02.2015, Annexure-8 letter was issued which was dated 10.11.2016. Annexure-8 speaks of non-delivery of the product and seeks an explanation with immediate effect. Obviously, the said letter was not followed up till the other two defalcations were also detected. It was on such detection that Annexure-11 notice was issued clubbing all the three incidents of alleged pilferage. Hence, though there were three incidents of pilferage, the Corporation proceeded for blacklisting only at one instance, clubbing the three incidents. The ITDG speaks of successive blacklisting with damages to be levied on each such successive blacklisting proceedings; which is not available in this case.

6. We find no successive proceedings having been taken. We fully agree with the learned Single Judge that there

was only one instance of blacklisting which could have resulted in levy of only Rs. 1,00,000/- (One Lakh) damages.

7. As such, we find no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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