GAHC010174852019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5380/2019

M/S. RIU ENTERPRISE
A PARTNERSHIP FIRM DULY REP. BY ONE OF ITS PARTNER SRI BHASKAR J. GOGOI, SON OF SRI BOLU RAM GOGOI, R/O- CHINAKI PATH, HOUSE NO. 5, LEFT BYE-LAND, ZOO- NARENGI ROAD, DIST. KAMRUP(M), ASSAM AND HAVING ITS HEAD OFFICE AT CHINAKI PATH, ZOO NARENGI ROAD, GUWAHATI-781024, ASSAM.

VERSUS

THE INDIAN OIL CORPORATION LTD. AND 3 ORS.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, AND HAVING ITS REGISTERED OFFICE G-9, ALI YAVAR JUNG MARG, BANDRA EAST, MUMBAI, MAHARASHTRA 400051, AND HAVING ITS ZONAL OFFICE AT P.O. DIGBOI, PIN- 786171, ASSAM AND REPRESENTED BY THE GENERAL MANAGER I/C (ZS).

2:THE GENERAL MANAGER I/C (ZS)
INDIAN OIL CORPORATION LTD.- AOD-ZONAL OFFICE
P.O. DIGBOI
PIN- 786171
ASSAM.

3:THE DEPUTY GENERAL MANAGER (SP)
INDIAN OIL CORPORATION LTD.- AOD-ZONAL OFFICE
P.O. DIGBOI
PIN- 786171
ASSAM.

4:THE CPNM- OM AND S
INDIAN OIL CORPORATION LTD.- AOD-ZONAL OFFICE
P.O. DIGBOI
PIN- 786171

ASSAM

For the Petitioner(s) : Mr. S. Borthakur, Advocate

For the Respondent(s) : Mr. K. Kalita, Advocate
: Ms. G. Swami, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 23-08-2023

1. The instant writ petition has been filed by the Petitioner challenging the order dated 03.07.2019 whereby the Respondent i.e. Indian Oil Corporation Ltd. had blacklisted the Petitioner along with its crew for 2 (two) years w.e.f. 03.07.2019 under Clause 8.1 a (i) and Clause 8.2.2.8 of Oil Industry Transport Discipline Guidelines (OITDG).

2. The facts involved in the instant case is that a show cause notice was issued to the Petitioner on 11.05.2019 thereby asking the Petitioner to show cause within 15 days as to why the Petitioner should not be placed in the "Holiday List" and be debarred from entering into any contracts with Indian Oil Corporation Ltd./be not de-listed from the list of approved Vendors/Contractors of Indian Oil Corporation Ltd. The reason for issuance of the show cause notice was that on 09.05.2019, SRN TTL No.NL02Q5450 entered Digboi Refinery for unloading the SRN which was dispatched from Guwahati Refinery on 20.04.2019. During routine checking of the vehicle, high quantity of water was observed on the top platform/box. The vehicle was detained and subsequently

checked in presence of the driver on the next day i.e. on 10.05.2019. Upon checking again on 10.05.2019 with Dip Rod and it was found in the TTL (Tank Truck Loading) chambers that there was water content in Chamber No.1, 2 and 5. It was further mentioned in the said show cause notice that the Petitioner was given the liberty to submit all supporting documents upon which the Petitioner would like to rely upon and if the Petitioner failed to submit the reply, it would be presumed that the Petitioner had nothing to say.

3. Thereupon on 14.05.2019, a reply was submitted by one of the partners of the Petitioner. In the said reply, there was no denial to the fact that there was no water in the chambers which was found on physical verification. But the reason assigned therein in the reply was that on account of Cyclone Fani, a large amount of rain water got accumulated in the inside of the dome covered box and as the drain outlet of the dome covered box was not working due to blockage, a considerable amount of water got leaked in the three Chambers of the oil tanker through the gas hole resulting in water spillage. It was further mentioned in the said reply that as per the information given to the partner of the petitioner by the driver, the said was not intentional or deliberate but resulted due to circumstances beyond the control and comprehension.

4. Pursuant thereto, it reveals from the records that a Committee was set up to investigate the matter. The Committee which was set up submitted a report on physical checking of the vehicle on 25.05.2019. It appears from a perusal of the report dated 25.05.2019 enclosed as Annexure-R4 to the affidavit-in-opposition filed by the Respondent IOCL that the physical verification was carried out by various personals in the presence of the representative of the Petitioner. The said report which was submitted had further confirmed that

there was water content in Chamber 1 and 2 as well as in the Chamber 5 which was also there in the show cause notice. However from the said report dated 25.05.2019, it transpires that the water content in Chamber No.1 was 15.7 cm which was otherwise 15.5 cm in the Show cause; in Chamber No.2, it was 3.0 cm which was 2.0 cm in the show cause and in Chamber No.5, it was 3.0 cm which was 2.0 cm in the show cause notice. It was also opined in the said report that the weight of the vehicle before draining of the water from inside of the Chamber was 29.770 MT and the weight of the vehicle after draining of the water from inside of the chamber was 29.440 MT. In Clause 9 of the said report, it was observed that the test results of Guwahati Refinery and the Digboi Refinery were not matching and for which a detailed analysis and report was directed to be submitted by the Committee shortly. Thereupon, the said Committee submitted a report on 30.05.2019. The conclusions so mentioned in the said report is at Clause-6 which is being relevant is reproduced hereinudner:

> "***6. <u>Conclusions</u>***:
>
> *6.1 As per the lab report, it is established that the material inside chamber no. 2 and 3 of TTL are adulterated.*
>
> *6.2 As per Clause no. 4.2(g) of Oil Industry Transport Discipline Guidelines, version 4.0 (Refer Annexure-VIII) "If the product passes the lab test, the TT shall be decanted at the consignees premises. If the product fails in the lab test, the TT shall be send for the disposal of the product as directed by the Oil Company."*
>
> *Since clear case of adulteration (chamber no. 2 and 3) committee recommends for decanting/disposing of the material suitably.*

6.3 As such a clear case of malpractice is established with intent.

Hence in the purview of OIL Industry Transport Discipline Guidelines (Version 4.0) (ITDG) clause 8.2.2.8 (Refer Annexure-VIII),

"*Established case of pilferage/non-delivery of product"*

is established."

5. It further reveals that thereupon on the basis of the two reports referred to hereinabove, on 03.06.2019, the CPNM (OM&S) had circulated an Inter Office Memo for taking appropriate penal action against the Petitioner. Pursuant thereto, on 3rd of July, 2019, the impugned order was passed whereby the Petitioner was blacklisted for 2 years w.e.f. 03.07.2019. As already stated hereinabove, the order dated 03.07.2019 has only been put to challenge and a perusal of the said order dated 03.07.2019 only shows that the Petitioner has been blacklisted for 2 years w.e.f. 03.07.2019. Today when the matter is being taken up, the period is long over.

6. Be that as it may, the learned counsel for the Petitioner submits that the said order dated 03.07.2019 was passed in violation to the principles of natural justice. The learned counsel further submitted that though the period of the impugned order had expired but an adjudication is necessary taking into consideration that the impugned order dated 03.07.2019 has various other consequences.

7. This Court further finds it relevant to take note of that a perusal of the pleadings in the writ petition would show that the allegations as regards the violation of the principles of natural justice as stated in the writ petition was that the show cause notice was silent that the Petitioner would be blacklisted.

8. Be that as it may, Mr. S. Borthakur, the learned counsel appearing on behalf of the Petitioner had further tried to develop the case on behalf of the Petitioner by taking support of certain enclosures which were part of the affidavit-in-opposition filed by the Respondent IOCL. He submitted by making a reference to Annexure-R4 and Annexure-R5 and submitted that the report which was enclosed as Annexure-R5 i.e. dated 30.05.2019 was a report made behind the back of the Petitioner and the said report ought to have been furnished to the Petitioner before passing the impugned order of blacklisting. In support of his submissions, the learned counsel for the Petitioner had referred to two judgments passed by the Supreme Court in the case of ***Raghunath Thakur Vs. State of Bihar and Others*** *reported in* ***(1989) 1 SCC 229*** as well as the recent judgment of the Supreme Court in the case of ***Madhyamam Broadcasting Ltd. Vs. Union of India and Others*** *reported in* ***(2023) SCC Online SC 366***.

9. On the other hand, Mr. K. Kalita, the learned counsel appearing on behalf of the IOCL submits that before taking any action of blacklisting, the only requirement is to give a show cause notice which was duly given on 11.05.2019 and thereupon after taking into consideration the reply so submitted by the Petitioner, a Committee was constituted. He submitted that while conducting the physical verification, the Petitioner was called to attend and the Petitioner duly authorized his representatives to be present. This aspect of the matter can be seen from the report dated 25.05.2019. He further submitted that the subsequent report dated 30.05.2019 is the definitive findings on the basis of evidence so collected in pursuance to the preliminary report dated 25.05.2019. The learned counsel therefore submitted that due opportunity was given to the Petitioner to have its savvy and the preliminary

report, final report and the impugned order were a part of the decision making process. He further relied upon the judgment of the Supreme Court in the case of ***M/S Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal and Another*** *reported in* ***(1975) 1 SCC 70*** wherein it was held that prior to passing an order of blacklisting, the contractor has a right to receive a show cause and to submit a reply thereupon. He therefore submitted that this Court is exercising a jurisdiction under Article 226 of the Constitution and as such, the jurisdiction so exercised is only to look into as to whether the decision making process is arbitrary, illegal, unreasonable or have caused manifest injustice. The learned counsel for the Respondent further submitted that in the instant writ petition, only the blacklisting order has been put to challenge and the said blacklisting order has already spent its force for which the instant writ petition has become infructuous.

10. I have heard the learned counsels for the parties and perused the materials on record. Before dealing with the facts involved which have been narrated in brief supra, this Court finds it relevant to take note of the judgments so placed by the learned counsels for the parties.

11. As already stated hereinabove, Mr. S. Borthakur, the learned counsel for the Petitioner had relied upon the judgments in the case of ***Raghunath Thakur (supra)*** as well as ***Madhyamam Broadcasting Ltd. (supra)***. In the case of ***Raghunath Thakur (supra)***, the Supreme Court at paragraph No.4 was dealing with the situation where a blacklisting order was passed without issuance of any notice and it is in that regard, it was observed by the Supreme Court that blacklisting any person in respect of business venture has civil consequence for the future business of the person concerned in any event and it is an

elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. At this stage, this Court further finds it relevant to take note of the judgment of the Supreme Court in the case of ***M/S Erusian Equipment & Chemicals Ltd. (supra)*** which was relied upon by Mr. K. Kalita, the learned counsel wherein also at paragraph Nos. 17, 18 ad 19, the Supreme Court held that a person prior to blacklisting is required to be treated fairly by giving due opportunity.

12. In the case of ***Madhyamam Broadcasting Ltd. (supra)***, the Supreme Court made an elaborate discussion on principles of natural justice and as to when judicial review is permissible on procedural grounds. Paragraph Nos. 39 to 47 of the said judgment details out the concept of principles of natural justice, its purpose and the content. It was observed by the Supreme Court in the said judgment that the principles of natural justice have to be read into the law and conduct of judicial and administrative proceedings with an aim of securing fairness. It was further observed that the Principles of natural justice seeks to realize the following 4 (four) purposes.

(i) Fair outcome,

(ii) Inherent value in fair procedure,

(iii) Legitimacy of the decision and the decision making authority, and

(iv) Dignity of individuals.

13. The Supreme Court further in the said judgment also explained the constitutionalizing principles of natural justice which was brought into the fold under Article 14 and 21 of the Constitution in the judgment of the Supreme

Court in the case of ***Mrs. Maneka Gandhi Vs. Union of India and Others*** *reported in* ***(1978) 1 SCC 248.*** At paragraph No.53 of the judgment in the case of ***Madhyamam Broadcasting Ltd. (supra)***, the Supreme Court further explains the impact of the judgment of the Constitution Bench in the case of ***Maneka Gandhi (supra)*** on the procedural fairness because of constitutionalizing of natural justice. The said paragraph No.53 is quoted hereinbelow:

> "*53. The judgment of this Court in Maneka Gandhi (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect,*

infringes upon the core of the right to a fair and reasonable hearing."

14. From a perusal of the above paragraph, it was observed by the Supreme Court that constitutionalizing the principles of natural justice would lead to a procedural fairness as well as breathe reasonableness into the procedure. It was also observed by the Supreme Court that the principles as regards the doctrine of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry and the materials that are available for perusal. It was also observed that while situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principles are abrogated because it is the core that infuses procedural reasonableness. Further to that, it was also observed that it is the burden upon the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing.

15. In the backdrop of the above principles of law, let this Court take into account the facts involved. On 09.05.2019 during a routine checking high quantity of water was found on the top platform of the TTL. Under such circumstances, what was found out during the said routine inspection and why action should not be taken against the Petitioner, a show cause notice was issued on 11.05.2019. The Petitioner duly replied to the same on 14.05.2019 and duly admitted that there was water content in the Chambers as alleged in the show cause notice. However, it was the case of the Petitioner that it was on account of Cyclone Fani, a large amount of rain water got accumulated inside of the dome cover box and the drain outlet of the dome cover box was not working due to blockage for which a considerable amount of water got

leaked in the three Chambers of the Oil tanker through the gas hole resulting in water spillage and it was not intentional or deliberate. Taking into account the reply, a Committee was formed on 15.05.2019. When the said Committee was taking up the physical checking of the SRN TTL i.e. the vehicle of the Petitioner, the representative of the Petitioner was duly present and on the basis of the physical verification, the preliminary report was given on 25.05.2019 and making it clear that the final report would be submitted by the Committee. The representative of the Petitioner was duly present therein also and signed the minutes dated 25.05.2019 and thereupon the report was given on 30.05.2019 and the conclusion so arrived at have been already quoted supra. It is thereupon on the basis of the said reports, the impugned order dated 03.07.2019 was issued.

16. The facts above mentioned and taking into account the law so laid down by the Supreme Court, it is the opinion of this Court that the procedural fairness as well as the reasonableness of the actions cannot be called into question taking into consideration that due opportunity was given to the Petitioner. This Court is further of the opinion that the Petitioner had also failed to show that if any other procedure would have been followed, the petitioner could have justified the findings of the report dated 30.05.2019. This Court is also of the opinion that the Petitioner have also failed to show that the followed procedure by the Respondent Authorities in effect infringes upon the core right to a fair and reasonable hearing. Under such circumstances, this Court finds no reason to interfere with the impugned order for which the instant writ petition stands dismissed.

17. The interim order so passed on 22.08.2019 that no coercive action

should be taken against the petitioner stands also vacated.

18. Pending applications if any, stands also closed.

JUDGE

Comparing Assistant