

07.10.2024
Sl. No.27(DL)
srm

W.P.A. No. 25634 of 2024

Jekay International Track Private Limited & Anr.

Versus

Research Design & Standards Organization & Ors.

Mr. Suddwasatva Banerjee,
Mr. Vikas Baisya,
Mr. Sourajit Dasgupta,
Ms. R. Seal,
Mr. Aman Agarwal,
Mr. Amin Chakraborty

...for the Petitioners.

Mr. Asok Bhaumik,
Mr. Sourav Sengupta

...for the respondents.

The petitioners have challenged an order of delisting. The Director/Track/IX/RDSO passed the order. It appears that a joint inspection was carried out on June 4, 2024, in the presence of the firm's representative, by the RDSO and SECR officials. During the joint inspection, three sets of samples were drawn. The samples were tested in RDSO's laboratory. The firm's representative did not turn up to witness the testing, although written request was sent twice. The samples failed in the dimension test, Toe load deflection test, Hardness test and Chemical analysis.

The firm was issued a show cause notice, asking them to show-cause why action as per para 4.2 of ISO Document

No.QO-D-8.1-11, should not be taken against the firm. Copies of all the test reports were also supplied with the show cause notice, as annexures. The firm issued the letter on July 16, 2024, by replying to the show cause notice. The contents of the reply and the answer of the authority to each of the objections are quoted below:-

“A. The firm has stated that it is an established procedure that the samples for the testing purpose should not be taken from fitted sleepers lying at site. Samples are required to be taken from the lot of ERC lying at consignee's end. Therefore, the established principle has not been followed in the instant case for drawing the samples.

Para 5.0 of ISO Document No. QO-D-8.1-11 provides for picking up samples from the field. Moreover, the supplied ERCs were used in recently commissioned, newly constructed lines and subjected to negligible traffic compared to 400 GMT/8 Years service time expected or ERC thus, the contention of the firm is not acceptable.

B. The firm has stated that their representative did not sign the tee load measurements taken jointly by their representative, RDSO and SECR officials as the samples were taken from the fitted sleepers For the same reasons, they did not witness the testing in RDSO's lab.

Para 5.0 and 511 do not prescribe association of the supplier firm in sample collection and testing. The firm was given an opportunity to associate so that their view points are appropriately considered. Although, the firm associated at the stage of sample collection, they did not turn up for witnessing the testing despite written requests made twice. In view of the above, the firm's contention that samples were drawn and tested in violation of natural justice is not tenable.

C. The firm has further contended that since, the raw materials of ERC were procured from RDSO approved

sources and were again tested in their factory, the samples cannot fail in chemical & hardness tests.

The manufacturer of ERC cannot shirk his responsibility by merely stating that the raw material was procured from an approved source. It is the manufacturer's responsibility to ensure that raw material of proper chemical composition and hardness is used in the manufacturing of ERCs. The samples failed in Dimensional and Toe Load Tests also, which clearly establishes the substandard quality of the supplied ERCS.

D. The firm has further stated that samples should be sent to an independent lab for testing.

Para 5.1 of the ISO Document No. QO-D-8.1-11, which is as binding on the vendor as on the RDSO officials, authorises the RDSO to decide on the Lab for carrying out the tests. The RDSO's Labs are independent labs. The firm was requested twice to witness the tests but they decided not to do so. Therefore, the request for getting the samples tested elsewhere is not acceptable."

Under such circumstances, the factual aspects which have been decided, cannot be the subject matter of challenge in an application under Article 226 of the Constitution of India. The authority reserved the right to test the samples. The provisions of the ISO document which permitted the authority to take such decision, have been discussed in the order. A show cause notice was issued. The inspection was also held in the presence of the petitioners. The petitioners' answers to the show cause notice were considered, point-wise.

This is not a case which falls under any one of the exceptions which permit judicial review of a decision making

process. There is an alternative remedy by way of an appeal. The order does not proceed on the basis of extraneous materials. The order deals with each and every contention of the petitioners. The petitioners were heard. The petitioners have a right of appeal, as already mentioned in the order. The petitioners are at liberty to prefer the appeal.

The contention of the petitioners that the action was taken beyond the period of thirty months (guarantee period) will be an issue, to be decided by the appellate authority.

The writ petition is disposed of accordingly.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)