**(2010) 02 DEL CK 0099**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 13457 of 2009

R.K. Machine Tools Ltd. and Another — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

**Date of Decision :** 11-02-2010

**Acts Referred:**

**Citation :** (2010) 02 DEL CK 0099

**Hon'ble Judges :** Dr. S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** V.N. Koura Ayush A. Malhotra and Munindra Dwivedi, in W.P. C No. 13457 of 2009 Siddhartha Dave and Jemtiben, in W.P. C No. 14083 of 2009 Darpan Wadhwa M.R. Shamshad and Divya Jha, in W.P. C No. 821 of 201, for the Appellant; Rajdipa Behura and C.S. Chauhan and Som Sundaran, Joint Secretary, Ministry of Defence in W.P. (C) No. 13457 of 2009, Jatan Singh, CGSC in W.P. (C) No. 14083 of 2009, Atul Nanda, Rameeza Hakeem and Gaurav Gupta, in W.P. (C) No. 821 of 2010, for the Respondent

**Final Decision :** Allowed

## Judgement

S. Muralidhar, J.—These three writ petitions arise out of a common set of facts and accordingly are being disposed of by this order.

Introduction

2. The question that arises for consideration is the validity of a decision taken by the Respondent Union of India ("UOI") through the Ministry of Defence ("MoD") to put "on hold" all contracts with the Petitioner companies. The contention of the Petitioners is that this decision taken some time in June 2009 was without any prior notice to any of them and that till date, even 8 months later, they are not aware of the reasons for the said decision. According to them the work concerning contracts worth several crores of rupees is at a standstill and even the bills for past supplies which have been found to be in accordance with the contracts have not been cleared. Since this is causing each of them great hardship they have approached this Court with the above Writ Petition (C) Nos.

13457 and 14083 of 2009 and W.P.(C) No. 82 of 2010, seeking a declaration that the orders of the Respondents to put "on hold" the past, present and future contracts of each of them are illegal and void.

Background facts

3. The facts in each of these petitions may be noticed briefly.

4. In W.P.(C) No. 13457 of 2009 the Petitioners are R.K. Machine Tools Ltd. ("RKMTL") and Shri Vinod Kumar Soni its Chairman and Managing Director. RKMTL has its registered office in New Delhi and a factory at Ludhiana in Punjab. It employs more than 400 persons and is engaged in the manufacture of various items of heavy machinery including the textile machinery, lathe machines, boring machines, shaping machines, gear hobbing machines and other special purpose machines. RKMTL claims to have been supplying equipments to the Indian Ordnance Factory ("IOF") under the MoD and in particular the mortar bodies for 120 mm guns of the Indian Army and to the Heavy Vehicle Factories ("HVFs"), critical parts for the Vijayanta Tanks and other critical parts. It is submitted that any interruption in the supply of parts and components would seriously jeopardise not only the defence production of the country but also the ability of the defence establishment to maintain critical T-55, T-72 and T-90 tanks which constitute the main armour of the defence forces.

5. As on 3rd June 2009, RKMTL had outstanding contracts to the value of Rs. 64.36 crores from various units/factories of the MoD. These are governed by the general terms and conditions of the contract of the Director General of Supplies and Distribution ("DGS&D") in Form 68. It is claimed that there is no particular condition which permits the MoD to put on hold or to suspend any contract.

6. On 3rd June 2009 RKMTL received a letter from the Ordnance Factory, Chanda, with reference to purchase order ("PO") dated 22nd May 2008 (for the supply of Shell 105 mm IFG HE (Qty. 28,900 Nos) quantity and a PO dated 29th March 2009 (for the supply of Bomb 120 mm HE quantity 14558 sets) both of which were "put on hold till further orders." Thereafter on 24th June 2009 the HVF of the MoD at Avadi, Chennai informed the Petitioner company that "as directed by the Ministry of Defence all the supply orders pending/existing and related activities on your firm are put on hold for the present, until further orders." On 15th October 2009 RKMTL received a communication from the IOF at Khadki, Pune with reference to the Supply Order dated 28th April 2009 requesting it "to hold all the activities against the subject supply order till further communication from our end."

7. It is stated that because of the above orders, RKMTL company has also not been considered for the award of any future contracts even though in some of them it has been the lowest bidder. Of the total value of Rs. 61 crores of the contracts put on hold, projects worth Rs. 5.57 crores were lying in the godowns of the RKMTPL ready for delivery. Goods of the value of Rs. 1.53 crores were under production and raw materials worth Rs. 4.61 crores had been procured

 

and were still lying in the stores of the Petitioner.

8. RKMTL addressed letters dated 22nd October 2009 and 5th November 2009 to the MoD requesting to know the reasons why it had "been awarded such severe economic punishment without ever the courtesy of being informed" of the charges and "without even being given an opportunity" of explaining its position.

9. It must be mentioned here that although notice was issued in the petition on 27th November 2009, no counter affidavit was filed till 8th February 2010 and that too after this Court took a serious view of the conduct of the Respondents in delaying the filing of the counter affidavit.

10. In the counter affidavit a preliminary objection has been taken as to the maintainability of the writ petition. It is submitted that Clause 2 of the general terms and conditions provides that disputes and differences arising from the contract are to be referred to the sole arbitration of an officer appointed by the Director General, Ordnance Factory. It is submitted, therefore, that unless that remedy is exhausted, the present petition ought not to be entertained. Secondly, it is submitted that the writ petition raises disputed question of facts. Thirdly, in terms of the contract, "the Courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out or in respect of the contract" and, therefore, this Court has no jurisdiction to entertain these writ petitions. On merits it is stated that an FIR No. RC/0102009A018 dated 17th May 2009 has been registered by the Central Bureau of Investigation ("CBI") in Kolkata against Shri Sudipta Ghose, formerly Director General, Ordnance Factory Board ("OFB") on the allegation of his having received bribe through an agent in connection with the supplies made to the OFB. It is stated that the FIR inter alia mentions the several firms/companies who are suppliers/vendors to the OFB and this includes RKMTL. It is stated that in view of the aforementioned FIR and Clauses 19 and 23 of the terms and conditions of the contract relating to withholding and lien in respect of sums claimed and penalty for use of undue influence, the MoD has decided that all procurement/acquisition cases in the pipeline with any of the firm whose name figures in the FIR "may be put on hold for the present" and the "matter should be comprehensively re-examined in consultation with the Chief Vigilance Commission and the Law Ministry, and consolidated note prepared for information and directions of CCS". Accordingly, an order dated 28th May 2009 was issued in which it was instructed that "all procurement/acquisition cases in the pipeline with any of the firm/companies/supplier/vendors figuring in the said FIR may be put on hold for the present" and "should not be proceeded with till further order." It is maintained that the above decision is "an interim measure and the final decision has not yet been taken in view of the CBI investigations still not completed." It is claimed that the CVC has also opined that as long as the CBI investigation was pending no dealings should take place with the Petitioner company and other companies involved in the case. It is claimed that the MoD is regularly coordinating with the CBI sharing the information available

 

with them and expediting investigation so that no undue harm is done to any firm. In para 11 of the counter affidavit it is stated that the CBI has informed the Secretary, MoD that the investigation thus far has revealed the payment of illegal gratification in respect of the Petitioner RKMTPL as well as the Petitioner in Writ Petition (C) No. 14083 [M/s. HYT Inovative Projects Pvt. Ltd. ("HYTIPPL")] and that the Petitioners "being guilty of a criminal offence are estopped from raising the grievances as mentioned in the petition". It is stated that the MoD has not yet taken any decision regarding blacklisting of the companies and that the Respondents reserve their right to take appropriate decision "after completion of the investigation by the CBI."

11. The facts in W.P.(C) No. 14083 of 2009 is more or less similar except that the HYTIPPL is located in Pune. It is stated that the HYTIPPL is a part of the HYT Group. The HYT Engineering Pvt. Ltd. (HYTEPL) is a sister concern of HYTIPPL. It is stated that although these two companies are different in the eyes of law, the Respondents have confused one for the other. HYTEPL is stated to be involved with the Indian Railways whereas HYTIPPL deals with the defence sector. It is claimed that the HYTIPPL specialises in the sale and manufacture of Flow Form Tubes using the flow form process which is an advanced form of spinning and is used in the military and aerospace industries to produce precise thin walled, seamless rocket motor and missile casings, nose cones, rocket housings and even cartridge casings. It is stated that the HYTIPPL has been manufacturing and supplying Pinaka Motor Tube using the flow forming process and at present has two supply orders from the Ordnance Factory, Ambajhari (OFAJ), Nagpur (Respondent No. 2) for the supply of 750 and 1167 quantities of Pinaka Motor Tubes. Consequent to the same FIR referred to hereinbefore, the contracts with the Petitioner HYTIPPL have also been put on hold.

12. The petition narrates the allegations mentioned in the FIR. Inter alia it is alleged that Sudipta Ghose had communicated with all the suppliers and had spoken to one Bhojraj Hemraj Teli, Managing Director of HYTEPL with regard to the payment of illegal gratification in return for the favour already shown to HYTEPL. It is alleged that Sudipta Ghosh asked Ashish Bose to pursue the suppliers to collect the remaining money and further informed Ashish Bose that HYTEPL was required to pay Rs. 15 lakhs. It is claimed that during the course of searches conducted in the house of one Ramesh Nambiar, besides other things, a cheque dated 30th April 2009 of Rs. 5 crores issued by HYTEPL in favour of Archana Traders Pvt. Ltd., a Dubai based company of accused Ramesh Nambiar''s father-in-law was recovered. A credit card in the name of Bhojraj Teli was also recovered. The Petitioner claims to have been surprised by the order dated 4th June 2009 issued by Respondent No. 2 putting a hold on all procurement, including of the two supply orders dated 6th December 2008 and 12th December 2008. It is submitted that no reasons have been mentioned why the said decision has been taken and that the effect of putting on hold tantamounts to blacklisting. The order is assailed on the ground of being violative of the principles of natural justice. It is claimed that even after the lodging of the FIR the Petitioner

 

continued to supply the motor tubes and the Respondent No. 2 continued to accept them. The Petitioner surmises that the order putting on hold has been passed only because the Petitioner company HYTIPPL belongs to the HYT Group and that the Chairman of the HYTEPL and HYTIPPL is common. HYTIPPL claims to have a separate office having nothing to do with the alleged scam. It is stated that the payments for the motor tubes already supplied to Respondent No. 2 have not been received. A total of Rs. 7.31 lakhs approximately remains due and payable for the supplies already made. The Petitioner''s representations dated 8th June 2009 and 12th July 2009 have not met with any response. With its contracts being put on hold indefinitely the Petitioner has filed the present petition seeking similar reliefs.

13. The counter affidavit filed in this petition on 6th February 2010 by the MoD is identical to the reply filed by it in W.P.(C) No. 13457 of 2009.

14. In W.P.(C) No. 821 of 2010, the Petitioner is a Poland based company Bipromasz Bipron Trading ("BBT"). The order dated 4th June 2009 passed by the MoD has put on hold about 23 contracts of the Petitioner without any reasons being indicated. It is stated that BBT has made huge investments for manufacturing the goods to be supplied under the contracts. The said goods are ready for delivery/dispatch. Bank guarantees have been furnished to the MoD and the Petitioner is incurring a huge expenditure to keep the bank guarantees alive. The impugned orders have also prejudiced the company very severely inasmuch as other entities like Bharat Electronics Ltd. ("BEL") have refused to accept the goods in terms of the purchase orders placed with the Petitioner BBT. Also MoD has refused to permit the BBT to participate in fresh tenders.

Submission of Counsel

15. The submissions of Mr. V.N. Koura, learned Counsel for Petitioner RKMTPL, Mr. Siddhartha Dave, learned Counsel for Petitioner HYTIPPL and Mr. Darpan Wadhwa, learned Counsel for BBT have been heard. Ms. Rajdipa Behura, Mr. Jatan Singh and Mr. Atul Nanda learned Standing counsel for the Union of India have addressed arguments on behalf of the Respondents.

16. The common arguments on behalf of the Petitioners in all the three petitions is that the impugned orders putting on hold the contracts have been passed in violation of the principles of natural justice. None of the Petitioners has been issued as much as a show cause notice seeking an explanation in regard to any of the conclusion. Although HYTIPPL received a copy of the FIR but the other Petitioners do not even know what is contained in the FIR. Even the counter affidavit filed, which refers to the FIR, does not enclose a copy of the FIR. Unless the Petitioners know the reason why the impugned decision has been taken they would not be in a position to place their point of view before the Respondents. Relying on the decisions of this Court in Saraswati Dynamics (P) Ltd. v. Union of India 2003 IV AD (Delhi) 225 it is submitted that an indefinite suspension without observing the principles of natural justice was per se illegal. A reference

 

is also made to the decisions in Bharat Filling Station and Another Vs. Indian Oil Corporation Ltd., and Bretton Woods Finlease Ltd. and Another Vs. Mahanagar Telephone Nigam Ltd., .

17. On behalf of the Respondents it is contended that the Petitioners ought to have known by now that the decision to put on hold the contracts was on account of the FIR registered by the CBI in which at least two of these Petitioners are named. Since it was assumed that the Petitioners would have any way known why the contracts were put on hold, it was not felt necessary to issue any separate show cause notice to each of them. Learned Counsel for the Respondents handed over during the course of hearing copies of the FIR both to the Court and to the learned Counsel for the other parties. It was submitted that the FIR itself should be treated a show cause notice. Learned Counsel for the Respondents also tendered copy of a document purporting to indicate the stage of investigation of the CBI and urged that since this was an extremely grave and sensitive case for the MoD, the impugned order ought not to be interfered with at all. The objections regarding maintainability of the writ petitions as set out in the counter affidavit have been reiterated.

Maintainability of the Petitions

18. In the first place this Court would like to deal with the objections as to the maintainability of the petitions. It is now settled in several judgments of the Supreme Court that the existence of an alternative remedy is not a bar to the filing of a writ petition at least in three contingencies, one of which is where the writ petition is filed "for the enforcement of any fundamental right" or where there has been a violation of the principles of natural justice [see Whirlpool Corporation v. Registrar of Trade Marks, Mumbai 1998 (7) SC 243]. This position was reiterated in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, and Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another, . As far as the present writ petitions are concerned the common ground urged concerns violation of the principles of natural justice. In fact, this Court does not propose to examine the merits of the case since the admitted position in each of the cases is that no show cause notice is issued seeking any information from any of the Petitioners and informing them of the reasons why their contracts have been put on hold. For the same reason, this Court does not see the existence of an arbitration clause as precluding a challenge to the decision of the Respondents on the grounds of violation of natural justice. The objections as to maintainability are hereby rejected.

Violation of natural justice

19. Indefinite suspension of the contract without offering any reasons for such decisions will undoubtedly cause severe prejudice. The facts in Saraswati Dynamics is more or less similar to the facts of the present cases. There the impugned order of suspension of supplies was passed on the orders of the Defence Minister. The allegation there was of corrupt practices. After noticing the

 

judgments of the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, where a memorandum of the State Government concerning "suspension pending enquiry" was considered, this Court rejected the contention of the Respondents that the principles of natural justice have to be complied with only when suspension is resorted to as a punitive action and "not when it is as an interim order i.e. pending suspension enquiry." It was further noticed that any deficiency in a post-decisional hearing as mentioned in Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, this Court concluded that the suspension order in that case could not be continued indefinitely without affording the Petitioner an opportunity of being heard. The enquiry was entrusted to a very senior officer of the Government "who belongs to other Department."

20. Likewise in Bharat Filling Station the suspension order was sought to be justified on the ground that an FIR had been registered. While setting aside the suspension order, this Court in para 18 observed as under:

I may point out at this stage that I am not going into the issue as to whether allegations, contained in the inspection Report and First Information Report are correct inasmuch as learned Counsel for the Petitioner has also tried to argue that the allegations made against the Petitioner are not correct. It would be a matter for the Respondent No. 2 to decide after giving proper opportunity to the Petitioner. Any observation made by this Court at this stage may have an adverse effect on the Petitioner and/or the Respondent and that is why, I am refraining from making any such observations. I am only concerned with the manner in which action is taken by the Respondent No. 2. Once it is found that principles of natural justice were required to be complied with for taking such action and admittedly that is not done the impugned notice/decision dated 13th June, 2001 terminating the dealership of the Petitioner cannot be sustained and is hereby set aside.

21. The submissions that the FIR itself should be treated as a show cause notice requires to be mentioned only to be rejected. In the first place a plea is not taken in the counter affidavit. In response to a query, whether there is even a noting in the file to the effect that show cause notice was not being issued only on the ground that the Petitioner should be assumed to have a copy of the FIR which will itself be treated as a show cause notice, learned Counsel for the Respondents answered in the negative. In other words, the Respondents were not even aware whether any of the Petitioners have the copies of the FIR. In any event, the FIR only sets out certain allegations on the basis of which investigations have commenced. The precise materials which constitute the basis of the decision to place the contracts of the Petitioners on hold have to be communicated to each of them. Without the issuance of a show cause notice seeking their explanation and without affording each of them an opportunity of being heard, the Respondents cannot possibly indefinitely put on hold their contracts. They cannot proceed on assumptions. Obviously, even assuming that

the Petitioners had a copy of the FIR (at least two of the Petitioners i.e. BBT and RKMTPL appear not to have) an FIR can hardly constitute a show cause notice.

22. The more sensitive the case, the greater the requirement for complying with the principles of natural justice. After all, every person accused of an offence has to know what the basis of the allegation is. This Court is not called upon to decide at this stage the merits of the individual cases at all. It is only concerned that the principles of natural justice should be complied with by the Respondents before taking any decision adverse to any of the Petitioners. It is therefore made clear that the merits of the contentions of either party are not being depicted in this order. All contentions are left open to be agitated in appropriate proceedings.

Conclusion

23. For all the above reasons, the impugned orders passed by the Respondents putting on hold the contracts with each of the Petitioners is hereby set aside. It is made clear that it is open to the Respondents to hereafter proceed "in a time bound manner" and in accordance with law. The Respondents will not take any decision adverse to the Petitioners without complying with the principles of natural justice indicated in the manner hereinbefore. All other contentions on merits are left open to be urged in appropriate proceedings.

24. The writ petitions are allowed with the above directions with costs. The applications are disposed of.