

17.09.2024
SL No.10
Court No.24
Ali

WPA 23542 of 2024

Ajit Kumar Murmu
Versus
Indian Oil Corporation Ltd. & Ors.

Mr. Debabrata Saha Roy,
Mr. Subhankar Das
.....for the petitioner.

Mr. Amit Kumar Nag,
Ms. P. Bhounik
.....for the respondents.

The present petitioner running a business of transport contractor of Oil Companies under the name and style of "M/S. MAA OIL MOVERS" and carrying on business of transporting bulk petroleum products and owned numbers of Tank Trucks (TTs) as per specification of Oil Companies to transport bulk petroleum products.

In pursuance of the tender issued by the respondent Oil Companies the petitioner initially placed 18 numbers of owned (TTs) in the said tender. However, the petitioner had been selected as successful bidder in respect of the tender and total 14 numbers of (TTs) were selected by the IOCL.

It is the case of the petitioner that in terms of the said tender Notification an agreement was entered into between the respondent authority with the petitioner on 26th of November, 2021. Accordingly, work order was issued on 27th of

November, 2021. The period of contract was valid from 01.01.2022 to 31.12.2024. It has been also stipulated in the contract that the contract is extendable for further two years at the sole discretion of the corporation.

It is the case of the petitioner that he could not produce the 10 (TTs) at the terminal to load the Petroleum products. Accordingly, one show cause notice was issued in respect of each (TTs) in terms of violation of Clause 8.2.2.2. (d) of Industrial Transport Discipline Guidelines (in short ITDG).

It is the case of the petitioner that the petitioner was also served with the show cause notice on 30th August, 2023 for entering into contract based on forged and manipulated documents/false information against tender notice. In terms of the said show cause notice, the petitioner has placed his written submissions with the authority concerned. The concerned authority was also awarded hearing to the petitioner and after hearing the respondent authority has passed an order on 10th September, 2024 thereby the agreement dated 26.11.2021 between the petitioner and the corporation were terminated, all 14 (TTs) were blacklisted till the period on 31st of December, 2026 and the security deposit has been forfeited.

Against the impugned order of termination, the instant writ petition was preferred.

Mr. Debabrata Saha Roy, learned counsel appearing on behalf of the petitioner submits that the impugned order of termination is arbitrary and illegal in the eye of law. He submits that the impugned order is not at all conformity with the show cause notice issued by the respondent authority in favour of the petitioner by violating relevant provisions of ITDG. The punishment which can be inflicted is only in respect of the particular (TTs) not against the company.

Mr. Saha Roy, further argued that there are no allegation against rest four (TTs); they are plying according to the terms of the agreement. Thus, the agreement cannot be terminated by the Oil Companies. He further argued that concerned authority has not considered the detail representation of the petitioner regarding the substitution of new truck in place of old truck but the arbitrary order has been passed.

Mr. Saha Roy, has placed the relevant provisions of Industrial Transport Discipline Guidelines (in short ITDG) and submits that according to such guidelines only the (TTs) can be blacklisted not the entire company.

Under the above observations, he seeks the necessary order in terms of the prayer (G) of the writ petition.

Learned counsel appearing on behalf of the respondent Oil Company initially submits that the instant writ petition is not at all maintainable in terms of paragraph 18 of the said agreement. He submits that both the parties are entered into the contract with a specific provision that if any dispute arises between the parties during the terms of the contract, the said disputes may be referred to the sole arbitrator.

He submits that the petitioner has not exhausted his relief in terms of the agreement. Thus, the instant writ petition has not at all maintainable. He submits that the petitioner may be directed to proceed before the arbitrator for necessary redressal.

In support of his contentions, he cited a decision of Hon'ble Supreme Court passed in ***Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others (1991) 1 SCC 533.***

He referred the said paragraph 9 of the said decision:

“9. The arguments advanced by Shri Harish Salve on behalf of the appellant-Corporation to the validity of the award are these. The first

contention is that the validity of the award has to be tested on the principles of private law and the law of contracts and not on the touchstone of constitutional limitations to which the Indian Oil Corporation Ltd., as an instrumentality of the State may be subject since the suit was based on breach of contract alone and the arbitrator also proceeded only on that basis to grant the reliefs. It is argued that for this reason the further questions of public law do not arise on the facts of the present case. The next contention is that the relief of restoration of the contract granted by the arbitrator is contrary to law being against the express prohibition in Sections 14 and 16 of the Specific Relief Act. It is argued that the contract being admittedly revocable at the instance of either party in accordance with Clause 28 of the agreement, the only relief which can be granted on the finding of breach of contract by the appellant-Corporation is damages for the notice period of 30 days and no more. It was then urged that the reasons given in the award for granting the relief of restoration of the distributorship are untenable, being contrary to law. Shri Salve contended that the propositions of law indicated in the award and applied for granting the reliefs disclose an error of law apparent on the face of the award. It

was also urged that the onus of proving valid termination of the contract was wrongly placed by the arbitrator on the appellant-Corporation instead of requiring the plaintiff-respondent 1 to prove that the termination was invalid. It was also contended that the failure of the arbitrator to consider and decide the appellant-Corporation's counter-claim when the whole suit was referred for decision constitute legal misconduct."

He also cited a decision reported of Hon'ble Apex Court in ***M/s Radhakrishna Agarwal and Others. Versus State of Bihar & Others*** reported in ***(1977) 3 SCC 457***.

By citing such decisions, he submits that it is the observation of Hon'ble Apex Court that ***"no writ or order can issue under Article 226 of the Constitution"*** in such type of cases ***"to compel the authorities to remedy a breach of contract pure and simple"***. He further argued that the contract between the parties is terminable according to the terms of the agreement. So, specific performance of cancellation of order of termination cannot be prayed for in a writ jurisdiction. He further argued that the instant writ petition involves several disputed questions of facts which can only be ascertained by the competent authority but not by this writ court. He further argued that the authority

concerned has adopted the procedure as enumerated in the contract according to the provisions of ITDG. The petitioner has accepted the irregularities in his written statement. Moreover, he has given an appropriate opportunity of being heard, the impugned order was not violated the principles of natural justice. Thus, the instant writ is not at all maintainable. He further referred several provisions of ITDG and submits that by virtue of provisions of ITDG, the impugned order of termination was passed.

Refuting the contentions of learned counsel for the respondent Mr. Saha Roy has placed some decisions of this Court passed in ***M/s. Bimala Gas Service & Anr. V. Indian Oil Corporation Ltd. & Ors.*** He submits that the Hon'ble Single Bench of this Court was of view that since there was an arbitration clause but the High Court cannot loses its authority to decide the issue providing substantial justice to an aggrieved party. The decision of Hon'ble Single Bench of this Court of ***M/s. Bimala Gas Service & Anr. V. Indian Oil Corporation & Ors.*** was upheld by the Hon'ble Division Bench in appeal and it was further upheld by the Hon'ble Apex Court. He referred the relevant paragraph 34 of ***M/s. Bimala Gas Service & Anr.***

V. Indian Oil Corporation & Ors. reported in
2018 SCC OnLine Cal 7352

“34. It is settled law that availability of alternative remedy is not an absolute bar to entertain a writ petition. In the instant case the cause of action arose when the distributorship agreement was terminated by IOCL on 26th March, 2014. The writ petition had been filed immediately thereafter. Admittedly it took more than four years to consider the said writ petition, hear out and decide the same. Adequate opportunities were given to the private respondent to defend his case. The private respondent chose not to appear. Prior to passing the order of termination an opportunity of hearing was given to all the parties. Even then the private respondent chose to remain silent. Remanding the matter back to arbitration would not in my opinion serve the ends of justice. The same will again be sheer wastage of time, energy and money and it would stand in the way of providing substantial justice to an aggrieved party. In my considered opinion remanding the matter for arbitration would be a futile exercise and in any case the same will not amount to effective and efficacious remedy. Moreover as livelihood of the petitioners has been taken away relying on an irrelevant and non existent cause, the fundamental right

of the petitioners to carry on trade and earn their living had been illegally infringed by the respondent authorities. The impugned order of termination is not tenable in the eye of law. The Hon'ble Supreme Court in the case of Harbanslal Sahania (supra) clearly held that where the petitioner's dealership, which was their bread and butter, came to be terminated for an irrelevant and non-existent cause relief should have been allowed by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

Mr. Saha Roy also cited a decision of ***Harbanslal Sahnia and another Versus Indian Oil Corpn. Ltd. and Others reported in (2003) 2 SCC 107*** wherein the Hon'ble Supreme Court in following its earlier decision in ***Whirlpool Corporation Versus Registrar of Trade Marks (1998) 8 SCC-1*** has observed that the writ petition before the High Court can be maintainable in three contingencies they are **(i) where the writ petition seeks enforcement of any the company of the fundamental rights; (ii) where there is failure of principle of natural justice; or (iii) where the orders of proceedings are wholly without the jurisdiction or the vires of an Act is challenged.**

Heard the learned advocates perused the observation of the Hon'ble Apex Court, it appears to

me that, the observation of Hon'ble Apex Court in ***Harbanslal Sahnia (supra)*** and ratio thereof is squarely applicable in this case. Hence, the writ petition, wherein the alleged arbitrary action of the authority is under challenged on the ground of violation of fundamental rights to livelihood, appears to me maintainable. The impugned order dated 10th September, 2024 is under challenged. The said order of the authority is in respect of show cause notice dated 30th August, 2023 and the reply of the petitioner dated 15.09.2023 as well as dated 29.09.2023. The first ground of challenged of such impugned order is that the order of termination is not specifically show caused by the respondent authority by virtue of the show cause notice dated 30th August, 2023.

On perusal of the show cause notice it appears that the concerned authority in pursuance of a complaint of one Sri Utkarsh Shaw has initiated the proceeding due to the specific term of violation as mentioned there as follows:

“The above findings are clear violation of clause 8.2.2.13 of ITDG (Version-4), clause 15(d),(f) of the transport agreement dated 26.11.2021 and clause No. 17, 18, 19 of tender terms and conditions”.

In the instant case, it has been alleged that out of total number of 14 (TTs) the petitioner could

not place 10 (TTs) at Howrah Terminal for loading the petroleum product. It has been further alleged in the show cause notice that the petitioner has entered into a contract with the concerned authority by submitting forged documents.

The facts of the case goes to show that though the 10 (TTs) were not placed at the loading location but rest 4 (TTs) were plying according to the terms of the agreement.

The facts also goes to show that after verification among 10 (TTs) only the documents of one (TT) appears to be not matching as per the report of the concerned registering authority. The vehicle No. which was not matching with the registration year is WB 11C5642. But, in respect of the rest 9 vehicles the documents are matching.

It is the case of the respondent that according to the provisions of clause 8.2.2.13 of ITDG (Version-4), clause 15(d),(f) of the transport agreement as well as clause 17, 18, 19 of the tender terms & conditions. The agreement of the petitioner with the respondent authority is liable to be terminated.

Let me see the specific provisions as mentioned in the show cause notice.

Clause 8.2.2 of ITDG enumerated the provisions of penalties upon disclosure of

malpractices/irregularities. Clause 8.2.2.2 (d) enumerated the condition as- “irregular reporting of (TT) at lodging location without permission of the location”; for the said irregularities of first instances it has been enumerated that “(TT) shall be suspended for three months” and for second instances “(TT) shall be blacklisted”.

Clause 8.2.2.13 has enumerated provisions for entering into contract based on forged documents/false information. The punishment is “(TT) shall be blacklisted”.

In the said provisions of 8.2.3 it has been enumerated as follows:

“However, in case complicity of the Contractor is established even in first instance of malpractice, the entire fleet will be blacklisted, contract terminated & carrier blacklisted along with forfeiture of SD”. So, in the present case, it has been proved that the 10 number of (TTs) were not placed at the loading location without the information of the location. It has also been proved that document of one (TT) appears to be not matching. Thus, it is under the authority according to the ITDG that the respondent authority may blacklist the all 10 (TTs) or may blacklist the (TT) for producing forged documents. It is the obligatory according to the ITDG that the complicity of the

contractor has been proved or established before termination of the contract.

In the present case, after perusing the written submission of the contractor/petitioner before the authority concerned it appears that he voluntarily placed all the documents of the (TTs) and discloses his inability for non-placing the 10 numbers of non reporting the vehicles due to some financial crunches. Moreover, he also placed a *bona fide* prayer before the authority to replace the 10 new vehicles against old vehicles which could not be placed under running condition at the location.

Basically, the petitioner pleaded before the authority his financial stringency. The authority concerned has referred the Clause No. 19 of the tender documents which allows the authority to terminate if any documents is appears to be forged subsequent to the award of contract.

After careful consideration of the impugned order passed by the concerned authority it appears to me that the concerned authority has failed to establish the complicity i.e. *mala fide* intention of the petitioner for production of the so called forged documents. Moreover, the documents of the (TTs) were placed by the authority. Though, it has been alleged that all registration documents of all 10 (TTs) are forged but after verification it appears that only

in respect of one (TT) the month and year of the manufacture has been mentioned as November, 2014. But the report of the concerned RTO stated that the month and year of the manufacture is October, 2014.

Submission of such erroneous month and year of manufacturing in respect of the particular (TT), whether the conscious mental act of the petitioner or not, has never been established by the authority. Moreover, it has never been specifically proved by the authority that the petitioner has willfully misled or misrepresented the authority concerned to compel them to enter into the contract by producing the forged documents.

Under the above observation, it appears to me that the impugned order of termination/order of blacklisting dated 10.09.2024 passed by the authority concerned appears to me arbitrary and erroneous. Thus, the order dated 10.09.2024 passed by the Executive Director & State Head, WBSO, IOCL is hereby quashed.

The authority concerned is hereby directed to allow the petitioner to carry four (TTs) in compliance with the terms of agreement till 31st of December, 2024. However, it is the sole prerogative of the Corporation itself whether they shall extend the agreement for further more two years or not?

Accordingly, the writ petition being **WPA 23542 of 2024** is disposed of.

Learned counsel appearing on behalf of the respondent prayed for stay of operation of this order till a limited period.

Heard the learned advocate for the respondent; considering the entire circumstances, I think it necessary that the order of stay cannot be granted at this stage.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)