

(2000) 07 PAT CK 0108
In the Patna High Court
Case No : C.W.J.C. No. 9796 of 1999

M/s. Bharat Agricultural and Mechanical Engineering Company	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Citation : (2000) 4 PLJR 293

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Ram Balak Mahto and Sukumar Sinha, for the Appellant; Manu Shanker Mishra for Respdts. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The petitioner seeks direction to the Bihar Renewable Energy Development Agency (BREDA) and its Director (referred to as "the respondents") to issue Despatch Instruction for delivery of 3800 Chulhas (ovens) and to arrange inspection of 12000 Chulhas said to be lying ready for delivery, and other incidental reliefs. The petitioner is a partnership firm and registered as Small Scale Industrial (SSI) unit for manufacturing improved portable chulhas. On 29.2.96 the respondents placed order for supply of 25,000 chulhas. The supply order contained detailed instructions. The delivery was to be made only after the materials were offered for pre-despatch inspection and inspected by the officers. The case of the petitioner is that on receipt of the said supply order and after manufacturing 10,000 chulhas, by letter dated 4.4.96 the respondents were informed that the said number of chulhas were ready for inspection. Reminders, it is said were sent on 13.4.96, 27.4.96, 9.5.96 and 4.6.96. Pursuant to the said letters the respondents held inspection of 10,100 chulhas on 25.6.96 but took delivery of only 6300 out of them vide letter dated 2.8.96. The petitioner-unit, in the meantime, had manufactured 12,000 chulhas more. However, the respondents did not take any step for inspection despite several letters. Finally, on 30.9.96 the respondents informed the petitioner that supply order stands

amended to only 6600 chulhas and with respect to the rest, may be treated as cancelled. According to the petitioner, the chulhas having been manufactured pursuant to the agreement, the respondents are obliged to take delivery. The petitioner approached the State Level Appellate Committee constituted under the Bihar Purchase of Materials Preference Rules, 1975, presided over by the Industrial Development Commissioner, who after hearing the parties by order dated 29.3.98 directed the respondents to accept delivery of the remaining quantity of chulhas. However, despite the said order the delivery is not being taken.

2. The respondents do not deny to have placed order by letter dated 29.2.96 with the petitioner-unit for supply of 25000 portable improved chulhas. According to them, the order was subject to specific terms and conditions. The conditions, inter alia, were (a) that the chulhas should be manufactured as per technical specification of Ministry of Non-Conventional Energy Sources (MNES), Government of India, conforming to IS: 13152 of 1991 and tested by recognised Technical Back up Unit approved by the MNES with test certificate, (b) 12,500 chulhas should be supplied by 15.4.96 and the balance 12,500 by 31.5.96. In case the materials are not supplied within three months from the expiry of the delivery schedule, the agreement will be deemed to have been cancelled automatically, (c) The chulhas to be supplied will be inspected by the officers of BREDA prior to despatch of the materials. The supplier shall intimate the programme of manufacturing and testing at least 15 days in advance to the Director, BREDA, before despatch to enable him to arrange inspection. Deviation in specification or failure to adhere to the technical specification would entail rejection of the materials.

3. The respondents deny the petitioner's case that 10,000 chulhas had been manufactured as per supply order in April 1996. It is said that in course of inspection on 25.6.96 it transpired that only 6600 chulhas had been manufactured by then, another lot of 3500 chulhas was lying unfinished. The respondents further contend that MNES allowed acceptance of Non-ISI marked chulhas upto 31.8.96. chulhas numbering 6600 supplied by the petitioner were accordingly accepted and payment also made for the same. As the petitioner failed to adhere to the manufacturing/delivery schedule and, in the meantime, Government of India put restriction on the acceptance of Non-ISI marked chulhas, the supply order with respect to the remaining chulhas was cancelled.

4. Shri Ram Balak Mahto, learned counsel for the petitioner, submitted that the stand of the respondents that only 6600 chulhas were found manufactured till 25.6.96 is not correct. He stated that the remaining 3500 chulhas which have been described as unfinished in the counter affidavit had also been manufactured but only minor work, such as tagging of labels or putting aluminium foil on or around the chulhas remained to be done, which would have taken no time. He urged that the plea of the petitioner has been accepted by the State Level Committee, and being inter-party order the direction issued by the Committee is

binding on the respondents. As regards the plea that in view of the guidelines laid down by the Government of India delivery of only ISI marked chulhas can be taken, it was submitted that the decision did not prevent BREDA from taking delivery of chulhas upto 31.8.86.

5. Shri Manu Shanker Mishra learned counsel for the respondents, submitted that the petitioner was required intimate the manufacturing/despached schedule to enable the respondents to range inspection but till much after the expiry of the stipulated period, only 6600 chulhas were found manufactured which amounted to breach of the term of agreement. As, in the meantime, the Government of India prohibited supply of non-ISI marked products it was not possible to extend the period stipulated in the supply order and accept chulhas manufactured by the petitioner. As regards the order of the State Level Appellate Committee to submitted that the provisions of the Per chase of Material Preference Rules and applicable to Government Department and for Corporation and not to registered societies like BREDA. Thus, the order the Committee is not binding on it.

6. In this case I do not propose to go into the question as to whether the order of the State Level Appellate Committee binding on BREDA or not, though, *prince facie*, I am inclined to think that having subjected itself to the jurisdiction of the Committee and not challenged the order as a respondent it cannot be allowed take the plea that the order and direction issued by the Committee are not binding on it. However, in the facts and c cumstances. I do not think it is a fit case in which any direction should be issued to the respondents to accept the remaining quantity of chulhas said to have been manufactured by the petitioner waiting for delivery to the respondents. There is a dispute about the number of the chulhas manufactured by the petitioner within the stipulated period. There is also dispute regarding number of chulhas the manufacturing process of which was complete by 25.6.96. The State Level Committee does not seem to have addressed itself to these aspects. It simply took the view that as BREDA failed to make an inspection despite repeated requests by the petitioner, which adversely affected its production and supply schedule, and if BREDA had made inspection on time no such problem would have arisen nor the question of acceptance or non-acceptance of non-ISI marked chulhas would have arisen, the BREDA should accept the chulhas which have already been manufactured and for the rest (out of 25000 chulhas as per supply order), to extend the period for supply. The Committee thus directed the respondents not only to accept chulhas which are said to have been already manufactured and available for supply, but also to extend the period of supply with respect to the remaining quantity of the chulhas out of 25000 as per the supply order. The compliance of the latter part of the direction would amount to the violation of the guidelines of the Government of India not to accept the non-ISI marked products. The guidelines being in consonance with the relevant provisions of the Bureau of Indian Standards Act 1986, the compliance of the direction would also amount to violation of the statute itself.

7. The more important aspect of the case is that the dispute falls in the realm of contractual obligations. The parties entered into agreement, as per the terms of the supply order dated 29.2.96, in the matter of purchase of chulhas. Though it is contended by the petitioner that it had manufactured 10000 chulhas (which even according to its own case was less than the number it was required to manufacture by 15.4.96), and has sent reminders for inspection, prima facie, the petitioner seems to have failed to adhere to the manufacture/despatch schedule. In any view, the action of the respondents in cancelling the supply order beyond 6600 chulhas amounts to breach of agreement for which writ petition is not appropriate remedy. Therefore, both on the ground that the case involves disputed questions of fact and also on the ground that it involves enforcement of contractual obligations and rights, the appropriate remedy for the petitioner is to institute suit in the civil court and seek its reliefs there. In these premises, in the facts and circumstances, no case is made out for interference by this court in writ jurisdiction, the writ petition stands dismissed.