

(2019) 06 UK CK 0128

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1857 Of 2019

M/s Salman Carrier Khempur

APPELLANT

Vs

Hindustan Petroleum Cooperation Ltd. & Others

RESPONDENT

Date of Decision : 27-06-2019

Acts Referred:

Citation : (2019) 06 UK CK 0128

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Ravindra S Garia, Anil Anthwal

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. The petitioner is a proprietorship firm which is engaged in the business of transportation. The petitioner has eight Tanker Trucks, on which petroleum products are being transported. The petitioner entered into a contract with Hindustan Petroleum Cooperation Ltd., on 28.12.2017 for transportation of petroleum products from different depot to the consumer end such as petrol pump and petrol depot.

2. On inspection of one of the trucks of the petitioner, some unauthorized fittings were found in the Tankers Truck (T.T.) of the petitioner. Consequently a show cause notice was given to the petitioner as some unauthorized fittings were found in one of the Tankers Truck bearing registration No.UK17CA 1559 which was carrying a load of 20 KL of high speed diesel from HPCL Roorkee Depot to the consumer end at Malik Life Sciences Ltd. The unauthorized fittings were found to be for the purposes of pilferage of high speed diesel and other petroleum products. After hearing the explanation of the petitioner, ultimately the contract of the petitioner has been terminated vide order dated 06.04.2019 and the petitioner's company has also been blacklisted.

3. The petitioner relies upon one of the conditions of the contract and submits that in the first instance only the concerned Truck as well as the concerned crew of the Truck should have been blacklisted and the termination of the entire crew i.e. all the Trucks comes later. The case of the petitioner is that it is the first instance of this kind.

4. All the same, in the same contract which is being invoked by the petitioner there is an arbitration clause i.e. Clause 18 which reads as under:-

"18. Arbitration. All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the Parties hereto touching or concerning the agreement, meaning, operation or effect thereof or to the rights and liabilities of the Parties or arising out of or in relation thereto whether during or after completion of the contract or whether before after determination, foreclosure, termination or breach of the agreement (other than those in respect of which the decision of any person is, by the contract, expressed to be final and binding) shall, after written notice by either Party to the agreement to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.

The appointing authority shall either herself act as the Sole Arbitrator or nominate some officer/retired officer of Hindustan Petroleum Corporation Limited (referred to as owner or HPCL) or a retired officer of any other Government Company in the Oil Sector of the rank of Ch. Manager & above or any retired officer of the Central Government not below the rank of a Director, to act as the Sole Arbitrator to adjudicate the dispute and differences between the parties. The contractor/vendor shall not be entitled to raise any objection to the appointment of such person as the Sole Arbitrator on the ground that the said person is/was an officer and/or shareholder of the owner, another Government Company or the Central Government or that he/she has to deal or had dealt with the matter to which the contract relates or that in the course of his/her duties, he/she has/had expressed views on all or any of the matters in dispute or difference.

In the event of the Arbitrator to whom the matter is referred to, does not accept the appointment, or is unable or unwilling to act or resigns or vacates his office for any reasons whatsoever, the Appointing Authority aforesaid, shall nominate another person as aforesaid, to act as the Sole Arbitrator.

Such another person nominated as the Sole Arbitrator shall be entitled to proceed with the arbitration from the stage at which it was left by his predecessor. It is expressly agreed between the parties that no person other than the Appointing Authority or a person nominated by the Appointing Authority as aforesaid, shall act as an Arbitrator. The failure on the part of the Appointing Authority to make an appointment on time shall only give rise to a right to a Contractor to get such an appointment made and not to have any other person appointed as the Sole Arbitrator.

The Award of the Sole Arbitrator shall be final and binding on the parties to the Agreement. The work under the Contract shall, however, continue during the Arbitration proceedings, except in case of termination and no payment due or payable to the concerned Party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings.

The Arbitrator may give a composite or separate Award (s) in respect of each dispute or difference referred to him and may also make interim award (s) if necessary.

The fees of the Arbitrator and expenses of arbitration, if any, shall be borne equally by the parties unless the Sole Arbitrator otherwise directs in his award with reasons. The lumpsum fees of the Arbitrator shall be Rs.70,000/- per case for transportation contracts. Reasonable actual expenses for stenographer, etc will be reimbursed. Fees shall be paid stagewise i.e. 25% on acceptance, 25% on completion of pleadings/documentation and balance 50% on receipt of award of the arbitrator.

Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder, shall apply to the Arbitration proceedings under this clause.

The Contract shall be governed by and constructed according to the laws in force in India.

The Parties hereby submit to the exclusive jurisdiction of the Courts situated at Chennai for all purposes. The Arbitration shall be held at Chennai and conducted in English language. The Appointing Authority is the Functional Director of Hindustan Petroleum Corporation Limited."

5. In view thereof, since there is an arbitration clause between the parties, it would not be proper for this Court to hear this matter in a writ petition.

6. Consequently, the writ petition is dismissed in limine.

7. However, the petitioner would be at liberty to invoke the arbitration proceedings available to him under the arbitration clause.