
(2001) 02 PAT CK 0106
In the Patna High Court
Case No : L.P.A. No. 1077 of 2000

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

Date of Decision : 05-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2001) 2 PLJR 327

Hon'ble Judges : Shiva Kirti Singh, J;N. Pandey, J

Bench : Division Bench

Advocate : S.N. Jha and Sukumar Sinha, for the Appellant; Manu Shankar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the parties. The writ petitioner, a small scale Industrial (S.S.I.) Unit for manufacturing improved portable Chulhas has preferred this Letters Patent Appeal against dismissal of the writ application bearing C.W.J.C. No. 9796 of 1999 [reported in 2000(4) PLJR 293] vide order dated 6th July, 2000 passed by a learned single Judge of this Court.

2. The writ application was for a direction to the Bihar Renewable Energy Development Agency (BREDA) and its Director to issue "Despatch Instruction for delivery of 3800 Chulhas (ovens) and to arrange inspection of 12,000/- (twelve thousand) Chulhas said to be lying ready for delivery and other incidental reliefs. Admittedly on 29.2.1996 the respondents placed order for supply of twenty five thousands Chulhas. The material facts relating to case of both the parties as well as their respective stand are mentioned in detail in the order of learned single Judge. For the purposes of deciding this appeal the only question is whether the dismissal of the writ application by learned single Judge on the twin grounds that the case involves disputed question of fact and that it involves enforcement of contractual obligations and rights is correct in law or requires interference in this appeal. From the rival stand of the parties it is clear that after inspection on

25.6.96 the respondents accepted delivery of 6,300/- Chulhas and the rest 3,800/- Chulhas were not accepted on the ground that they were not fully finished. The first lot of 12,500/- chulhas were to be supplied by 15.4.96 and the balance 12,500/- chulhas by 31.5.1996. According to appellant the remaining 3,800/- chulhas were manufactured by them but the respondents did not hold further inspection and did not issue any despatch instruction to take delivery of remaining chulhas. Admittedly, payment was made for the 6,600/- chulhas accepted by the respondents. The respondents have denied and disputed that any further chulhas were ready within the permissible time limit. However, their main defence appears to be that the Chulhas were required to be manufactured, as would appear from the terms and conditions of the agreement, as per technical specification of Ministry of Non-conventional Energy Sources (MNES), Government of India conforming to I.S:-13152 of 1991 and tested by recognised Technical Back-up Unit approved by the MNES with test certificate. Though the respondents accepted 6,600/- Chulhas supplied beyond stipulated period of supply, in the meantime the Government of India prohibited supply of Non-I.S.I. marks Products and in that view of the matter the respondents could not extend the period for supply stipulated and could not accept Chulhas manufactured by the petitioner.

3. The aforesaid stand of the respondents is clear from Annexure-B/1, a letter dated 29.6.96 sent by Director, BREDA to the petitioner and another manufacturer. The said letter mentions the fact that request is being made for testing of the present Chulhas being manufactured by the petitioner by the officials of Technical Agency Unit. The letter also contains a request for upgrading the quality of the chulhas to the new standard. The appellant, writ petitioner has not disputed the aforesaid stand of the respondents as it appears from Annexure-B/1 and has not annexed any reply to that letter. The letter of appellant dated 2.9.96 (part of Annexure-2 series) contains an assertion that earlier inspected 3,800/- chulhas have been completed and accordingly request for issuance of immediate despatch instruction with regard to 3,800/- chulhas was made. A further information was given that a lot of seven thousand chulhas are also ready and hence inspection of the same may be arranged at the earliest. It is notable that this communication is admittedly after 31.8.96 and by that time even the three months time from the expiry of the delivery schedule, within which materials could still be supplied was also over.

4. In the aforesaid facts and circumstances the writ court appears to be correct in holding that the assertion of the appellant that it had the necessary number of Chulhas manufactured and ready for inspection before the expiry of the stipulated period is a disputed question of fact and on such assertion it was not possible to grant relief to the writ petitioner. The enforcement of contractual obligation in a writ proceeding was also rightly held to be not possible in such circumstances.

5. Learned counsel for the appellant has placed reliance upon a judgment of the

Supreme Court in the case of Common Cause, A Registered Society Vs. Union of India and Others, to submit that executive and administrative actions of State or its Instrumentalities or Statutory or Public Bodies which are in violation of Fundamental Rights or which are arbitrary or oppressive in violation of Article 14 of the Constitution of India or any statute are open to judicial review under Article 226 of the Constitution of India. No doubt the aforesaid principle is well settled. Once a writ court comes to a finding that the impugned action of State or its instrumentalities is in violation of Fundamental Rights or in violation of Public duties or any statute, judicial review of such action is permissible under the Public Law notwithstanding that damages are also claimed in those proceedings. But whether such violation has taken place or not depends upon the facts of each case. In this case, in view of dispute of fact noticed earlier it cannot be held with certainty that the action of the respondents is arbitrary and against Article 14 of the Constitution of India. No violation of any other statute is involved in the present case. In such circumstances this case would fall in a category where Public Law remedies are being sought when the impugned action is in a purely private contractual matter directed against a private individual. In this regard as would appear from paragraph 65 of the judgment of the Apex Court in the case noted above, Public Law remedy under Article 226 of the Constitution of India would not be available to the petitioner.

6. In the aforesaid facts and circumstances, we find no good ground to interfere with the impugned order under appeal. Since the learned single Judge has already held that appropriate remedy for the appellant-petitioner is to institute a suit in the Civil Court, hence we do not think it proper to go into the validity or merit of the order passed by the State Level Appellate Committee in favour of the petitioner on 29.2.1998 vide An-nexure-4 to the writ application. However, no relief can be granted to the appellant under writ jurisdiction, even on the basis of said order (Annexure-4) as learned counsel for the appellant failed to show that the said order has been passed under any statutory provisions of law. Accordingly with the above observation, this appeal is dismissed. In the facts of the case, there shall be no order as to costs.