
(2014) 12 KL CK 0037

In the High Court Of Kerala

Case No : W.P.(C). No. 31321 of 2014 (M), R.P. No. 851 of 2014 (A) and W.P.(C). No. 21802 of 2014

K.L. Jinto

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2014) 12 KL CK 0037

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : K. Jaju Babu, Sr., M.U. Vijayalakshmi and Brijesh Mohan, Advocate for the Appellant; N.N. Sugunapalan, Senior Advocate and S. Sujin, Advocate for the Respondent

Judgement

A. Muhamed Mustaque, J.—These petitions are filed by the transport contractors with Bharat Petroleum Corporation Ltd. One of the vehicle belongs to the Petitioner in W.P.(C). No. 21802 of 2014 has been noticed with alteration to facilitate pilferage of petroleum products by Senior Inspector of Legal Metrology Department, the vehicle is bearing registration No. KL 41C-6100. This was informed to the Corporation based on the notice of the Legal Metrology Department. By Ext. P4, contract was terminated and petitioner was blacklisted from industry for a period of two years. Apart from the vehicle mentioned above, there are five more vehicles being engaged by the Corporation for transporting petroleum products to the petitioner. This Court by interim order allowed the petitioner to transport the vehicles other than one which was detected with certain illegalities. Thereafter, petitioner filed I.A. No. 14370 of 2014 in W.P.(C). No. 21802/14 seeking a direction to replace truck No. KL07W 5255 with KL-04P-5106. This was allowed and directed the Corporation to allow the petitioner to replace the vehicle. Against the order in I.A. No. 14370 of 2014, Corporation filed R.P. No. 851 of 2014. W.P.(C). No. 31321 of 2014 is filed by another contractor. One of his vehicle bearing registration No. TN-30D-6746 is detected with malpractice. It is also noted by the Corporation that six other

vehicles did not report the installation for taking loads on certain dates and periods. Accordingly, petitioner's lorries were suspended. Thereafter, as per Ext. P3 contract was terminated and petitioner therein also blacklisted for a period of two years from the industry.

2. Hearing learned Senior counsel appearing for the petitioners and learned Senior counsel appearing for the Bharat Petroleum Corporation, the detection of one of the vehicles belonged to the petitioner in W.P.(C). No. 21802 of 2014 is based on an inspection by the Senior Inspector of Legal Metrology department. Petitioners case is that there is a challenge against findings of Senior Inspector and the proceedings under the Standards of Weights and Measures Act has not been concluded. However, as far as W.P.(C). No. 31321 of 2014 is concerned, petitioner admits the malpractice, according to him malpractices were committed by the employee. But, Writ Petitioner never admits delay in reporting at installation centres. He has explained various reasons for any delay occurred in reporting.

3. Question is whether blacklisting and termination of the contract is warranted? Learned Senior counsel pointed out to this Court clause 8.2.2.5 of Industry Transport Discipline Guidelines. It does not indicate blacklisting or terminating on account of delay in reporting. However, it stipulates blacklisting in certain situations like pilferage of product and also explanation to the guidelines which according to the learned Senior counsel, if the complicity of the carrier is detected in case of occurrence of any of the malpractices, blacklisting is possible. However learned Senior counsel appearing for the petitioner points out that blacklisting is possible only to the extent of detected tank truck and entire contract cannot be terminated and petitioner cannot be blacklisted from the industry.

4. Before entering into the legal interpretations of the various provisions of the guidelines, I am of the view, there is no dispute to the fact that the detection has been noticed first time and petitioners have undertaken before this Court, no other vehicles used by them have been reported with any detection of malpractice. I am of the view in such situation, it is appropriate for the respondent/Corporation to permit the petitioners to allow to operate other vehicles which have not been found with any malpractice or irregularities. Petitioner in W.P.(C). No. 21802 of 2014 has not accepted detection by the Senior Inspector and the proceeding is under challenge. In respect of W.P.(C). No. 31321 of 2014 is concerned, petitioner admits malpractice. However, according to the petitioner it is done by his crew and petitioner has taken disciplinary action against him and he has been dismissed from the service.

5. In view of the matter, I am of the view Corporation shall take a lenient view after considering the peculiar circumstances of the case. Therefore, petitioners shall approach the respondent to reconsider the issue regarding termination and blacklisting and necessarily, the Corporation shall have a re-look at various provisions which according to me requires an appreciation in the light of

argument raised by the Senior counsel for the petitioner, that blacklist of all trucks is not possible under the Guidelines.

6. As far as R.P. No. 851 of 2014 is concerned, apprehension of the learned Senior Advocate for the respondent is that as a matter of right, no contractor can ask for replacement of the vehicle and it purely falls within the discretion of the Corporation to grant any request for replacement. I am of the view, it is purely discretion of the Corporation in the matter and it is on account of the peculiar circumstances of the case, this Court ordered for replacement. Therefore without treating it as a precedent, the RP is closed. However, in respect of other directions, petitioner shall make representation before the Corporation to reconsider the matter in the facts and circumstances mentioned above and petitioner shall be permitted to operate with other vehicles till a decision is taken. Needful shall be done within a period of two months. Any amount due to the petitioner shall also be disbursed within a period of one month.

The Writ Petition is disposed of as above. No costs.