
(2015) 02 RAJ CK 0109
In the Rajasthan High Court
Case No : Civil Writ Petition No. 826/15

Laxmi Petroleum	Vs	APPELLANT
Indian Oil Corporation Ltd. and Others		RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Constitution of India, 1950 — Article 226

Citation : (2015) 02 RAJ CK 0109

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Vikas Balia, for the Appellant; M.C. Bhoot, Senior Advocate and O.P. Mehta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—This writ petition has been filed by the petitioner questioning the legality of the order dated 26.12.14 issued by Chief Terminal Manager, Indian Oil Corporation Limited (IOCL), Jodhpur and the order dated 31.12.14 issued by Deputy General Manager (O), RSO, IOCL, whereby the contract awarded to the petitioner firm for transportation of bulk Motor Spirit/High Speed Diesel (MS/HSD) Ex Jodhpur Terminal, stands terminated and its all the Tanker Trucks (TTs) with TT crew have been blacklisted for a period of two years. That apart, notice to show cause dated 19.11.14 issued by the Chief Manager, IOCL, Jodhpur Terminal, initiating the proceedings for termination of contract and blacklisting of TTs is also impugned.

2. The relevant facts are that in the month of September, 2011, the IOCL issued a Notice Inviting Tender (NIT) for transportation of bulk MS/HSD from Ex Jodhpur Terminal to various destination. The petitioner firm, which is engaged in business of road transportation since from the year 1986, submitted its tender. The rates offered by the petitioner being found most competitive, it was declared successful bidder and the contract was finalised in its favour. Accordingly, vide

work order dated 12.7.13, the petitioner was awarded the contract for operating TTs for transportation of bulk MS/HSD supplies Ex Jodhpur Terminal for a period of two years i.e. from 1.5.12 to 30.4.14, with an option of extension for one year at sole discretion of IOCL. The details of 76 TTs put for disposal of IOCL was also enclosed with the work order. Subsequently, the contract awarded was extended for a period of one year i.e. upto 30.4.15.

3. As per clause 2.0 of Industry Transport Disciplinary Guidelines ("Disciplinary Guidelines"), which forms part of Tender Bid Document and has also been declared to be forming part of agreement/contract, it is obligatory for carrier to provide TT fit in all respect to carry petroleum products with license of Explosive Department, Calibration Certificate issued by Weights and Measure Department and with requisite compliance as prescribed under Motor Vehicles Act, 1988. Under clause 2.3.7 of the Disciplinary Guidelines, it is obligatory for the carrier/owner of TTs to get the vehicle calibrated either from Calibration Station of the Oil Company or at the specified service station as directed by respective Petroleum Company.

4. The controversy involved in the present writ petition, relates to TT bearing registration No. RJ-30-G-1976 referred to at Serial No. 43 in the list attached to the work order issued in favour of the petitioner, which was put in use for contract work for last three years. Since the calibration certificate of the TT in question was expiring on 18.10.14, the petitioner firm submitted a letter dated 10.10.14 alongwith requisite fee and last calibration certificate issued by the Legal Metrology Department to the authorities of IOCL for carrying out inspection for issuing calibration certificate. The TT was queued up for calibration, outside the service station of Salawas Terminal of IOCL on 10.10.14, which was called up for inspection on 15.11.14 and entry gate pass was prepared. After inspection, a check list was prepared on 15.11.14, approving certain specifications/columns and indicating certain repairing works to be carried out. For carrying out the repairing/maintenance work pointed out, the carrier drove out TT from service station under outward gate pass and thereafter, after carrying out suggested repairing work, the TT in question was again driven in at service station, Jodhpur Terminal, Salawas, for inspection on 17.11.14 at 8.30 a.m.

5. On 26.11.14, the petitioner was served with the show cause notice dated 19.11.14 issued by the Chief Terminal Manager, Jodhpur Terminal, Salawas, stating therein that before calibration during inspection of TT in question, it was observed that it is having unauthorised fittings i.e. "tapping in bottom of 3rd compartment hidden by sheets on either sides", which amounts to alternation in standard fittings/unauthorised fittings, attracting action in terms of clause 8.2.2 under the Disciplinary Guidelines, which may result in termination of contract and blacklisting of all TTs. The petitioner was directed to file reply to the show cause notice within 7 days from the receipt thereof.

6. The proprietor of the petitioner firm responding to the notice vide communication dated 28.11.14, submitted that marriage of his daughter is

scheduled to be solemnized in December, therefore, time may be granted upto 30.12.14 for filing the reply. The request made by the petitioner for granting time upto 30.12.14 was declined by the IOCL vide communication dated 4.12.14, however, the petitioner was granted time to file reply on or before 6.12.14.

7. The petitioner filed the reply on 13.12.14 denying the allegations levelled vide show cause notice dated 19.11.14. It is stated in the reply that the TT in question does not have any "tapping in bottom of 3rd compartment hidden by sheets on either sides" and the allegations levelled are absolutely false and unfounded. The petitioner requested that in case any inquiry or investigation is conducted then it should be conducted in presence of the petitioner so that the principles of natural justice are not violated and no accusing finger can be raised against either side. The petitioner submitted that since new tenders of transportation are scheduled to be submitted by 23.12.14 which is very near, it is very likely that the confusion may be result of some mala fide complaint, which might have resulted on account of acute business rivalry of parallel transport groups.

8. During the pendency of the proceedings, pursuant to the show cause notice, on 20.11.14, the IOCL issued a fresh NIT, on 20.11.14, for award of contract for transportation of petroleum products from Jodhpur Terminal to various destinations. The last date for submission of the tender bids through e-bidding was upto 23.12.14 at 2.30 p.m. The petitioner submitted its online tender on 22.12.14 and also submitted the draft of Rs. 22,95,000/- fulfilling the requirement of demand draft of Rs. 5,000/- for each TT offered.

9. On 23.12.14, IOCL restricted the entry of all 76 TTs of the petitioner in the Depot. On 26.12.14, the petitioner was served with a notice informing that its contract stands terminated and all its TTs and carriers stand blacklisted as per advice of Rajasthan State Office of IOCL, Jaipur.

10. On the petitioner demanding the reasons for restricting the entry of TTs, the petitioner was served with letter dated 31.12.14 issued by DGM (O) RSO, IOCL, Rajasthan State Office, Jaipur, whereby the petitioner was informed that all its TTs under contract alongwith the TT crew has been blacklisted as per approval of the competent authority for a period of two years, i.e. from 22.12.14 to 21.12.16. The reason for the blacklisting is assigned as "Malpractices-TAMPERING WITH STANDARD SAFETY/SECURITY FITTINGS, IOCL IMAGE TARNISHING, COMPLICITY OF CARRIER etc. UNDER ITDG Clause 8.2.2, 8.2.2.11, 8.2.2.16". Hence, this petition.

11. The clauses 8.2.2, 8.2.2.11 and 8.2.2.16 referred to in the said letter dated 31.12.14 incorporated in the Disciplinary Guidelines, read as under:

"8.2.2. Penalties upon detection of malpractice/irregularities

The carrier 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:

XXXXX

If the complicity of the carrier is detected in case of occurrence of any of above malpractice/irregularity or incident of malpractice/irregularity stipulating into blacklisting of second TT of the carrier (during the tenure of the contract), the whole contract comprising of all the TTs belonging to the concerned carrier shall be terminated and the concerned carrier and their all TTs shall be black listed on Industry basis.

However, in case of 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 and 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-authorised duplicate keys of security locks.
3. Duplicate dip rod/calibration chart.
4. Mis-appropriation of security locking system."

12. Precisely, the legality of the order terminating the contract and blacklisting of the TTs and crew is questioned by the petitioner on the ground that the petitioner has been held guilty by passing a non-speaking order, without holding inquiry and giving an opportunity of hearing. It is submitted that the allegation made vide show cause notice dated 19.11.14 and order dated 31.12.14 are at variance and no notice regarding any malpractice under clause 8.2.2 of the Disciplinary Guidelines was ever given to the petitioner before holding it guilty under clauses 8.2.2.11 and 8.2.2.16 of the Disciplinary Guidelines. It is submitted that a vague notice which does not explains in what manner the additional fittings alleged to have been found on 17.11.14 results in tampering with fittings of TT affecting the qualitative and quantitative use of the TT. It is submitted that the reply filed on behalf of the petitioner has not been taken into consideration, which clearly shows that the respondent IOCL from very beginning determined to blacklist all the TTs and crews for two years to oust the petitioner from contract for tender bids which was to be received until 23.12.14.

13. A reply to the writ petition has been filed on behalf of the IOCL raising certain preliminary objections. It is contended that the present writ petition involves seriously disputed questions of facts, which cannot be adjudicated upon by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. It is submitted that the agreement between the parties contains arbitration clause and therefore, the petitioner cannot be permitted to

invoke the writ jurisdiction of this court. It is submitted that the petitioner has not approached the court with clean hands and therefore, his conduct disentitles it from invoking equitable jurisdiction of this court under Article 226 of the Constitution of India. The respondents have also preferred an application under Section 8 of Arbitration and Conciliation Act, 1996 for reference of the dispute to the Arbitrator in terms of the agreement.

14. It is averred on behalf of the IOCL that the petitioner has made a false story that the TT in question was queued up outside the terminal since 10.10.14. It is submitted that the TT in question was containing locking system of Mild Steel, which was to be replaced by stainless steel locking system and for that purpose, the TT was brought to the Terminal on 31.10.14 for unlocking of locks and after getting fitted stainless steel locking arrangement, the petitioner's driver came for calibration of TT on 15.11.14. However, it is not disputed that when the checklist was prepared on 15.11.14, the concerned engineer did not detect the authorised fittings. It is submitted that unauthorised fitting was hidden by plate sheets and therefore, the same could not be detected at that time. It is submitted that the TT was brought at the Terminal on 17.11.14 for obtaining calibration certificate and during the inspection, the Engineer of IOCL, Mr. Ravi Yadav, who inspected the truck, detected a tapping attached beneath to the 3rd chamber of the tank hidden by GI sheets on either side and by that unauthorised fitting, pilferage of petroleum products was possible even in lock condition and thereby quality and quantity of the petroleum product to be transported can be tampered with. It is submitted that the authorised fittings was discovered in the presence of authorised driver of the petitioner, who upon finding the said unauthorised fitting in the TT, parked the TT in the Terminal and went away. It is submitted that when the factum of unauthorised fittings being found was reported by the Engineer Mr. Ravi Yadav, the Chief Terminal Manager appointed a two member committee to inspect the TT in question, which inspected the TT in presence of its driver, who was called on next day i.e. 18.11.14 and after inspection on 18.11.14, a report was prepared. It is submitted that it is only after confirmation of the unauthorised fitting, the notice dated 19.11.14 was issued. It is submitted that on 12.12.14, officers of the Vigilance Department found removal of tapping from petitioner's TT and thereafter, on the next day, the reply to the show cause notice was filed by the petitioner. It is alleged that the petitioner in connivance and collusion with either security person or welding workman, managed to get removed unauthorised fittings from TT and thereafter, replied the show cause notice in terms that there is no unauthorised fitting in his TT. It is submitted that the reply submitted by the petitioner was considered from all aspects upto highest level and as unauthorised fitting detected in the TT was very much established in light of photographs and report of two members committee and further, since the removal of the fittings was also made while the TT was there in the Terminal Depot of the IOCL, as such the action initiated against the petitioner and the decision taken is absolutely just and appropriate in the facts and circumstances of the case. In this regard, copy of the proceedings

taken is placed on record as Annexure R/18. It is submitted that the action taken against the petitioner has nothing to do with the future tendering as alleged.

15. Learned counsel for the petitioner submitted that admittedly, on 15.11.14 when the TT in question was inspected for calibration and the checklist was prepared, no unauthorised fitting was found. Learned counsel submitted that the calibration certificate of the TT in question expired on 18.10.14 and therefore, the same could not have been used for transportation of bulk petroleum products until new calibration certificate is issued by the appropriate authority. It is submitted that after repairing/maintenance work as per the checklist dated 15.11.14, the TT was again produced for the purpose of calibration, however, no checklist pointing out deficiency, if any, was prepared. Learned counsel submitted that the calibration checklist placed on record as Annexure R/1 by the respondents is apparently a concocted document wherein, the note regarding unauthorised tapping being found, alleged to have been signed by the driver of the TT, has been inserted by the respondents subsequently. Drawing the attention of this court to the contents of the reply to the petition filed on behalf of the respondents as also the Additional Affidavit of Mr. Ravi Yadav filed on 2.12.14, learned counsel submitted that according to the respondents, upon detecting the unauthorised fittings, the driver left the TT in the Terminal and went away and therefore, the question of his putting the signature on the said document, does not arise. Learned counsel submitted that as per the show cause notice dated 19.11.14, the allegation levelled was that the TT is having unauthorised fittings i.e. "tapping in bottom of 3rd compartment hidden by sheets on either sides", which in no manner falls within the definition of "tampering with the existing standard fitting" so as to attract the penal action in terms of clause 8.2.2.11 and thus, the petitioner has been held guilty of the allegation never levelled against it. Learned counsel submitted that in terms of clause 8.2.2 before imposing penalty upon detection of malpractices/irregularities, the IOCL is under an obligation to conduct the investigation and only if the malpractice/irregularity is established, the penal action stipulated could have been taken. Learned counsel submitted that in the instant case, no investigation worth the name was ever conducted and the petitioner has been held guilty of tampering with standard safety and security fittings, acting in absolutely perfunctory manner. Drawing the attention of this court to the proceedings placed on record by the respondents, learned counsel submitted that on 17.12.14, a specific note made by the competent authority in terms that the operational department is silent on issue of removal of unauthorised fittings from TT parked inside the Terminal, which is a serious issue and needs to be properly investigated, has been altogether ignored and without making any further investigation in this regard, the action of blacklisting as proposed was approved. Learned counsel submitted that it is not even the case of the respondents that any speaking order holding the petitioner guilty of the allegations levelled was ever passed by the competent authority and thus, the order impugned passed by the authority concerned holding the petitioner guilty by merely recording its

conclusion, is not sustainable in the eyes of law. Learned counsel submitted that the impugned action of the respondents in terminating the contract and blacklisting the TTs and crew of the petitioner for a period of two years without even serving the notice to the petitioner setting out the allegations and giving an opportunity of hearing to defend the same, is ex facie violative of elementary principle of natural justice and therefore, deserves to be quashed. Relying upon the decision of the Hon''ble Supreme Court in the matter of Gorkha Security Services Vs. Govt. of NCT of Delhi, , learned counsel submitted that the action of blacklisting which is termed as "civil death" could not have been taken by the respondents without giving the proper notice to the petitioner setting out the allegations and breaches clearly and giving it adequate opportunity to defend the allegations. Learned counsel submitted that the order impugned having been passed by the respondents terminating the contract and blacklisting the TTs and crew of the petitioner for a period of two years in gross violation of the principles of natural justice, the petitioner is entitled to invoke extra ordinary jurisdiction of this court under Article 226 of the Constitution of India and cannot be relegated to the remedy of arbitration proceedings in terms of the arbitration clause incorporated in the agreement. In this regard, learned counsel has relied upon the decision of the Hon''ble Supreme Court in the matter of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , Hindustan Petroleum Corpn. Ltd. and Others Vs. Super Highway Services and Another, , "Union of India and Ors. vs. Tania Construction Private Limited", (2011) 5 SCC, 697 and Bharat Petroleum Corporation Ltd. Vs. Jagannath and Company and Others, .

16. On the other hand, the counsel appearing for the respondent-IOCL reiterating the preliminary objections taken as aforesaid, submitted that the conduct of the petitioner throughout the proceedings and while approaching this court, has not been above the board and therefore, its conduct disentitles it from invoking extra ordinary jurisdiction of this court under Article 226 of the Constitution of India. Learned counsel submitted that in the first instance, the notice dated 19.11.14 was served upon the petitioner on 26.11.14, which was responded by the petitioner in terms that the marriage of his daughter is to be solemnized in the month of December and therefore, he may be granted time upto 30.12.14 for filing the reply. It is submitted that on 17.11.14, the inspection of the TT was made in presence of the petitioner's driver and it cannot be believed that for 9 days, the petitioner did not inquire from the driver about the status of the calibration of the TT. It is submitted that the marriage of the petitioner's daughter was scheduled to be solemnized on 2.12.14 followed by Reception Ceremony on 3.12.14, but with an intention to delay the proceedings, he sought time for filing the reply upto 30.12.14. Learned counsel submitted that after solemnization of the marriage of the petitioner's daughter, vide communication dated 4.12.14, the petitioner was called upon to submit the reply of the notice on or before 6.12.14, however, again vide letter dated 6.12.14, the petitioner sought time on the ground that his daughter's marriage is to be celebrated wherein some social custom of vidai are to be performed and for that

purpose, he will be out of Jodhpur. Learned counsel submitted that yet another reason assigned for not filing the reply immediately that the petitioner remained as indoor patient at Satyam Hospital is also found to be false on inquiry being conducted by DGM (O), IOCL. In this regard, learned counsel has relied upon the communication dated 22.1.15 sent by Authorised Signatory of Satyam Hospital. Learned counsel submitted that the conduct of the petitioner in not responding to the serious allegations levelled against it and taking them so lightly, clearly indicates his involvement in putting unauthorised tappings and removal thereof. Learned counsel submitted that as a matter of fact, after removal of the unauthorised fittings, obviously in collusion with the either security persons or welding workman of IOCL, the petitioner filed the reply taking the stand that the TT does not have any "tapping in bottom of 3rd compartment hidden by sheets on either sides". Learned counsel submitted that indisputably, the writ petition involves seriously disputed question of facts, which cannot be adjudicated by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. Learned counsel submitted that in view of arbitration clause in the agreement, which is couched in exhaustive terms, there is absolutely no reason as to why the petitioner should be permitted to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India. In support of the contention, learned counsel has relied upon the decisions of the Hon'ble Supreme Court in the matters of Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., , The Empire Jute Co. Ltd. and Others Vs. The Jute Corporation of India Ltd. and Another, , Bharat Sewa Sansthan Vs. U.P. Electronics Corporation Limited, and a decision of this court in the matter of "M/s. Shri Karni Filling Station through its proprietor Shri Kami Filling Station Vs. Indian Oil Corporation and Others, . Learned counsel submitted that the entire facts indicating involvement of the petitioner in putting the unauthorised tapping and removal thereof have been set out in the reply to the writ petition and the affidavits filed in support thereof, which have not been controverted by the petitioner by filing any rejoinder thereto and therefore, the same has to be taken as correct. In support of the contention, learned counsel has relied upon a decision of this court in the matter of Prem Singh and Others, etc. Vs. State of Rajasthan, . Relying upon the reply filed by the petitioner and other material on record including the photographs showing the tapings and the removal thereof, learned counsel submitted that on the facts and in the circumstances of the case, when there is no different view from the one taken by the authority concerned is possible, in absence of any prejudice caused to the petitioner on that account, the action cannot be held to be illegal and unlawful. In support of the contention, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, . Learned counsel submitted that the allegation of putting tapping in bottom of 3rd compartment hidden by sheets on either sides and removal thereof being established against the petitioner, the order passed in conformity with clause 8.2.2 of the Disciplinary Guidelines cannot be faulted with.

17. I have considered the rival submissions and perused the material on record.

18. The first question which arises for consideration is as to whether in view of the existence of arbitration clause in the agreement, the petitioner is precluded from invoking discretionary jurisdiction of this court under Article 226 of the Constitution of India.

19. It is well settled that ordinarily when a dispute between the parties requires adjudication of the disputed question of facts, where parties are required to lead evidence which can be determined by the domestic forum chosen by the parties, the writ court would refuse to exercise the discretionary jurisdiction. But then, the rule of exclusion of writ jurisdiction on account of availability of alternative remedy is a rule of discretion and not rule of compulsion and therefore, the availability of the alternative remedy by itself, does not fetter the extra ordinary jurisdiction of the court under Article 226 of the Constitution, which is plenary in nature and is not limited by any other provisions of the Constitution.

20. As laid down by the Constitution Bench of the Hon"ble Supreme Court in the matter of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another, , the rule that party who applies for issue of a high prerogative writs should before he approaches the court have exhausted the remedies open to it under the law is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but it is rather, a rule which courts have laid down for the exercise of their discretion.

21. Suffice it to say that the availability of alternative remedy to the petitioner, does not operate as bar to the jurisdiction of the High Court under Article 226 of the Constitution of India and the court can always exercise its discretion taking into consideration facts and circumstances of the case.

22. Coming to the question regarding observance of principles of natural justice and fair opportunity of hearing to the person against whom the action of termination of contract and blacklisting is contemplated, it needs to be emphasised that the rules of natural justice are assurance of justice and fair play and therefore, any action which has evil and civil consequences, should be taken only after following the principles of natural justice. Further, the observance of principle of natural justice is a rule and exclusion an exception and therefore, unless exceptional circumstances exists, departure therefrom is not permissible under the law.

23. Indisputably, the action in terminating the contract prematurely and blacklisting of the awardee of the contract on account of malpractices casts stigma and many civil and evil consequences flow therefrom and therefore, such an action could only be taken after following the principles of natural justice.

24. In Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , the Hon"ble Supreme Court observed:

"20. Blacklisting has the effect of preventing a person from the privilege and

advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

(emphasis supplied)

25. Similarly, in *Raghunath Thakur Vs. State of Bihar and Others*, , the Hon"ble Supreme Court observed that blacklisting any person in respect of business ventures has civil consequences for future business of the person concerned and therefore, even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representation against the order.

26. In *Gorkha Securities*" case (supra), the Hon"ble Supreme Court while relying upon the decisions in *M/s. Erusian Equipment and Chemicals Ltd's* case and *Raghunath Thakur's* case (supra), observed that the action of the blacklisting must be preceded by show cause notice setting up the precise case which noticee is required to meet. The court observed that this would require the statement of imputations detailing out the alleged breaches and defaults committed so that he gets an opportunity to rebut the same. Another requirement as pointed out by the Court is the nature of action which is proposed to be taken for such breach inasmuch as, it is incumbent upon the authority concerned to provide adequate and meaningful opportunity to the person concerned. The court further observed that when it comes to the action of blacklisting which is termed as "civil death", a harshest possible action, it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT.

27. In *Hindustan Petroleum Corporation Limited's* case (supra), the Hon"ble Supreme Court while dealing with the matter regarding cancellation of dealership agreement observed that the cancellation of dealership agreement is a serious business and cannot be taken lightly. The court observed that in order to justify the action to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the purpose. The court held that non service of notice to the aggrieved person before the termination of his dealership agreement also offends well established principle that no person should be condemned unheard.

28. Thus, in the backdrop of the settled position of law noticed as above, it needs to be examined as to whether while passing the order impugned terminating the contract and blacklisting the petitioner, the respondents have followed the principles of natural justice and extended fair opportunity of hearing to the petitioner.

29. Adverting to the facts of presence, case, indisputably, as per clause 8.2.2 of the Disciplinary Guidelines, if an awardee of a contract is found involved in malpractice/irregularities, his TT and the crew may be suspended/blacklisted. But then, the penal action stipulated including blacklisting could be taken only if the malpractice/irregularity is established after conducting investigation wherever required.

30. It is to be noticed that in first instance, when the TT in question was driven in Salawas Terminal of IOCL for calibration, no authorised fittings was noticed. In this regard, the calibration checklist dated 15.11.14, placed on record is self explanatory. According to the respondents, when the TT was reported for re-calibration on 17.11.14, the Engineer of IOCL, Mr. Ravi Yadav, who inspected the TT, detected the tapping attached beneath to the 3rd chamber of tank hidden by GI sheets on either sides, capable of being used for pilferage of petroleum product even in lock condition and thus, quality and quantity of the petroleum product was likely to be tampered with. It is not the case of the respondents that on 17.11.14, any checklist or inspection report was prepared rather, a note was appended on calibration checklist dated 15.11.14, allegedly in the presence of driver of the TT, who put his signature under the note appended. But then, in the reply to the writ petition as also in the additional affidavit of Mr. Ravi Yadav, filed before this court, it is not the stand of the respondents that note appended in the calibration checklist was made in presence of the driver and he put his signature thereon. To the contrary, the categorical stand of the respondents is that upon detecting unauthorised fittings, the driver left the TT in the Terminal and went away. It is stated that that driver was called on the next day i.e. 18th November and after inspection, the two members committee prepared a report on 18.11.14 and after confirmation of the unauthorised fittings in the TT, the notice dated 19.11.14 was issued by the Chief Terminal Manager, IOCL, to the petitioner.

31. A perusal of notice dated 19.11.14 reveals that the factum of the TT in question having unauthorised fittings i.e. tapping in bottom of 3rd compartment hidden by sheets on either sides, was specifically mentioned in the notice issued and it was also mentioned therein that it may result in termination of contract and blacklisting of the TTs. But, the facts regarding detection of unauthorised fittings in presence of the driver and subsequent inspection and confirmation of the factum of unauthorised fittings were not disclosed in the notice. It is pertinent to note that the allegation regarding possible pilferage of oil by using the tapping in the bottom of the compartment No. 3 of the TT was also not specifically set out in the notice issued.

32. Be that as it may, according to the respondents, on 12.12.14, when the subject TT was checked by Vigilance Team from NRO with Manager (Operation Safety) and CTM, Jodhpur Terminal, it was observed that unauthorised fitting was tampered and removed and pieces of grinding wheel and M-Seal were found evidencing that there has been a tampering with the evidence of unauthorised fitting.

33. But then, it is not the case of the respondents that the petitioner was put to notice regarding tampering with the evidence of presence of unauthorised fittings in the TT in question. A perusal of the proceedings taken regarding blacklisting of the petitioner alongwith his entire fleet in contract and the crew, reveals that the petitioner has been held guilty observing that the denial of the factum of tapping in the bottom of the 3rd compartment hidden by sheets on either sides as false and unfounded, reflects its complicity in involvement in occurrence of malpractice and also in tampering with the evidence of the same. It is pertinent to note that while dealing with the committee report seeking approval of the action of blacklisting carrier alongwith his TTs for a period of two years on industry basis, the authority concerned specifically observed that Operation Department is silent on the issue of removal of unauthorised fitting from TT parked inside the IOCL Terminal. The authority opined that this is a serious issue which needs to be properly investigated. The authority concerned specifically observed that removal of the fittings cannot be done without involvement of the security personnel and/or IOCL's own employees and therefore, clarification in this regard was sought before taking any further action.

34. It is not the case of the respondents that any further investigation was made pursuant to the directions issued by the competent authority as aforesaid. Strangely enough, later, without further investigation for finding the truth, straight away the action as proposed was approved by the authority concerned.

35. Having gone through the material on record in its entirety and objectivity, this court is of the considered opinion that no proper inquiry into the allegations levelled against the petitioner was made by the IOCL and the petitioner has been held guilty by the authority concerned by merely recording its ipse dixit. A fortiori, the petitioner has been held guilty of the allegation of tampering with the unauthorised fittings in collusion with the welding workman/security personnels of IOCL regarding which, he was never put to notice. Further, it is not the case of the respondents that the material available on the record of IOCL, indicating involvement of the petitioner in tampering with the fittings was made available to it. Thus, on the facts and in the circumstances of the case discussed hereinabove, it can safely be concluded that the petitioner has been held guilty of the allegations of malpractices/irregularities in putting the unauthorised fittings and tampering with the same, without extending it fair opportunity of hearing. Moreover, it is well settled that every action of the State or instrumentality of the State in exercise of the executive power must be informed by reason. But, in the instant case, the petitioner has been held guilty and penalised by the respondent authority without justifiable reason, by passing a non speaking order, which cannot be countenanced by this court.

36. In this view of the matter, the impugned action taken by the respondents in terminating the contract and blacklisting the petitioner, in gross violation of principles of natural justice, is not sustainable in the eyes of law.

37. Lastly, coming to the allegation of the respondents that the conduct of the

petitioner has not been above the board and therefore, the inference of his involvement in malpractice/irregularity deserves to be drawn on the basis of the material on record, suffice it to say that merely because the petitioner did not respond to the notice immediately and sought time for filing reply on or another pretext, his involvement in the malpractice/irregularity as alleged, cannot be inferred/presumed. Before taking the penal action, the allegations levelled must be properly investigated upon and established on the basis of the evidence on record. To say the least, in absence of any categorical finding arrived at by the authority concerned after due appreciation of the evidence on record by passing a speaking order, the penalty inflicted upon the petitioner as proposed, deserves to be set aside.

38. In the result, the writ petition succeeds, it is hereby allowed. The impugned order dated 26.12.14 issued by the Chief Terminal Manager, IOCL, Jodhpur Terminal and order dated 31.12.14 issued by Deputy General Manager (O), RSO, IOCL, whereby the award of the contract to the petitioner firm for transportation of bulk Motor Spirit/High Speed Diesel (MS/HSD) Ex Jodhpur Terminal, stands terminated and all the TTs and its crews have been blacklisted for a period of two years, are set aside. The application (IA No. 417/15) preferred by the respondent-IOCL under Section 8 of Arbitration and Conciliation Act, 1996, shall stand dismissed. The respondents shall be at liberty to take proceedings against the petitioner afresh, by issuing notice clearly setting out the allegations and action proposed to be taken. Needless to say that fresh order shall be passed by the respondents after due investigation and giving an adequate opportunity of hearing to the petitioner, in accordance with law. No order as to costs.