

(2009) 05 KL CK 0046
In the High Court Of Kerala
Case No : OP. No. 18640 of 2001 (R)

Industrial Sweing Syndicate	Vs	APPELLANT
National Small Industries Corpn. Ltd.		RESPONDENT

Date of Decision : 25-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 05 KL CK 0046

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : M. Ramesh Chander, for the Appellant; K.P. Dandapani, (Sr.), for the Respondent

Final Decision : Dismissed

Judgement

1. The prayer sought in this original petition is for a direction to the respondent to disburse an amount of Rs. 3,32,532/- to the petitioners towards the value of the Sewing Machines supplied by them at the instance of the respondent. This claim is on the basis that the first petitioner is a proprietary concern of the second petitioner and is engaged in the business of sale of sewing machines throughout the state. It is stated that pursuant to the quotation submitted by the petitioners on 21/12/2000, the respondent issued Ext.P3 order to them for the supply of sewing machines mentioned therein. Subsequently by Ext.P4, the petitioners were directed to supply the machines to M/s. Chitra Apparels, Thanur, Malappuram.

2. It is stated that accordingly the machines were supplied and Ext.P5 is stated to be the proforma invoice, claiming Rs. 3,32,532 towards the value of the sewing machines supplied. According to the petitioners, they complied with all conditions of the purchase order and subsequently respondent issued Ext.P6 calling for certain clarifications which was duly furnished. It is stated that they submitted Ext.P7 invoice claiming payment, but however, payment was not made. It is their case that in the meanwhile M/s. Chitra Apparels referred to

above issued Ext.P1 dated 4/6/01 confirming receipt of sewing machines and also certifying that the performance of the machines was good.

3. Despite all this, the petitioners complain, that respondent did not pay the invoice value. It is contended that respondent being an instrumentality of the State is bound to act fairly and reasonably and that without any reason whatsoever, payment has been denied. It is in these circumstances, the petition has been filed praying that the respondent be directed to make payment of the amount due to them for the sewing machines supplied.

4. A detailed counter affidavit has been filed by the respondent producing supporting documents. They submit that facts have been suppressed and that petitioners have approached this Court with unclean hands disentitling them for relief in this petition. In the counter affidavit, it is stated that one Smt. P.Vijayalakshmi, who started M/s. Chitra Apparels referred to above applied for supply of sewing machines producing a quotation given by the petitioner in the name of the respondent. It is stated that the application was processed under the hire purchase scheme and ultimately Ext.P3 order was issued by the respondent for supply of sewing machines for a total value of Rs. 2,99,900/-. According to the respondent subsequently by Ext.R2 dated 15/3/2001, the respondent amended Ext.P3 supply order and the value was increased to Rs. 2,48,000/-. It is stated that subsequently, by Ext.R3, despatch instruction was given to the first petitioner for supply of machines. Ext.R3 despatch instruction contains several conditions to be complied with by the petitioners.

5. It is stated that these conditions were not complied with and finally the respondent inspected the premises of M/s. Chitra Apparels and found that the petitioners had not supplied the five thread over lock machine in conformity with the original and revised purchase orders and the despatch instructions. Ext.R4 is the inspection report which discloses these findings. It is stated that in view of Ext.R4, petitioner was directed to produce the original bill and supply the machines as per the specifications in the supply order. It is stated that the original bill was accordingly produced, but however, this did not tally with the photocopy that was produced earlier. It is stated that through Ext.R5, the respondent requested the first petitioner to offer clarifications, but however, there was no response.

6. In the meanwhile, according to the respondent, the hirer send Ext.R6 fax requesting that in view of the non compliance with the supply order conditions, payment shall not be released to the petitioner. In the meanwhile, petitioner was claiming payment without curing the defects and finally according to the respondent petitioner colluded with the hirer and got Ext.P1 issued by them. It is stated that in the light of Ext.P1, the respondent inspected the premises on 15/6/01 and found that the petitioner illegally paid money to the hirer agreeing to take back the machines after getting payment from the respondent. It is stated that they were also informed later that the machines were taken back by the petitioner after paying Rs. 26,000/- to M/s. Chitra Apparels with a promise

that on receiving the payment from the respondent that a further sum of Rs. 28,000/- will be paid to the hirer. It is stated that in the aforesaid circumstances, the petitioner having not supplied sewing machines as per the purchase order and also having taken the machines back in the dubious manner in which they have done, no amount is due to be paid.

7. Counter affidavit also makes reference to the previous instance when petitioner committed fraud on the respondent and on the basis of which they have made a complaint to the Superintendent of Police, Aluva.

8. From the counter affidavit thus filed, it is evident that the respondent is not admitting their liability to pay the amount claimed in the original petition. On the other hand, they are contending that the machines supplied by the petitioners were not in compliance with the purchase order and that the petitioners played fraud on them. On this basis, they are contending that money is not actually due to the petitioners.

9. The dispute thus raised by the respondent in the counter affidavit, which have not been contradicted by a reply affidavit of the petitioners show that these are not issues which can be resolved in a petition under Article 226 of the Constitution of India. If the petitioners have a case that money is legitimately due to it, the remedy available to the petitioners is to approach the Civil Court. Therefore, no relief can be granted in this original petition.

Original petition fails and is dismissed.