
(2012) 01 AHC CK 0196

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 37510 of 2011

M/s. Chauhan Road Lines and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : (2012) 3 ADJ 724 : AIR 2012 All 82

Hon'ble Judges : V.K. Mathur, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble Amitava Lala, J.—This is third round of litigation by the petitioners against blacklisting of petitioner No. 1 on industry basis. The background which gave rise to this writ petition is necessary to be narrated in brief in order to understand the controversy involved herein. The petitioner No. 1 is a proprietorship concern and petitioner No. 2 is proprietor thereof. The petitioner No. 1 is engaged in transportation of petroleum products of Indian Oil Corporation (hereinafter in short called as "IOC") after having entered into an agreement with the IOC. For carrying out such job, total 20 tank trucks (in short called as TTs") were used by the petitioners. However, on account of involvement of two TTs, bearing registration Nos. UP 80 BJ 9458 and UP 78 AN 2061, in the alleged malpractice, show-cause notice was issued by the respondent-IOC and an order was passed on 14th September, 2010 blacklisting the petitioner No. 1 on industry basis and forfeiting its security deposit as per Clauses 8.1.1 (b) and (d) of the Industry Transport Discipline Guidelines (in short called as the "Guidelines"). Such order dated 14th September, 2010 was challenged by the petitioners by filing Civil Misc. Writ Petition No. 58370 of 2010 (M/s. Chauhan Road Lines and another v. Union of India and others) on the ground of violation of principles of natural justice. After exchange of affidavits and hearing the counsel for the parties, such writ petition was allowed by a Division Bench of this

Court by order dated 29th October, 2010 directing the respondents-IOC to conduct an enquiry by adopting the principles of natural justice and further the order of blacklisting dated 14th September, 2010 was set aside. The operative part of the order dated 29th October, 2010 is as follows:

Having regard to the totality of the facts and circumstances and in view of the fact that orders in the nature of punitive were passed against the petitioners the writ petition shall stand allowed.

We, therefore, direct the respondent Corporation to conduct an enquiry by adopting principles of natural justice. We also direct the respondents to issue show-cause notices to the petitioners regarding charges of malpractices within two weeks from the date of the judgment made ready and the petitioners are directed to offer their explanations within two weeks thereafter. The enquiry shall be conducted by taking into account the relevant documentary evidence, if any, produced by either side, before the enquiry officer and the said enquiry shall be completed on or before 20.12.2010.

In the result, for the aforementioned observations, the impugned orders dated 14.9.2010 are liable to be set aside and are accordingly set aside. The writ petitions are allowed subject to the conditions as indicated above.

2. Pursuant to such order, on 29th November, 2010 a show-cause notice was issued to the petitioner No. 1 levelling allegations against the petitioner No. 1 in respect of aforesaid two TTs, to which the petitioners submitted a detailed reply dated 7th December, 2010. After conducting an enquiry in the matter, again the respondent-IOC passed an order dated 28th December, 2010 blacklisting the petitioner No. 1 on industry basis and directing for forfeiture of security deposit. Challenging such order dated 28th December, 2010 the petitioners again approached this Court by means of Civil Misc. Writ Petition No. 3586 of 2011 (M/s. Chauhan Road Lines and another v. Union of India and others). In such writ petition, after considering the materials on record, submissions made by the parties and the case laws cited at the bar, a Division Bench of this Court, presided over by one of us (Amitava Lala, J.) was pleased to dispose of the writ petition under the judgment and order dated 10th May, 2011 when did not find complicity of carrier/ transporter with regard to involvement of TTs and directed the authority concerned to complete the further enquiry with regard to involvement of TT crew i.e. driver, helper, etc. to come to a finding about the complicity of the carrier/transporter. The operative part of the judgment dated 10th May, 2011 is as under:

In this case, we do not find any description of enquiry with regard to TT crew. Without any enquiry/investigation with regard to TT crew i.e. driver, helper, etc., it is very difficult for the Court to come to a definite conclusion with regard to complicity of the carrier/ transporter. Grammatically, complicity is involvement with other people in an illegal activity or plan; a state of being an accomplice; participation in guilt. Clause 8.1.1(c) of the Industry Transport Discipline

Guidelines speaks that in case of proven malpractice the entire contract will be terminated and their all TTs shall be blacklisted on industry basis. Hence, a definite conclusion with regard to involvement of the carrier/ transporter in the malpractice is required to be arrived at. In such type of cases, a specific finding is needed with regard to complicity of the crew i.e. driver, helper, etc. independent of involvement of the carrier/ transporter, otherwise cloud about the involvement of the carrier/ transporter cannot be dispelled. In other words, whether their involvement is independent of carrier/ transporter or dependent upon carrier/ transporter, is to be seen, particularly when we find that the authority, in the report, has come to a conclusion that the transporter in its reply was not able to provide any satisfactory explanation regarding tampering of the locking system and variation in the density of the product at the destination.

Against this background, we are of the view that order of blacklisting of the transport vehicles on industry basis cannot be withdrawn at this stage but subject to further enquiry by the authority with regard to involvement of the TT crew i.e. driver, helper, etc. to come to a finding about the complicity of the carrier/ transporter. At the time of enquiry, concerned enquiry officer will be very careful with regard to the observations of this Court about complicity of the carrier/transporter.

Thus, the writ petition is treated to be disposed of with a direction upon the authority concerned to complete the further enquiry and pass a final order in this respect preferably within a period of fifteen days from the date of communication of this order.

No order is passed as to costs.

3. After the aforesaid judgment dated 10th May, 2011, a Committee was constituted to conduct an enquiry with regard to complicity of the carrier/ transporter. Such Committee submitted its report dated 6th June, 2011 with the conclusion that complicity of the petitioner No. 1 is proved in this case. On the basis of such report, an order dated 24th June, 2011 has been passed by the respondent-IOC blacklisting the entire fleet of TTs for two years as per Clauses 8.1 (a), (b), (f) and (g) of the Guidelines. Such order dated 24th June, 2011 has been challenged in the present writ petition.

4. Mr. R.N. Singh, learned Senior Counsel appearing for the petitioners, has submitted that the order impugned has been passed in complete violation of the principles of natural justice as no notice or opportunity of hearing of any kind was given to the petitioners at all before passing the impugned order. Therefore, an order having such a serious consequence could not have been passed without associating the petitioners with the so-called enquiry and the enquiry report was not made available to the petitioners. The conclusions arrived at in the impugned order with regard to complicity of the transporter are based on presumptions. So far as allegations with regard to TT No. UP 80 BJ 9458 are concerned, the IOC has based its order upon the material which was collected by the police

authorities based on the First Information Report, in respect of which investigation is yet to be conducted and no report has been submitted pursuant thereto, and the IOC has not conducted any enquiry of its own. So far as the product, which was there in TT No. UP 78 AN 2061, is concerned, that has been unloaded and while it was unloaded it was tested by the officials of the IOC and was found to be in order and the allegations levelled against this TT are that there were sign of new welding and new painting and the colour of paint differed from unique paint done at other places. There was no allegation with regard to the quality of product which was delivered. In such a situation, it was not proper on the part of the respondents-IOC to blacklist the entire fleet of the petitioners.

5. On behalf of respondents-IOC it has been submitted by Mr. Prakash Padia, learned Counsel appearing on their behalf, that pursuant to the order of this Court dated 10th May, 2011 a two members Committee was constituted to conduct enquiry with regard to complicity of the carrier/ transporter. The Committee submitted its report dated 6th June, 2011, which has been brought on record by way of supplementary affidavit. In such report the allegations levelled against the aforesaid two TTs have been found proved. It was rightly observed in the order that with regard to TT No. UP 78 AN 2061 it was stated by the petitioners that the TT had broken down due to some technical problem in the engine of the TT and hence, the TT could not report at RDI Kasganj for ten days, when the travel time required for the aforesaid transaction is not more than one day, therefore, after the expiry of one day in case of any kind of technical problem, information should be given either by the transporter or by his driver to the Corporation, but no such information was given. It was further observed that product of TT No. UP 80 BJ 9458 has been changed with the instruction of registered owner of such vehicle and since the vehicle is attached with the petitioner No. 1, the carrier is solely responsible for operation of all the TTs under the contract. The Committee observed in the report that it is not possible that the irregularities, which are of very serious nature, had taken place without the involvement of the carrier and concluded that all the above deliberate malpractices are covered under the Guidelines and all the circumstances prove clear cut involvement of the transporter in this complete malpractice committed by aforesaid two TTs.. In respect of giving personal hearing to the petitioners, he submitted that it is clear from the perusal of the report dated 20th December, 2010 that personal hearing was given to the petitioners but at this time, the opportunity of personal hearing was not given as all the aspects of the matter have already been dealt with and the only thing, which is to be clarified by the IOC, is regarding complicity of the crew i.e. driver qua complicity of carrier/ transporter and these facts have been dealt with in great detail in the enquiry report dated 06th June, 2011.

6. Mr. Prakash Padia has further contended that there is an arbitration clause which is exhaustive one and definitely this dispute can be resolved by the arbitrator.

7. Let us consider the last question at first since it relates to forum for adjudication. It is true to say that there is an arbitration clause in the contract. It is also true to say that in case of dispute and differences amongst the parties, the matter can be referred for arbitration. It is well known and also we find from *The Branch Manager, Magma Leasing and Finance Limited and Another Vs. Potluri Madhavilata and Another*, that though the arbitration clause is part of the agreement but it is independent one to decide the dispute inclusive of the cause of termination since the cause of termination and/or forfeiture is also part and parcel of the agreement. A Division Bench of this Court presided over by one of us (Amitava Lala, J.) has also considered this issue in the judgment dated 24th October, 2009 delivered in Civil Misc. Writ Petition No. 23467 of 2007 (*M/s. Sikandara Rao Gas Service and another v. Indian Oil Corporation and others*), which was reportedly challenged before the Supreme Court and the SLP was dismissed. But in respect of the question of blacklisting particularly when it has been invoked on industry basis having great amount of penal consequences, the writ Court cannot shut its eyes merely having arbitration clause in view of the judgment in *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, . In the earlier judgment dated 10th May, 2011, by which the order was directed to be passed after further enquiry, this Court was pleased to consider this issue and negated the view of the respondents with regard to non-interference in the matter by the writ Court having arbitration clause. Principle of blacklisting has been discussed by this Court on numerous occasions following the ratio of the Supreme Court judgments in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , which was followed in *Joseph Vilangandan v. The Executive Engineer (P.W.D.)*, *Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others*, and *Raghunath Thakur Vs. State of Bihar and Others*, , as quoted hereunder:

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 the case before he is put on the blacklist.

8. It is to be remembered that any action of blacklisting goes to the root of fundamental right of a person in carrying on business as per Article 19(1)(g) of the Constitution of India.

9. According to us, it is a matter of blacklisting, that too not with regard to one or two vehicles of a transporter but in respect of the entire fleet, which were not involved in the alleged malpractice: When such type of decisions are to be taken by any authority, it has to be very much cautious about passing of such drastic order of blacklisting the entire fleet. When the respondents themselves are adjudicators, they should be sincere in coming to appropriate conclusion so that the order of blacklisting may not seem to be disproportionate.

10. We have gone through the enquiry report of the Committee dated 6th May, 2011, being Annexure-1 to the supplementary affidavit filed on behalf of the respondents-IOC, conducted in compliance of the earlier order passed by this Court. The Committee adopted a methodology to visit the concerned location for carrying out enquiry. The Committee has given opportunity to the transporter to associate with the enquiry. It had gone through the documentary evidences to find out the complicity of the carrier/ transporter in this case. Ultimately, the exhaustive report of the Committee ended with the following conclusion:

In the light of the above, the committee concludes that all the above deliberate malpractices are covered under Industry TDG clause Nos. 8.1(a), (b) (f) & (g) and all the circumstances prove clear cut involvement of the transporter M/s Chauhan Roadlines in this complete malpractice committed in TT No. UP80BJ9458 & UP78AN2061.

Thus complicity of M/s Chauhan Roadlines, Agra is proved in this case.

11. Therefore, the order impugned was not passed in violation of the principle of natural justice. Sitting in the writ Court we have to see the decision-making process but not the decision. We cannot go beyond the reason/s of the reasonableness and scrutinize the same like appellate forum. Moreover, the respondents-IOC have contended before us that the period of contract has already expired in the month of March/April, 2011. We find that the contract was given for a period of two years, which started from 1st March, 2009. The work order was issued on 8th May, 2009. The petitioner No. 1 was blacklisted on 14th September, 2010.

12. Mr. Singh has joined the issue therein by saying that the period of contract has not expired but it has been extended for a further period of one-year. Against this background, passing of order of blacklisting the entire fleet seems to be outcome of mala fide or unfair play or self contradictory or colourable exercise of power on the part of the respondents-IOC. We have concluded the hearing by reserving the judgment with such impression. In any event, on the date when the judgment was to be pronounced i.e. 21st December, 2011, we once again enquired from both the parties whether period of contract was extended or not. Mr. Prakash Padia, learned Counsel appearing for the respondents-IOC, in presence of Mr. G.K. Malviya, learned Counsel appearing for the petitioners, has categorically stated that the period of contract was not extended after expiry of two years" period as per the contract, to which no reply was given by Mr. Malviya. However, in order to verify such fact from the record, we postponed the delivery of judgment. From paragraph-58 of the counter-affidavit of respondents-IOC we find there is a categorical statement that the period of contract is already over in the month of March/April, 2011 and no relief can be granted in respect of continuance of contract. This paragraph is based on record and not on personal knowledge. From paragraph-26 of the rejoinder, which deals with such paragraph-58 of the counter-affidavit, we do not find any specific averment as per the earlier statement of Mr. Singh, learned Senior Counsel appearing for the

petitioners, that the period of contract was extended for a period of another one year. An evasive denial has been made to the categorical statement of paragraph-58 of the counter-affidavit.

13. Against this background, we are of the view that when the contractual period has already been expired, no relief can be granted in favour of the petitioners to withdraw the blacklisting even partially leaving aside the involved vehicles. So far as criminal case is concerned, we have only got the fact of lodging of First Information Report but not yet received any information with regard to result, if any, of the criminal case. However, if ultimately it is found that decision of the criminal Court based on the First Information Report goes in favour of the petitioners or if the petitioners even otherwise are able to affirmatively prove before any Court/forum/authority that the decision is perverse in nature, they will be entitled to proceed there in accordance with law for any relief inclusive of compensatory relief. Writ Court is not in a position to make scrutiny.

14. Under such circumstances, no relief can be granted to the petitioners in this writ petition. Hence, the writ petition is dismissed, however, without imposing any cost. Interim order, if any, stands vacated. In any event, passing of this order will in no way affect the right of the petitioners to get the appropriate relief on merit before any Court /forum/authority in accordance with law,