

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5089/2010 & CMs 10036 & 13017/2010

JUGGILAL KAMLAPAT JUTE MILLS
COMPANY LIMITED

..... Petitioner

Through: Mr. N.K. Kaul, Senior Advocate with
Mr. Suman Doval and
Mr. Sumit Babbar, Advocates.

versus

UNION OF INDIA & OTHERS

..... Respondents

Through: Ms. Rajdipa Behura with
Mr. C.S. Chauhan, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

10.01.2011

1. The Petitioner seeks a direction to the Director General, Directorate of Supplies & Disposal ('DGS&D') (Respondent No.2) and the Jute Commissioner, Ministry of Textiles, Government of India at Kolkata (Respondent No.4) to issue production control orders ('PCOs') to the Petitioner's jute mill for production and supply of B Twill Bags to various governmental agencies and departments. A further direction is sought to restrain the Respondents from initiating punitive action against the Petitioner for not complying with the earlier PCOs.

2. The Petitioner Juggilal Kamlapat Jute Mills Company Ltd., earlier promoted by the family members of J. K. Singhania Group, incurred heavy losses and on 24th October 1994 filed a reference with the Board for Industrial & Financial Reconstruction. Thereafter, steps were taken for revival of the company. On 22nd October 2008, agreements were entered into with nine workers' unions. A new management came into the picture

and production recommenced on 12th November 2008.

3. The Petitioner's mill at Kanpur was producing jute bags including B Twill Bags (gunny sacks) pursuant to the PCOs issued by the Jute Commissioner, Respondent No. 4 from time to time. The procedure followed was that the various State Governments and the foodgrains procuring agencies, including the Food Corporation of India, utilised the services of the DGS&D Kolkata for purchases of B Twill jute bags for packing foodgrains meant for the public distribution system. These agencies sent their requirement of jute bags along with the requisite funds and consignee-wise details to the DGS&D. On receipt of such information, the DGS&D communicated the required quantity of jute bags to the Office of the Jute Commissioner, which issued PCOs to various jute mills for manufacturing the requisite quantity. These orders were issued under Clause 4 of the Jute and Jute Textiles Control Order, 2000 ('Control Order, 2000'). A copy of such PCO was also sent to the Office of the DGS&D enabling it to issue the requisition/supply order to the concerned jute mills stipulating the destinations, the mode of transport and the price payable against the supply of such bags. The Quality Assurance Wing of DGS&D was nominated as the pre-despatch inspection agency. This agency carried out the inspection of the jute bags as per the standards fixed by the Bureau of Indian Standards. After presentation of proof of dispatch of inspected stores, inspection challans etc., payment would be released to the concerned jute mill by the Pay & Accounts Office of DGS&D.

4. It is stated by the Jute Commissioner in its counter affidavit dated 1st

October, 2010 that PCOs were issued to the Petitioner in the months of October, November and December 2009. However, after 23rd October 2009 the Petitioner did not offer a single bale of B.Twill bags for inspection. A letter dated 24th November 2009 was written by the Respondent No. 4 to the Petitioner stating that as of date the Petitioner was having a backlog of around 6,000 bales (3,010 meant for Uttar Pradesh and 2,990 for Punjab). After pointing out that the PCOs were of a statutory nature and that failure to honour a PCO would be an offence under Section 7 of the Essential Commodities Act, 1955 the Respondent No. 4 in the said letter dated 24th November 2009 informed the Petitioner as under:

“It is surprising that you have not bothered to intimate this office about your failure to manufacture and supply required quantity of bags. If any such information was sent to this office, alternative arrangement could have been made for ensuring supply. This is a serious lapse on your part and viewed seriously. You are aware that any shortfall in receipt of bags is bound to create problem to the indenting agencies.

You are, therefore, directed to explain why appropriate penal measures should not be initiated against your mill company for failure to intimate to this office your inability to honour the relevant PCOs and to offer for inspection of any bags after 23-10-2009. Your reply should reach to the undersigned within 27-11-2009.”

5. In reply to the above notice, the Petitioner, in its letter dated 18th December 2009, referred to certain complaints from its competitors about the goods having been sent to Punjab by lorry, which was not true since the goods were sent to Punjab only by railway wagons. It was then stated that since the last 1½ months, investigations were going on by different agencies.

As a result, the Quality Assurance Department was unable to inspect the goods. It was stated by the Petitioner that “in last few days we offered inspection twice but this way or that way they did not agree for inspection and we had to withdraw the same”. The Petitioner’s apprehension was that as long as the investigations were on, the Quality Assurance Department would not like to carry out any inspection. The Petitioner thereafter stated in the letter dated 18th December 2009 as under:

“Under the circumstances as mentioned herein above we are unable to continue our B. Twill production and have diverted it to other product mix. We have taken the tender of U.P. Sugar Federation & U. P. Sugar Corporation and Uttarakhand Sugar Mills for supply of sugar bags. These parties are also Govt. Body.

Sir, at this juncture, situation is totally uncertain about inspection of our goods and with no certainty of inspection we are returning back all the pending PCO for cancellation. However, we assure you Sir, as soon as the situation is over and we get a clean chit, which we are sure to get, we will request you for further orders.

We hope, you will appreciate our problem and bear with us till the clouds are clear.”

6. On 23rd December 2009, the Respondent No. 4 wrote to the Director of Quality Assurance at Kanpur asking if the contention of the Petitioner that no inspection was being carried out of the B.Twill bags was correct. The Director of Quality Assurance replied to the Respondent No.4 on 6th January 2010 stating as under:

“With reference to above cited subject, it is intimated that M/s. J.K. Jute Mills Co. Ltd., Kanpur had tendered the store for inspection to this office on 27/11/2009 & 09/12/2009 and subsequently withdrawn by the firm.

Further the firm have not tendered any store for inspection to this office till date as such question of non inspection by this Directorate does not arise.

This is for your information and necessary action please.”

7. It must be mentioned here that even according to the Petitioner, although it had offered the stocks for inspection on the aforementioned dates, it subsequently withdrew the same citing labour problems. On 28th November 2009, the Petitioner wrote to the Director, Quality Assurance Circle at Kanpur stating as under:

“Please refer to the inspection offered to you for 130 bales on 27.11.2009. We very much regret to inform you that due to sudden labour problem in our Finishing and Spinning Department, the bales could not be made ready for the inspection. As such, we would like to withdraw the said inspection. However, we will be offering you afresh after completing all the formalities in respect of readiness of the bales.

The inconvenience is very much regretted.”

8. It again wrote on 10th December 2009 as under:

“Please refer to the inspection offered to you for 260 bales on 09.12.2009. We very much regret to inform you that due to sudden labour problem in our Finishing and Shipping Department, the bales could not be made ready for the inspection. As such, we would like to withdraw the said inspection. However, we will be offering you afresh after completing all the formalities in respect of readiness of the bales.”

9. On 5th January 2010 a common show cause notice was issued to several jute mills, including the Petitioner, by the Respondent No. 4 drawing their

attention to the non-fulfillment of the PCOs issued to them. They were asked to show cause why appropriate action should not be taken under the Control Order, 2000. In response to the above notice, the Petitioner on 12th January 2010 wrote to the Respondent No. 4 claiming that in view of the investigations undertaken against the Petitioner, they had been verbally informed that there will be no inspection of the goods. Therefore, the movement of B-Twill bags was hampered and the finances of the Petitioner were badly affected. It was admitted that the Petitioner had thus stopped the manufacture of B-Twill bags and had taken up a production of “such qualities (sic) which could generate funds for smooth running of our Jute mill.” The same stand was reiterated by the letter dated 16th February 2010 from the Petitioner to Respondent No. 4.

10. On 26th February 2010, the DGS&D wrote to the Respondent No. 4 drawing its attention to the investigations undertaken by the vigilance team into the large number of complaints against the Petitioner “alleging large scale supply of sub-standard gunny bags to different procurement agencies and submission of bills worth lakhs of Rupees using false consignee receipt and inspection note in connivance with the officers of the Quality Assurance, Kanpur and the concerned State officials.” Accordingly, the Respondent No. 4 was requested to consider not placing any further orders on the Petitioner. The Petitioner has characterized the said letter dated 26th February 2010 as an implied blacklisting order. On 5th April 2010, the Petitioner again wrote to the Respondent No. 4 as under:

“We regret to inform you that due to continuous unauthorized, illegal strike by section of workers and all around indiscipline in production and productivity in the

mill, the management has declared suspension of work in the mill with effect from 6 A.M. of 05.04.2010 till further notice. A copy of the notice, which is self-explanatory, is enclosed herewith for your records and doing the needful.”

11. The immediate cause for the Petitioner to approach this Court was a communication dated 24th May 2010 issued by the DGS&D to the Respondent No. 4 stating that PCOs could be issued except to five jute mills, including the Petitioner.

12. On 4th October 2010, this Court passed the following order:

“1. Two sets of affidavits have been filed by the Respondents. One is a counter affidavit on behalf of the Jute Commissioner Respondent No. 4. The other is an affidavit on behalf of Respondent Nos. 1, 2 and 3.

2. The stand of the Jute Commissioner appears to be that on two occasions the Petitioner was unable to offer inspection of the mill for quality assurance on account of some labour problem. In the months of November and December 2009 the inspection could not therefore take place.

3. The case of the Petitioner, on the other hand, is that the DGS&D commenced an investigation against the Petitioner on 14th December 2009. This has carried on indefinitely. In view of the pending investigation the DGS&D is not entertaining any request of the Petitioner for inspecting its mill for the purpose of quality assurance. Resultantly, no production control order (‘PCO’) has been issued to the Petitioner. It is further pointed out that the Punjab office of the DGS&D has informed that there is no case for further investigation of

the Petitioner.

4. The case of the Respondent Nos. 1, 2 and 3 is that the earlier PCOs were not honoured by the Petitioner. Although the affidavit states that the investigations are in progress, it does not indicate the exact steps that were taken by the DGS&D consequent to the commencement of investigation by the letter dated 14th December 2009.

5. Learned counsel for the Respondent DGS&D states that within two weeks a detailed affidavit will be filed indicating the current stage of the investigation and what steps were taken since 14th December 2009 in progress of investigation.

6. As regards the other interim relief sought by Petitioner for a direction to the Respondents to release outstanding payments, the stand of the Respondents is that there is no payment outstanding. It is stated that all bills of the Petitioner up to September 2010 have been cleared by the Respondent for payment.

7. List on 2nd November 2010.”

13. Pursuant to the above order, an additional affidavit has been filed on 30th October 2010 on behalf of the Respondents Nos.1 to 3 in which it is stated that the Respondents had cleared all payments due to the Petitioner except in respect of Contract No. 669 dated 28th August 2009 in the sum of Rs. 10,25,944/-. It is stated that the said payment was not made as the Petitioner had supplied the consignment after the delivery date. Further, it was stated in the affidavit as under:

“That the respondents have received number of complaints, all alleging about the fraud and scam of Rs.50.00 crores by few jute mills including M/s J. K. Jute

Mills, Kanpur by obtaining false Consignee Receipt Certificate (CRC) addressed to Prime Minister, Home Minister, Minister of Commerce and DG (S & D), Director (CBI), Director (Vigilance) etc. On the basis of these complaints the investigations have been started. From the reply received from the Commissioner of Food and Civil Supplies it is very much clear that the truck nos. mentioned in the records of State Government and in the records of DCOA, Kolkata from where the petitioner firm has taken the payment do not match. Further the firm has supplied sub standard bags which has been verified and documented by the Consignee in presence the representative of the firm. It is also evident that the firm has claimed payment of invoice nos.1088 before the actual the delivery of stores from the DCOA, Kolkata. Commissioner Food and Civil Supplies Government of UP has recommended black listing of the firm by DG S&D and Jute Commissioner, Kolkata.”

14. Mr. N.K. Kaul, learned Senior counsel appearing for the Petitioner submits that the implied blacklisting order was issued against the Petitioner without any prior show cause notice. There could not be any indefinite suspension of issuance of PCOs to the Petitioner on the basis of the investigations as that would severely prejudice the Petitioner. He submitted that given the history of the Petitioner having been a sick undertaking, which has been revived through the efforts of the present management, the Petitioner would be again pushed into financial unviability if the Respondents continued the implied ban on issuance of the PCOs to the Petitioners.

15. Mr. Kaul submitted that it is only on account of the pending

investigations that the Petitioner's unit was not inspected and this, in turn, prevented the Petitioner from honouring the PCOs. He, accordingly, submitted that the Respondents should be directed to restore issuance of PCOs to the Petitioners and withdraw the instructions given to the contrary to the Respondent No. 4 by the DGS&D's letter dated 24th May 2010.

16. Appearing for the Respondents, Ms. Rajdipa Behura, learned Advocate points out that the Petitioner had, on its own, expressed its inability to either offer the stocks of B.Twill bags for inspection or to honour the PCOs. In fact, it returned the PCOs stating that it would inform the Respondents as and when it was in a position to restore production in its unit. Even as late as 5th April 2010, the Petitioner informed the Respondent No.4 that on account of an illegal strike by the workers, the work at the mill had been suspended. The investigation into the complaints revealed that there were problems in relation to the supplies of B. Twill bags in the State of UP. It is pointed out that in the above circumstances, the DGS&D was justified in directing the Respondent No. 4 not to issue any further PCOs to the Petitioner.

17. The above submissions have been considered.

18. The Petitioner's stand as regards its inability to honour the PCOs has been inconsistent. Going by the letters dated 28th November 2009 and 10th December 2009 from the Petitioner to the Director, Quality Assurance, Kanpur, copies of which have been extracted hereinbefore, it is plain that the Petitioner was unable to offer its stock for inspection due to labour problems. In neither of those letters did the Petitioner state that it was unable

to offer the stock for inspection on account of any investigation undertaken by the DGS&D. It appears that this explanation was offered only in its letter dated 18th December 2009 after the investigations commenced. Consequently, it appears that even prior to the investigations being taken up by the DGS&D on the complaints received against the Petitioner, production of B.Twill bags by the Petitioner was stopped and, in any event, the Petitioner was not in a position to offer its stocks for inspection. This had the inevitable result on the Petitioner not being able to meet its commitments under the PCO. By its letter dated 18th December 2009, the Petitioner in fact returned the PCOs stating that it was not in a position to honour the commitments thereunder.

19. The above events show that independent of the complaints against the Petitioner and the investigations into such complaints, the Petitioner was, in any event, unable to honour the PCOs. In the circumstances, this Court fails to appreciate how the Respondents could be said to have acted arbitrarily in deciding not to issue any further PCOs to the Petitioner.

20. As is evident from the additional affidavit of the Respondents Nos.1 to 3, the facts revealed in the course of investigations into the complaints against the Petitioner, as far as supplies in the State of UP are concerned, justify the decision of the Respondents not to place further orders on the Petitioner till such investigations are concluded. Given the scope of judicial review, this Court is satisfied that there was sufficient and relevant material on the basis of which the Respondents took the impugned decisions.

21. This Court is unable to accept the submission of the Petitioner that it was not given sufficient opportunity to explain its position. The Petitioner, in fact, appears to have been issued numerous notices apart from the show cause notice dated 5th January 2010 seeking its explanation. In the circumstances, this Court is unable to be persuaded to hold that there has been any violation of the principles of natural justice.

22. The Petitioner has been unable to make out grounds for grant of any of the reliefs sought in this petition. The petition is dismissed but, in the circumstances, with no order as to costs. The pending applications are disposed of.

S. MURALIDHAR, J.

JANUARY 10, 2011

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