
(2000) 01 PAT CK 0132
In the Patna High Court
Case No : C.W.J.C. No. 6044 of 1999

S.S.L. Steel Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 2 BLJR 1168 : (2000) 2 PLJR 164

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to issue a writ of mandamus, commanding the respondents to take supply of the total quantity of order placed with the petitioner vide letter dated 4.1.99 (Annexure 4), from the respondent-authorities to the petitioner. The respondent-authorities had placed orders for supply of 745 pieces of 15 metres of S.S. Mast which were to be supplied on the terms and conditions mentioned therein, and has been cut short by the impugned order.

2. The respondent-authorities had issued tender for supply of 2180 numbers of 15 metres of S.S. Mast, and orders were issued to different manufacturers and suppliers which is summarised hereinbelow:

(i) M/s Telemates India Ltd. for 955 Nos. of masts,

(ii) M/s Superbhat Steel Ltd. for 1225 Nos. of masts (the petitioner) Balance 2820 Nos. of masts was to be procured from the following suppliers during 1998-99 as per approval:

(i) M/s Superbhat Steels Ltd. 410 Nos.

(ii) M/s. Telemates India Ltd. 745 Nos.

(iii) M/s. Nirmal Overseas Ltd. 1665 Nos.

Some of these manufacturers/suppliers failed in their commitment, and the respondent-authorities discovered towards the end of 1998 or so that 745 pieces were still needed. Therefore, the respondent-authorities had issued the aforesaid letter dated 4.1.99 (Annexure 4), to the petitioner to supply 745 pieces of S.S. Masts of 15 metres at the rates mentioned therein, apart from various other conditions including the conditions that the supply had to be made by 31.3.1999. According to the writ petition, the products had to be supplied as per the exact specifications of the respondents, and are needed only by the Tele-Communication Department, Government of India. The petitioner had conveyed its unconditional acceptance along with the performance Bank Guarantee, vide its letter No. SSL/STRU/DOT. 2697, dated 26.3.99, which, inter alia, is manifest from the statements made in paragraph 5 of the counter-affidavit. In that view of the matter, the petitioner proceeded to manufacture 745 pieces of S.S. Mast to be in a position to supply the same within the dead-line given to them by the respondent-authorities. The petitioner could supply 400 pieces, and the impugned order dated 26.3.99 (Annexure 10) was abruptly issued which, in substance, conveys to the petitioner that in so far as the balance of the 345 pieces are concerned, tenders would be floated and the petitioner may apply against that. In other words, the effect" of the impugned order is that the respondents have resiled from the combined effect of the aforesaid letter dated 4.1.99 (Annexure 4), and the petitioner"s unconditional acceptance conveyed by letter dated 26.3.99, and the concluded contract has been truncated.

3. While assailing the validity of the impugned action of the respondent-authorities, learned Counsel for the petitioner has submitted that the product in question is as per the exact specifications of the respondent-authorities and, therefore, the same cannot be sold to anyone else. Therefore, in his submission, the respondents are bound to accept the balance 345 pieces of S.S. Mast. The Government and Governmental agencies are bound by their promises.

4. Mr. S.N. Pathak, learned Addl. SCSG, in his attempt to support the impugned action, has submitted that no prejudice is being done to the petitioner by the impugned order. It will be open to him. to submit tenders against the future advertisements, and the same does not amount to stigma.

5. Having considered the rival submissions, I am of the view that this writ petition has to be allowed. It is manifest from a plain reading of the aforesaid letter dated 4.1.99 (Annexure 4), read with the relevant pleadings, that the products in question have to be manufactured as per the exact specifications of the respondents, and that there is no other buyer in the market for the same. Therefore, the petitioner is right in his submission that the respondent-authorities could not have cancelled the order for such a Tailor-made product so light-heartedly. The counter-affidavit makes a poor reading and does not make the slightest attempt to justify the impugned action. There is not the slightest indication in the counter-affidavit that the respondent-authorities have faulted

the products of the petitioner, nor is there any indication that they had over-estimated their requirements, or the like, in which case the position would have been different.

6. There is another aspect of the matter. The Government or Governmental agencies are bound by their promises. I am in this connection reminded of the judgments reported in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , and (1948) 2 All ER 767, *Rebertson v. Minister of Pensions*. Speaking for the Court, Denning, J. held as follows:

...if a man gives a promise or assurance which he intends to be binding on him and to be acted on by the person to whom it was given, then, once it is acted on he is bound by it...the next question is whether the assurance is binding on the Crown. The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, i.e., the doctrine that the Crown cannot, bind itself so as to fetter its future executive action.... In my opinion, the defence of executive necessity is of limited scope.... I come, therefore, to the most difficult question in the case. Is the Minister of Pensions bound by the War Office Letter? I think he is.... He was entitled to assume that they had consulted any other departments that might be concerned, such as the Minister of Pensions, before they gave him the assurance.... He does not know, and cannot be expected to know the limits of its authority. The department itself is clearly bound, and as it but an agent for the Crown, it binds the Crown also, and as the Crown is bound, so are the other departments, for they are also but agents of the Crown. The function of the Minister of Pensions is to administer the Royal Warrant issued by the Crown and he must so administer it as to honour all assurances given by or on behalf of the Crown....

Learned Counsel for the petitioner has rightly relied on the judgment dated 13.1.2000, passed by me in C.W.J.C. No. 11952 of 1996 *M/s. Hindguts Impex Put. Ltd. v. The State of Bihar and Ors.* wherein I held that the State Government was bound by its promise to the petitioner with regard to industrial subsidy.

6.1. The counter-affidavit does not state, that the respondent-authorities found the products supplied by the petitioner to be qualitatively poor, or that the respondent-authorities had made wrong assessment of the products or overestimated their requirements, or that the petitioner had in any way violated the terms and conditions of the aforesaid letter dated 4.1.99 (Annexure 4). If that were so, perhaps the writ petition may not have been maintainable. In the absence of any such case set up in the counter-affidavit, it becomes a case of arbitrary action and thus violative of Article 14 of the Constitution of India. The combined effect of the impugned order and the statements made in the counter-affidavit is that the petitioner can try their luck against tender notice to be published in future. The reason is unconvincing, and follows as a matter of necessary implication that there is still the need for the product in question. Learned Counsel for the petitioner has rightly relied on the judgment dated

11.1.2000, passed by me, in CWJC No. 2598 of 1999 M/s. Elite Engg. Co, Ltd. v. BSEB Ors. wherein, though in a slightly different context, this Court had issued a writ of mandamus to Bihar State Electricity Board, to accept supply of the balance of the goods for which orders had been placed by the Board with the petitioner-company in that case.

7. In the result, this writ petition is allowed with costs, and the impugned order No. MR-20/Purchase/97, dated 26.3.99 (Annexure 10), is hereby quashed. The respondent-authorities are hereby directed to issue requisite orders to the petitioner for supply of the balance 345 pieces of S.S. Mast. The respondent-authorities shall pay to the petitioner costs of this writ petition quantified at Rs. 1,000/- which shall be paid along with the bills of the petitioner. The respondent-authorities shall also deposit a sum of Rs. 10,000/- with the Patna High Court Council of Legal Aid & Advice within a period of one month from today.