

July 4, 2024
Sl. No.14
Court No.9
s.biswas

WPA 15123 of 2024

M/s. NSS Stores Supply Agency Pvt. Ltd. and another
vs.
Union of India and others

Mr. Pingal Bhattacharyya
Mr. Avik Das
Mr. Rajdeep Singh

Mr. Brijendra Pratap Singh ... for the petitioners
... for the respondents

1. Affidavit of service is taken on record.
2. The petitioner no.1 company is a micro small and medium enterprise and the petitioner no.2 is one of its directors.
3. The petitioners allegedly supplied materials to the West Central Railway. The purchase order was placed by the West Central Railway sometime in November 2022. The purchase order was delivered to the petitioner no.1 at its registered office at Howrah. The petitioner's goods were inspected by Rites Limited, Eastern Region, Kolkata, at the petitioners' factory. Upon supply of goods, the petitioners received payments.
4. The railway authorities found the second consignment of brake blocks to be defective and contrary to the specifications mentioned in the contract. Accordingly, a joint inspection was directed to be held. Records reveal that the inspection was inconclusive and the matter is pending with the Research Designs & Standards

Organisation (hereinafter referred to as 'RDSO') for drawing and testing of samples from the brake blocks bearing rites holograms.

5. The petitioners offered to replace the samples in terms of the procedure prescribed in the specification being No.M&C/MTD/101/2007. Such prayer of the petitioner was rejected. The petitioners' prayer to put on hold the warranty rejection claim was also denied. This was communicated to the petitioners in their office at Howrah. The communication dated May 17, 2024 is quoted below:-

“Apropos of above, this office had submitted many test samples of worn out & fresh brake blocks of the same lot to RDSO. 1 out of each i.e. 1 worn out sample and 1 fresh sample bearing RITES hologram had both failed in testing by RDSO. Rest of brake blocks are laying at RDSO. Vide letter No.ref (3) this office had requested RDSO to arrange date of Joint Inspection at RDSO for drawing & testing samples from the brake blocks bearing RITES hologram. You are also advised to pursue their office for the Joint Inspection involving all concerned parties to resolve the matter.

Till further results of more samples are received our office will not be able to withdraw warranty for failed lot of brake blocks and there is no option on UDM to put hold on warranty rejection cases and withholding of rejection amount is automatic. This is your for your kind information please.”

6. The petitioner is aggrieved by the said communication and also by the deduction of an amount of Rs.31,52,701/- from the subsequent

bills raised by the petitioner for other materials supplied.

7. According to the petitioner, when the joint inspection at the RDSO was still pending, the authorities could not have deducted the amount. According to the petitioner, the earlier joint inspection by Rites Limited and other authorities, was inconclusive. Thus, the writ petition has been filed for refund of the amount deducted and for further directions.
8. It appears to this court that prayer of the petitioner to put on hold the warranty rejection case, was not accepted by the authorities till further results for more samples were received by the office. The communication dated May 17, 2024, reveals that the joint inspection at the RDSO is yet to be held. The authority is of the view that joint inspection would resolve the matter.
9. The two questions which have been raised before this court are whether the petitioner should have been given an opportunity to replace samples as per the warranty provision in accordance with MXC/MTD/101/2007 and whether the authorities could allegedly deduct the amount until the proposed joint inspection procedure at the RDSO was completed and the test results were available.

10. Mr. Singh, learned advocate for the West Central Railway, submits that the authorities have acted within the four corners of the procedure and they were within their right to take steps as the petitioner had supplied brake blocks which did not conform to the purchase order and the specifications made therein.
11. These are technical issues which the writ court cannot decide. Only experts can decide about the quality of materials supplied by the petitioner and whether the same conformed to the specifications as per the contract. The authority has already intimated that the RDSO, Ministry of Railways, Government of India would be the appropriate authority to cause a joint inspection and arrive at the final conclusion.
12. Under such circumstances, the writ petition is disposed of directing the General Manager, West Central Railway to treat the writ petition as a representation of the petitioner and address the grievances raised. The communication dated May 17, 2024 indicates that the joint inspection at the RDSO is pending. The authority shall ensure that such joint inspection is held immediately at RDSO as required as it is the specific contention of the petitioner that no such joint inspection has yet been held at the RDSO.

13. After the report of the joint inspection is received, the petitioner will be allowed to deal with the report and file a written version/explanation before the respondent no.2. Thereafter, the respondent no.2 will pass a reasoned order and indicate whether the West Central Railway authority had acted in accordance with the procedure prescribed. Necessary parties will be heard.
14. It is made clear that the entire exercise shall be completed within a period of four months and no further deduction shall be made from the other bills of the petitioner in respect of this consignment, till the issue is decided.
15. This order shall not restrict the authority from taking steps in respect of payment of the bills and assessment of such bills for supply of other materials/consignments, but further deduction on the ground that alleged consignment which is the subject matter of dispute is not permitted, until the issue is decided, as directed hereinabove.
16. The writ petition stands disposed of.
17. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)