



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd November, 2023

IN THE MATTER OF:

+ **W.P.(C) 4753/2020 & CM APPL. 17152/2020**

M/S-SAINI CARGO

..... Petitioner

Through: Mr. Pushkar Sood, Mr. K P Singh,
Mr. Vishwajeet Singh, Mr. Rishabh
Singh, Mr. Satya Prakash Singh,
Advocates

versus

INDIAN OIL CORPORATION LTD. & ANR

..... Respondents

Through: Ms. Mala Narayan and Mr. Shaswat
Goel, Advs for R-1.
Mr. Manish Vashisht, Sr. Advocate
with Mr. Vanshay Kaul and Ms.
Akansha Kaul, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court under Article 226 of the Constitution of India challenging an Order dated 08.05.2020 passed by Respondent No.1 blacklisting the entire fleet of the Petitioner and the crew of the Tank Truck (TT) bearing No. HR 37 D 7142 for a period of five years with effect from 07.02.2020 along with the decision to forfeit the security deposit lying with Respondent No.1. Vide the impugned order Respondent No.1 also observed that a sum of Rs.25,11,563/- is recoverable from the Petitioner in line with Clause 2.3.6 of the Industry Transport Discipline Guidelines.
2. Respondent No.1/Indian Oil Corporation Limited issued a tender for road transportation of bulk petroleum product, i.e., Aviation Turbine Fuel



(ATF), from ex-Panipat terminal to Chandigarh Air Force Station.

3. ATF is a very sophisticated and sensitive product which is used for fuelling aircraft of India Air Force and other commercial aircraft. The Petitioner herein was a successful bidder and an agreement, i.e., Bulk Petroleum Product Road Transport Agreement was entered into between the Petitioner and Respondent No.1 on 08.03.2018 whereby 7 TTs of the Petitioner were hired for the purpose of transport of the ATF.

4. An additional work order for 4 more TT was received by the Petitioner on 07.08.2019. It is stated that on 23.07.2019, an inspection was conducted in one of the Petitioner's TT bearing No. HR 37 D 7142 after it had reached Chandigarh Air Force Station for delivery of aviation turbine fuel. The allegation is that the driver of the TT, one Nayab Singh was in possession of a duplicate dip rod and there was a shortage of 693litres of the aviation turbine fuel in the said truck which indicated pilferage of the aviation turbine fuel.

5. Material on record indicates that the driver of the TT admitted to the pilferage and gave a statement in writing wherein he confessed that he is in possession of the two dip rods.

6. It is pertinent to mention here that extra dip rod did not match with the calibration dip chart. An FIR being FIR No. 507/2019 dated 20.11.2019 was registered at Police Station Baldev Nagar, Ambala against driver Nayab Singh for offences under Section 407, 408, 420, 468, 471 IPC.

7. A show cause notice was issued on 11.12.2019, mentioning the abovementioned facts as to why the Bulk Petroleum Product Road Transport Agreement with the Petitioner herein should not be terminated and the security deposit should not be forfeited and the entire carrier of the



Petitioner along with the TT transport fleet should not be blacklisted.

8. Show cause notice also indicated that the tampering with the calibration of the vehicle in any manner would amount to malpractice under Clause 8 of the Agreement entered into between the parties and the product loss would be recovered from the carrier from the date of the last calibration.

9. Replies were filed by the Petitioner. Respondent No.1 by the Order dated 08.05.2020 found that the replies given by the Petitioner amounts to admission of guilt on the part of the Petitioner about the existence of two dip rods in TT bearing No. HR 37 D 7142 carrying aviation turbine fuel to Chandigarh Air Force Station. The Petitioner also took a plea that the rival transporters might have lured the driver of the said TT bearing No. HR 37 D 7142 to carry the second dip rod was not acceptable. The impugned order was passed by Respondent No.1 blacklisting entire fleet of the Petitioner. It is this order which has been challenged in the instant writ petition.

10. Pleadings are complete. The principal contention of the Petitioner is that the entire fleet could not have been blacklisted and only the concerned TT could have been blacklisted. Reliance has been placed on Clause 8.2.2.11 of the Industrial Transport Discipline Guidelines, which according to the Petitioner, provides for blacklisting of the TT where the tampering with standard fittings of the TT has been found. The Petitioner contends that the punishment is contrary to the provisions of the Industrial Transport Discipline Guidelines and, therefore, is unsustainable.

11. In its reply, apart from taking the ground that the dispute arises out of Industrial Transport Discipline Guidelines, the Petitioner should be asked to approach the Civil Court for redressal of his grievances. It has also been stated that the Petitioner is a repeat offender and that this Court ought not to



exercise its jurisdiction under Article 226 of the Constitution of India.

12. Heard learned Counsel for the parties and perused the material on record.

13. Learned Counsel for the Petitioner has taken this Court to the various clauses of the Industrial Transport Discipline Guidelines to contend that the punishment imposed on the Petitioner blacklisting the fleet is contrary to the terms of the Industrial Transport Discipline Guidelines. He states that as per the guidelines in case a TT is found to have fittings which are tampered, then only that TT can be blacklisted and there is no provision in the agreement for blacklisting the entire fleet and for forfeiting the security deposit. Learned Counsel for the Petitioner further contends that there is no finding that there was a complicity between the Petitioner and the driver of the said TT and the fact that the driver was in possession of the two dip rods does not indicate that the Petitioner carrier was involved in the pilferage and the driver could have been doing it for his own personal gain or could have been working at the behest of the rival competitors. Learned Counsel for the Petitioner places reliance on a judgment of the High Court of Rajasthan in J V Enterprises v. Indian Oil Corporation through Managing Director; General Manager, Indian Oil Corporation Limited, **2019 Law Suit (Raj) 143**, wherein the High Court of Rajasthan held that if the corporation take action as per the complicity of the carrier, then notice of such allegation and proposed action is required to be given to the carrier. Simply by referring to the Industry Transport Discipline Guidelines (ITTG) alone cannot absolve the responsibility of the corporation to issue a proper show cause notice.

14. *Per contra*, learned Counsel for the Corporation contends that the agreement stipulates that in case of duplicate dip rods/calibration chart, the



complicity of the carrier is deemed to be existed and the whole fleet of the carrier comprising of all the TTs is to be terminated and the security deposit to be forfeited. It is further stated that that other irregularities have also been committed by the Petitioner.

15. This Court, at this juncture is inclined to extract the various clauses of the Industrial Transport Discipline Guidelines which is the basis of imposing penalty.

16. Clause 2.3.6 of the Oil Industry Transport Discipline Guidelines deals with tampering with calibration of the vehicle reads as under:-

“2.3.6 Tampering with calibration of vehicle in any manner shall be construed as a malpractice and penal action will be taken against the carrier as outlined under clause no. 8. Further, alleged product losses will be recovered from the carrier from the date of last calibration. ”

17. Clause 8.2 of the Oil Industry Transport Discipline Guidelines which deals with penalty for malpractices and irregularities reads as under:-

“8.2 Penalties for malpractices/ Irregularities

8.2.1 Malpractices/ Irregularities will cover any of the following:

a. Unauthorized deviation from specified route/ unauthorized delay/ unauthorized on-route stoppage/not reaching destination/ over speeding/ en-route switching off VMU/ unauthorized removal of VMU/ use of VMU on other vehicles

b. TT crew found in intoxicated state while on duty.

c. Irregular reporting of TT at loading location without permission of the location.



- d. Refusal to carry loads allocated by the location.*
- e. Reported case of non-wearing of retractable seat belt while driving.*
- f. Driving vehicle without cleaner/helper.*
- g. Non-functioning of Fire Extinguisher canted by TT.*
- h. Polluting environment due to product spillage from tilting or leaky vehicles on road, in case of accident/unsafe driving*
- i. Accident involving injury or damages to the facilities at the work place*
- j. Fatal accident at the work place*
- k. Tampering with standard fittings of 17 including the sealing, security locks, security locking system, calibration, Vehicle Mounted Unit or its fittings/fixtures*
- l. Unauthorized use of TT for products other than the petroleum products for which it has been engaged*
- m. Entering into contract based on forged documents/false information.*
- n. Entering into an agreement for the same TT with other oil companies*
- o. Irregularities under VV&M Act*
- p. Not lodging FIR with the Police In case e accident, not informing/ submitting accident report to the Oil Company about the accident.*



q. Pilferage/ short delivery of product

r. Any act of the carder/ carrier's representative that may be harmful to the good name/ Image of the Oil Company, its' products or its services

8.22 Penalties upon detection of malpractice/ irregularities

The carder shall attract penalties for the malpractice /irregularities as given below and the TT mentioned in the following Instances shall be suspended/blacklisted along with TT crew. However, an investigation, wherever required, shall be conducted and if the malpractice/ irregularity is established then penal actions stipulated as under shall be taken, including blacklisting:

Clause No.	Type of malpractice/irregularity	Penalty against number of instances		
		First	Second	Third
8.2.2.1	<i>(a) Reported non-wearing of retractable seat belt while driving.</i> <i>(b) Repetitive/ Habitual over speeding</i> <i>(c) Driving vehicle without cleaner/ helper.</i>	<i>TT shall be suspended for one week.</i>	<i>TT shall be suspended for 3 months.</i>	<i>TT shall be blacklisted.</i>
8.2.2.2	<i>(a) Established repetitive unauthorized stoppage en route.</i> <i>(b) Established repetitive unauthorized diversion from specified route.</i> <i>(c) Refusal to carry loads allocated by the location.</i>	<i>TT shall be suspended for 3 months.</i>	<i>TT shall be blacklisted.</i>	



	<i>(d) Irregular reporting of TT at loading location without permission of the location.</i>			
8.2.2.3	<i>Short delivery of product for established malpractice.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.4	<i>(a) Non-availability/ non-functioning of TT fire extinguisher.</i> <i>(b) TT crew found in intoxicated state while on duty.</i> <i>(c) Not wearing uniform.</i> <i>(d) Not wearing PPEs at loading/un-loading locations.</i>	<i>TT shall be suspended for one week.</i>	<i>TT shall be suspended for 3 months.</i>	<i>TT shall be blacklisted.</i>
8.2.2.5	<i>(a) Established tampering/ damaging of VMU.</i> <i>(b) Established disconnection of power/cable of VMU enroute.</i> <i>(c) Removal of VMU from original mounting.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.6	<i>Accident at the location leading to injury of persons or damages to the facilities.</i>	<i>TT shall be suspended for 3 months.</i>	<i>TT shall be blacklisted.</i>	
8.2.2.7	<i>Polluting environment due to product spillage from TT.</i>	<i>TT shall be suspended for 3 months.</i>	<i>TT shall be blacklisted.</i>	
8.2.2.8	<i>Established case of pilferage/ non-delivery of product.</i>	<i>TT shall be blacklisted.</i>		



8.2.2.9	<i>Fetal accident at the work place.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.10	<i>Irregularities under W&M Act.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.11	<i>Tampering with standard fittings of TT including the sealing, security locks, security locking system, Calibration.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.12	<i>Unauthorized use of TT outside the contract.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.13	<i>Entering the contract based on forged documents/ false information.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.14	<i>Entering into an agreement for the same TT with other oil companies.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.15	<i>Not lodging FIR with the Police in case of accident, not informing/submitting accident report to the Oil Company about the accident.</i>	<i>TT shall be blacklisted.</i>		
8.2.2.16	<i>Any act of the carrier/carrier's representative that may be harmful to the good name /image of the Oil Company, its' products or its services,</i>	<i>As decided by the company</i>		

During the validity of transportation contract, in the first instance of blacklisting for a transporter, as per the above provisions, damage of Rs.1Lakh will be imposed on the Transporter apart from blacklisting of the involved TT. In second Instance of blacklisting, a damage of Rs 3 Lakhs will be imposed and the Involved



TT will be blacklisted. In third instance of blacklisting, a damage of Rs 5 Lakhs will be imposed and 25% of the remaining TTs will be blacklisted along with the involved TT. In fourth Instance, a penalty of Rs 8 Lakhs will be imposed and 50% of remaining TTs will be blacklisted along with Involved TT. In case of any further Incident of malpractice, the entire fleet will be blacklisted and the SD will be forfeited and the transportation contract will be terminated. The percentage of TT blacklisted will be in proportion of own & attached offered and will be rounded off to the higher numerical.

Above damages imposed are in addition to the recovery of the product quantity found short or recovery due to contaminated product involving the cost of product, expenses and losses Incurred as determined by the company.

However, in case, complicity of the transporter is established even In first Instance of malpractice, the entire fleet will be blacklisted, contract terminated & carrier blacklisted along with forfeiture of SD.

The blacklisting of TTs shall be on Industry basis.

In the following irregularities, the complicity of the carrier shall be deemed to be existent and the whole contract comprising of all the TTs belonging to the concerned carrier shall be terminated, security deposit forfeited and the concerned carrier & their all TTs shall be blacklisted on Industry basis:

- 1. False/hidden compartment, unauthorized fittings or alteration in standard fittings affecting Quality and Quantity.***
- 2. Illegal/un-authorized duplicate keys of security***



locks.

3. Duplicate dip rod/calibration chart.”

(emphasis supplied)

18. Clause 8.2.2 indicates that various penalties are to be imposed for various types of irregularities. Though Clause 8.2.2.11 states that in case of tampering with the standard fittings of the TTs including the security locking system and calibrations postulates the TTs to be blacklisted that cannot amount to say that only that TT will alone be blacklisted. The Petitioner has been given the responsibility by carrying aviation turbine fuel for aircraft. The TT in this case was to supply ATF to Air Force Station, Chandigarh. It cannot be said that carrier having 8 TTs and only one of the TT was defective amounting in a huge loss of 693 litres then only that TT alone will be blacklisted and other TTs which are not caught can be permitted to carry on its operation. Clause 8.2 further provides that in case it is found that there is a duplicate dip rod chart, then the complicity of the carrier is deemed to be existent and that the whole of the contract of all the TTs belonging to the concerned carrier shall be terminated.

19. In the present case, in reply to the show cause notice, the Petitioner has only tried to shift the responsibility on the driver. There is nothing on record to show as to whether the criminal case has concluded in favour of the Petitioner. Even assuming it has, even then, that cannot be a yardstick to exonerate the Petitioner carrier wherein a substantial loss of 693 litres of aviation turbine fuel has been found.

20. There is nothing on record to demonstrate that the Petitioner has been able to rebut the presumption which exists against the carrier. There is



deeming provision in the said clause which provides that the carrier is deemed to be an accomplice in the pilferage and the entire fleet of the carrier is to be blacklisted. The Petitioner has been blacklisted for a period of five years as provided under the ITDG. The jurisdiction of the Courts while interfering with the administrative actions has been well defined in a number of cases. It is well settled that the author of the agreement are the best persons to interpret the contract and the Courts do not sit as an appellate authority over the decisions taken by the authority unless the decision is extremely perverse.

21. In Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr., (2016) 16 SCC 818, the Hon'ble Supreme Court has observed as under: -

"11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.



12. In *Dwarkadas Marfatia and Sons v. Port of Bombay* [*Dwarkadas Marfatia and Sons v. Port of Bombay*, (1989) 3 SCC 293] it was held that the constitutional courts are concerned with the decision-making process. *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional courts can interfere if the decision is perverse. However, the constitutional courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in *Jagdish Mandal v. State of Orissa* [*Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517] as mentioned in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)*, (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99].

13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision."

22. In Municipal Corporation, Ujjain & Anr. v. BVG India Limited & Ors., (2018) 5 SCC 462, the Hon'ble Apex Court opined: -

" 14. The judicial review of administrative action is intended to prevent arbitrariness. The purpose of judicial review of administrative action is to check whether the choice or decision is made lawfully and not to check whether the choice or decision is sound. If the process adopted or decision made by the authority



is not mala fide and not intended to favour someone; if the process adopted or decision made is neither so arbitrary nor irrational that under the facts of the case it can be concluded that no responsible authority acting reasonable and in accordance with relevant law could have reached such a decision; and if the public interest is not affected, there should be no interference under Article 226."

23. In Silppi Constructions Contractors vs. Union of India and Anr., (2020) 16 SCC 489, the Apex Court has observed as under:-

" 19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts



should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

24. In N.G. Projects Limited v. Vinod Kumar Jain and Ors., (2022) 6 SCC 127, the Apex Court has held as under: -

“23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view.



Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work.”

25. In the present case, the facts of the case that the TT bearing No. HR 37 D 7142 was inspected on 24.10.2019 and on that date, there was shortage of 693 litres of aviation turbine fuel and the driver was having two dip rods and the calibration chart of the one dip rods did not match with the calibration chart has been admitted. The agreement under the ITDG provides that in such cases, the complicity of the carrier must be presumed. Nothing on record has been given by the Petitioner to rebut the presumption.

26. In view of the above, this Court does not find any reason to interfere with the decision arrived at by Respondent No.1. The writ petition is dismissed along with pending application(s), if any.



NOVEMBER 02, 2023/hsk

SUBRAMONIUM PRASAD, J