

(2001) 07 JH CK 0057
In the Jharkhand High Court
Case No : LPA No. 400 of 2001

S.B. Engineers and Traders

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2001) 07 JH CK 0057

Hon'ble Judges : Vinod Kumar Gupta, C.J.;D.N. Prasad, J

Bench : Division Bench

Advocate : Mahesh Tiwary, Kalyan Banerjee, Rita Kumari, Ajay Kr. Tewary and Usha Singh, for the Appellant; A.K. Mehta, for the Respondent

Final Decision : Allowed

Judgement

1. It appears that the respondent-Bharat Coking Coal Limited authorities have been careless and negligent all through. As the facts would hereafter reveal even the impugned communication dated 2nd June, 2001, shows their utter lack of responsibility in the cryptic manner in which it is drafted. Although the impugned communication says that the supply order is cancelled without any financial repercussion on either side, it does not at all assign any reason for cancellation of the supply order. The respondent-BCCL being a public institution and an authority under Article 12 of the Constitution of India was under an obligation to assign cogent reasons for sending the impugned communication whereby it cancelled a subsisting contract. For ready reference, the impugned communication is re-produced hereunder. It reads thus :--

"To

M/s. SB Engineer & Traders. Amlapara, P.O. Jharua - 828111, Dhanbad.

Sub : Cancellation of Order No. 0062/56-2000/01 dt. 4.4.2000.

Ref: Your letter No. SBET/2001-02/15 dt 27.4.2001.

Dear Sirs, The subject order is hereby cancelled without any financial repercussion on either side:

This issues with the approval of competent authority.

Yours faithfully Sd. M. Chandra 2.6.01n Materials Manager (P)"

2. It shall, therefore, be clearly apparent from a bare reading of the aforesaid communication that it was totally non-speaking and did not assign any reason. Article 14 of the Constitution of India views unfavourably at any attempt of an arbitrary exercise of executive power. The respondent-company being an instrumentality of the State was under an obligation to inform the appellants the reasons for cancelling the supply order. The supply order became vitiated only on account of the aforesaid patent illegality writ large on its very face.

3. Be that as it may, the tender was invited for supply of D.G.M.S. approved U.G. Telephone Cable 0.5 dia copper conductor etc. etc. as per IT.D. specification No. S/WT/ 113C etc. The supply order was placed upon the appellant-writ petitioner for this item. The same has now been cancelled, vide impugned communication on the ground (even though not spelt out in the impugned communication but disclosed in the counter affidavit) that the cable required should have been conforming to ITD specification No. S/WS/113C. As far back as on 18th September, 2000 (Annexure 5 to the memo of appeal), the appellant had conveyed to the respondents in clear and categorical terms that there was no cable by the ITD. Specification No. S/WT/113C and that the specification was S/WS/113C and that what the appellant was supplying was conforming to this specification. Actually, it appears that even the test report of the manufacturers (copies filed by the respondents along with their counter-affidavit as Annexure "B" & "C") mistakenly mentioned this specification as S/WT/113C instead of S/WS/113C. It is the case of the appellant that the appellant supplied the cable as per the specification of S/WS/113C.

4. When we referred to the callousness, carelessness and negligence of the respondents, it now comes out and becomes apparent that despite the aforesaid facts, the respondents have not so far even cared to find out as to whether what they have received is in accordance and conformity with the required specifications or not. The entire saga of these events shows that the appellant cannot be faulted at all. The blame lies squarely upon the respondents. Despite all this, they did not bother to find out as to how could the public money be utilised for a proper purpose. After all, what they have received from the appellant was in accordance with the specifications given by them and therefore, they are supposed to pay for the same.

5. These-facts only lead to one conclusion and that is, that the respondents at least now should enquire into and find out as to whether what the appellant has supplied to them conforms to the specification No. S/WS/113C and if it does so conform to this specification, to decide whether to accept or reject the supplies. If the supply does conform to the specifications as have been prescribed and

required, there will be no reason to reject the same, if they do not conform to the specifications as are required, even then the question may arise as to who would be liable to bear the cost/price of such supply because surely the appellant cannot be held responsible for this lapse.

6. Based upon the aforesaid observations, this appeal is allowed. The order of the learned single Judge is set aside. The respondents are directed to reconsider the entire matter and pass a speaking order and communicate the same to the appellant. If despite aforesaid observations and directions, the respondents pass any order about which the appellant has any grievance, the appellant shall be at liberty to take such appropriate action as is available to it under law.

7. Appeal allowed.