
(2003) 03 JH CK 0072

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3944 of 2002

Chamundeshwari Corporation

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 51 BLJR 862 : (2003) 2 JCR 552

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A. Alam, N.N. Tiwari, Ritu Kumar and R.R. Tiwary, for the Appellant;
Rajiv Ranjan Mishra, GP II, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner seeks appropriate direction upon the respondents to issue dispatch instruction and take delivery of 2149 Adult Weighting Scales by making payment of the price thereof as agreed in terms of the agreement entered into by the respondents under the World Bank Integrated Child Development Scheme.

2. Petitioner's case is that it is authorized agent of manufacturing unit of weighting machines and deals in business, amongst others, supply of such articles on payment. On 28.12.1999 the Government of Bihar, Welfare Department invited tenders for supply of Adult Weighting Machines for supplying to Angan Bari Centers in the district of East Singhbhum and Palamau. Petitioner's tender was accepted for supplying of the weighting machines and on 14.11.2000 an agreement was entered into for the supply of 2149 numbers of Adult Weighing machines, the total value of which being Rs. 14,84,959/-. The tender was invited by the Government of Bihar, Welfare Department under the World Bank assisted ICDC II project management. The petitioner's case is that after the agreement was entered into a huge investment of amount was incurred for making all those machines ready for supply and intimidated the Project

Coordinator, World Bank assisted ICDC Patna for inspection at the factory premises. The inspection team thereafter inspected the said stock and found that the adult weighing machines were in conformity with the technical specification as approved by the State Level Project Committee. The petitioner thereafter several times requested the Project Coordinator to issue dispatch order so that the supply may be made to Angan Bari Centers in the district of East Singhbhum. In response to the said letter dated 20.2.2001 the Procurement Officer, Patna vide letter dated 26.2.2001 informed the petitioner that supply order will not be issued due to reorganisation of State of Bihar and formation of the new State of Jharkhand. It appears that in the meantime by letter dated 17.9.2001 the Secretary Government of Jharkhand requested the Senior Project Officer, World Bank Project Management Cell Government of India for making available fund for procurement of machines. The petitioner also wrote letter to Director Social Welfare Government of Jharkhand intimating that delivery instruction has not been issued till date.

3. The State of Jharkhand has filed a counter affidavit wherein it is stated that the agreement was entered by the Government of Bihar on 14.11.2000 on the eve of appointed day for creation of State of Jharkhand and as such the Government of Jharkhand is not bound to honour the said agreement signed by the State of Bihar. It is contended that the Government of Bihar should not have entered into the said agreement. The respondent's further case is that the inspection of goods was done by a team constituted by Government of Bihar on 9.1.2001 in New Delhi. The Government of Bihar although has transferred the file related to purchase of weighing machines to the Jharkhand Government and the State of Jharkhand has not received any fund for the purpose of weighing scales from the petitioner, as such the Government of Jharkhand is under no obligation to issue purchase order for the supply of machines.

4. Mr. N.N. Tiwary learned Senior Advocate appearing for the petitioner submitted that the respondents are bound to carry put the obligations created under the agreement and they cannot back out from the agreement merely because of the creation of State of Jharkhand. Learned counsel drawn my attention to Sections 54 and 55 of the Bihar Reorganisation Act and submitted that the State of Jharkhand cannot deny their liability in fulfilling the terms of the agreement.

5. In the facts of the case, the only question that falls for consideration is whether on the admitted facts of the case this Court can issue appropriate direction upon the respondents to take delivery of the Adult Weighing Machines in terms of the agreement entered into by the State of Bihar with the petitioner on 14.11.2000.

6. As noticed above tender of the petitioner was accepted by the Government of Bihar before creation of the State of Jharkhand but agreement was entered into by the Government of Bihar with the petitioner on the appointed day i.e. on 14.11.2000 for supply of 2149 numbers of Adult Weighing Machines. The

petitioner continued correspondences with the State of Bihar and in furtherance of the agreement wrote a letter dated 23.11.2000 to the Project Coordinator, World Bank assisted ICDS, Patna informing him that the articles were ready for inspection and requested for deputing inspectors for inspection of the articles. Accordingly, the articles were inspected by a team of Joint Director, Department of Industries, Government of Bihar and Procurement Officer, ICDS, PMC, Patna. For the first time on 16.5.2001 the Secretary, Welfare Department, Government of Bihar sent a letter to the Secretary, Government of Jharkhand informing the latter that the file in respect of the tender in question is being transferred to the Jharkhand Government for taking further action. On receipt of the aforesaid file the Government of Jharkhand sent a letter to the Senior Project Officer, WBP Management Cell, Ministry of HRD, Government of India for making available funds for procurement of Adult Weighing Machines. In response to the aforesaid letter the Project Manager, Human Resources Department, Government of India informed the Director, Social Welfare, Government of Jharkhand, Ranchi that expenditure in this regard may be incurred out of the savings under "other expenditures" but the procurement may be done following the World Bank Procurement Procedure and may be completed before the end of the project period t.e. 30th September, 2002. The Government of Jharkhand, however, did not supply the machines owing to the non-availability of funds.

7. Taking into consideration the aforesaid facts, in my considered opinion the Government of Bihar and after creation of the State of Jharkhand, the Govt of Jharkhand were bound to take delivery of the weighing machines in terms of the agreement but they have committed breach of contract.

8. From perusal of Annexure 9 which is a letter dated 28.3.2002 issued by the Project Manager, Govt. of India, Human Resources Development department in response to the letter dated 17.9.2001 written by the Govt. of Jharkhand, it appears that tender notice for the purchase of weighing machines, was issued by the Govt. of Bihar under a special project of the World Bank Procurement Procedure and the project was to be completed by 30th September, 2002. The letter dated 28.3.2002 issued by the Govt. of India, Human Resources Development department, is reproduced hereinbelow.

"F-1 No-20-2-2001-WBP.

Govt. of India

Human Resources Development;

Women and Child Development

1st Floor Hotel Janpath, New Delhi-110001 Dated 23.8.2002

Shri Alok Goyal, Director, Social Welfare, Govt. of Jharkhand, Engineering Hostel, Dhurwa, Ranchi-0834004.

Sub : Procurement of Adult Weighing Machines by Jharkhand.

Sir,

I am directed to refer to your letter No. WBP-ICDS-II- P.R. 01/99-1723 dated 17.9.2001 on the subject mentioned above and to state that Govt. of India has no objection to the proposal of the State Government to procure 6280 Adult Weighing Machines for an amount of Rs. 4.11.924/-. Expenditure in this regard may be incurred out of the savings under "Other Expenses" head indicated by the State Govt. vide their letter No. 1/DELHI/C 2002 dated 21.1.2002. The procurement may be done following World Bank Procurement Procedures and may be completed before the end of the project period i.e. by 30th September, 2002.

Yours faithfully, Sd/- (S.K. Biswas) PROJECT MANAGER"

9. It appears that when supply order was not issued inspite of the aforesaid letter dated 28.3.2002 the petitioner sent a letter dated 30.5.2002 to the Director, Social Welfare, IDCS, Jharkhand informing the letter that if supply order is not issued within 21 days then the petitioner shall be entitled to recover costs and charges for the losses it suffered for the non-supply of the machines. Inspite of the letter supply order was not issued by the State of Jharkhand on the plea that the agreement executed by the State of Bihar is not binding on the Government of Jharkhand and also because funds were not made available to the Government. In such circumstance, particularly because the project came to an end by 30th September, 2002, no direction can be Issued to the respondents for issuance of supply order and for taking delivery of the machines but prima facie, it is evident that both the Government of the Bihar and the Government of Jharkhand have committed breach of agreement by not taking supply of the machines. In such circumstance, the petitioner rightly gave notice that on failure of the respondents to take supply of the machines they will be liable for the losses suffered by the petitioner for the breach of the contract.

10. Having considered the facts and circumstances of this case no writ or direction can be issued to the respondents as sought for by the petitioner. This writ application is accordingly dismissed with the aforesaid observation.