

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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Writ Petition No.29245 of 2016

ORDER:

Vide present writ petition, the petitioner seeks writ of *Certiorari*, by declaring the action of the 4th respondent in issuing impugned notices /letters dated 26.07.2016 and 02.08.2016, as illegal.

2. In the writ affidavit, the petitioner has stated that the petitioner company is incorporated under the provisions of the Companies Act, 1956 on 12.11.1981 and is engaged, *inter-alia* in the business of manufacturing and supplying of forging components. The South Central Railways (SCR) from time to time issues tenders for purchasing of various forging components for railway coaches including 'bogie bolstart suspension hangers', hereinafter referred to as 'the said materials'. The petitioner company has been supplying the said materials since more than 25 years as also other components of railway coaches to SCR. The petitioner supplies various railway components to other railway zones, as an approved vendor.

3. The 4th respondent has issued letter dated 11.12.2015 allegedly towards warranty claim against some materials. From the said purported letter, it transpired that the railway authorities had purportedly raised warranty claim with respect to 2163 numbers of the said materials supplied during the period October to December, 2014 and July to September, 2015 aggregating a sum of Rs.17,26,074/-.

4) It is submitted by the learned counsel appearing for the petitioner that the petitioner was requested to settle the warranty claim and was further requested for a joint inspection to be held within 30 days, failing which, the railway authorities threatened to debit the amount of the warranty claim from the petitioner's pending bills. The

petitioner, by its letter dated 05.01.2016 informed the 3rd respondent – Chief Works Manager, that the authorised persons would be visiting the railway depot for joint inspection. Immediately, thereafter the petitioner received another letter dated 08.01.2016 from the 3rd respondent purportedly making a similar claim on account of warranty for another 1510 numbers of the said material supplied during the period October to December, 2015 aggregating a sum of Rs.12,04,980/-. On 09.01.2016, the petitioner received two purported communications from the 4th respondent, once again raising purported warranty claims in respect of the said materials. The petitioner received two letters dated 12.04.2016 from the 3rd respondent, allegedly raising warranty claim with respect to 1510 and 1512 numbers of the said materials, which were supplied during the period October to December 2015 and July to September, 2015, aggregating a sum of Rs.24,11,556/-.

5) Learned counsel appearing for the petitioner further submitted that a joint inspection was asked to be held on 04.05.2016 and 05.05.2016. A joint inspection was held at the Work Shop of SCR but remained inconclusive. The petitioner's utter shock and disbelief, received a letter from the 4th respondent-Production Engineer, dated 06.05.2016 alleging that the purported warranty claim was made on the basis of shop issue size of 37 mm and since the condemned size was 36.5 mm and the sizes for warranty claim, as alleged is not clear, the matter ought to be clarified from Research Design and Standard Organization-5th respondent (RDSO). The petitioner was further informed that he would be informed upon receipt of clarification from RDSO and the warranty claim issue was kept pending till clarification was received. On 12.06.2016, the petitioner received one mail from which it transpired that the purported joint inspection was fixed in terms of the letter allegedly dated 14.05.2016. The petitioner, not having received any letter dated 14.05.2016, by a letter dated 14.06.2016

brought the aforesaid fact to the notice of the Railway authorities. It was specifically clarified that in terms of the earlier notice of the 4th respondent dated 06.05.2016, the petitioner was specifically put on notice that the issue has been referred to RDSO for clarification and only upon receipt of clarification from RDSO, the petitioner was required to be informed and thereafter call for joint inspection. The authorities not having received any clarification from RDSO, holding joint inspection, could not and did not arise.

6) Learned counsel appearing for the petitioner further submits that surprisingly, the 4th respondent by a letter dated 20.06.2016 once again offered joint inspection on 25.07.2016, despite not having received any clarification from RDSO. The petitioner company by a letter dated 04.07.2016 once again, *inter-alia*, sought for clarification from RDSO. The petitioner, not having received any response, vide letter dated 21.07.2016 once again called upon the 3rd respondent to defer the joint inspection till a reply is received from RDSO, being the 5th respondent. Once again, the petitioner by a letter dated 26.07.2016 called upon the RDSO informing them of the events, purported warranty claim and the fact that no clarification has been received from RDSO. Vide letters dated 26.07.2016 and 02.08.2016, the 4th respondent called for joint inspection on 10.08.2016.

7. Learned counsel for the petitioner submits that the warranty claims can only be handled in the manner prescribed in the instructions issued by the Ministry of Railways, Railway Board, dated 07.08.2015, which is in supersession of all prior instructions issued with respect of handling of rejection of pre-inspected items and warranty claims.

8) After hearing the counsel appearing for the petitioner, the grievance of the petitioner is that the Railway Authorities were acting

arbitrary, become apparent upon receipt of a letter dated 04.08.2016 from RDSO, which is self-explanatory. The action of the Railway Authorities in repeatedly fixing the date for joint inspection is contrary to the procedure laid down by the Ministry of Railways under the instructions dated 07.08.2015 apropos to warranty rejection.

9) Learned counsel further submits that the action of the Railway Authorities in contrary to the specific instructions of the Ministry of Railways issued under the advice of the Central Vigilance Commission with respect to warranty claim. The respondents have failed to follow the procedure prescribed by the Ministry of Railways in raising warranty claim and in proceeding in a manner, which is arbitrary, capricious and whimsical, contrary to the rules and deserves to be set aside.

10) The Railway Authorities are the statutory authorities, within the meaning of Article 12 of the Constitution and are under bounden duty to discharge its statutory functions in accordance with the principles of fair play, equity and justice.

11) It is pertinent to mention that as per communication dated 02.08.2016, it reveals that in pursuance of the letter dated 08.06.2016 of the 4th respondent, the joint inspection was fixed on 30.05.2016 but no representative reported for joint inspection on behalf of the petitioner and thereafter, with reference to the letter dated 14.06.2016 of the petitioner, the joint inspection was fixed on 25.07.2016 and the same was communicated by the office of the 4th respondent to the petitioner's office vide letter dated 20.06.2016. Meanwhile, in pursuance of the request letter dated 21.07.2016 of the petitioner, the joint inspection date was re-fixed on 10.08.2016 and it is informed to the petitioner that under any circumstances, any request for postponement of the inspection will not be considered. Accordingly, advised the petitioner to depute its representation for the joint

inspection on 10.08.2016. Meanwhile, the 5th respondent, vide letter dated 04.08.2016 communicated to the Production Engineer, Carriage Workshop, SCR, Lalaguda, Secunderabad, that as per the Railway Board's guidelines for joint inspection reflected in the Railway Board's letter No.2000/RS(G)/ 379/2 dated 07.08.2015 for attending the joint inspection of BSS Hanger under warranty lying at Carriage Workshop/S.C.Railways/Lalaguda, scheduled to be held on 10.08.2016. However, the office of the RDSO-the 5th respondent communicated to the 4th respondent that their office would not be in a position to depute inspecting official to the said joint inspection on 10.08.2016 until all the required inspection procedure as para No.Cat.B.I(a) of Railway Board Guide lines dated 07.08.2015, is complied. More over, it is also directed to furnish complete information citing of rejection detail/quantity/ dimensional inaccuracy in detail.

12. The inspection has to be carried out by the respondents 3 and 4 in the presence of the 5th respondent. Due to the reasons stated above, the joint inspection could not be carried out. From the material available on record, it clearly establishes that whatever dispute is, it is between respondents 3 to 5 only and there is no fault on the part of the petitioner in conducting joint inspection. But the petitioner is aggrieved vide communications dated 09.01.2016 and 12.04.2016 of the respondents 3 and 4, whereby the petitioner is threatened that if the joint inspection is not carried out within 30 days from the date of issuing of letter, they will debit the cost of warranty claims from current pending bills of the petitioner. The inspection has to be carried out *inter-se* respondents 3 to 5 and there is no role of the petitioner.

13. In view of the facts recorded above, without issuing notice to the respondents, I hereby direct the respondents 3 to 5 to arrange for a joint inspection, till then, they are directed not to give effect to those impugned letters and no coercive steps shall be taken against the

petitioner.

14. With the above direction, the writ petition is disposed of. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition shall stand dismissed.

SURESH KUMAR KAIT, J

Date: 30.08.2016
BSS

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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Date: 30.08.2016

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