

Elite Engineering Company Vs. Bihar State Electricity Board and ors.

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Court : Patna

Decided On : Jan-11-2000

Judge : Sudhir Kumar Katriar, J.

Acts : [Constitution of India](#) - Articles 19, 147 and 226

Appeal No. : Civil Writ Jurn. Case No. 2598 of 1999

Appellant : Elite Engineering Company

Respondent : Bihar State Electricity Board and ors.

Advocate for Def. : Mihir Kumar Jha, Adv.

Advocate for Pet/Ap. : L.K. Bajla, Adv.

Disposition : Petition allowed

Judgement :

Sudhir Kumar Katrirar, J.

1. This writ petition has been preferred by the petitioner company with the prayer to quash office order No. 8 EB, dated 29-1-99 (Annexure 15), passed by the Bihar State Electricity Board (hereinafter referred to as 'the Board'), whereby the petitioner company has been ' . . . blacklisted and all business dealings of B.S.E. Board with the firm and its associates are debarred'. The petitioner company is a

manufacturer of electrical equipment and has been a supplier to the Board for a long time.

2. Shorn of the details, the petitioner company had received orders from the Board for supply of 45 sets of Isolators of 132 KV of different amperes as per the exact specifications of the Board, vide letter No. Trans. 1032/95-03-EB, dated 18-2-97 (Annexure 1). It is manifest from this letter that the Board had prescribed detailed specifications according to which the petitioner had to manufacture and supply 45 sets of 132 KV Isolators to the Board made to meet the specific needs of the Board. Paragraphs 14 and 15 of the letter deals with the supplier's guarantees, and are set out hereinbelow for the facility of quick reference :-

'14. GUARANTEE

All equipments/materials to be supplied against this order will be guaranteed against bad workmanship defective materials and unsatisfactory services for a period of one year from the date of commissioning or eighteen months from the date of receipt by the consignee and if the materials are found defective during this period the same shall be replaced or rectified by the suppliers free of any cost whatsoever.

'15. PERFORMANCE GUARANTEE

To ensure satisfactory performance of the equipments supplied against this order, you shall, after the supply is fully completed, furnish a bank guarantee of the amount of 5% (Five) percent of the value of the order. The guarantee shall be issued by a Nationalised Bank and made payment to the Dy. Director of Accounts (Hd.Qrs,) B.S.E. Board, Patna, and its terms and conditions shall be as provided in the Bank Guarantee form attached. The performance guarantee should be furnished in the form attached. The performance guarantee should be furnished immediately, after the supply is effected fully, on a non-Judicial stamp paper of Rs. 50,00 only. Delay in submission of performance guarantee will entail delay in release of your 5% Bank Guarantee submitted against terms of payment clause.

The performance guarantee shall cover the following to Bihar State Electricity Board.

You shall warrant the successful and satisfactory operation of the equipment furnished under the contract, under the conditions and for the services specified against any and all defects in design, materials and workmanship and shall upon written notice by the Bihar State Electricity Board. Patna, fully remedy free of expense to the Board such defects as developed under the normal use of the said equipment within the first year of service but not exceeding 18 months from the date of despatch of the said equipment by the supplier.

On the performance and execution of the order in all respects, the Bank Guarantee will be returned without any interest and on presentation of the 'No Demand Certificate'.

3. The petitioner company had informed the Board that 15 out of the 45 sets were ready for pre-despatch inspection, and had requested for inspection by the functionaries of the Board, vide letter dt. 3-7-97 (Annexure 3). The Board by its letter dt. 14-7-97 (Annexure 4), had informed the petitioner company about deputation of an Electrical Executive Engineer for inspection. Accordingly, the inspection took place from 6-8-97 to 19-8-97 and 17-9-97 to 18-9-97, the 15 sets

were qualitatively adjudged and approved by Ram Kripal Singh, Electrical Executive Engineer, vide his inspection report dt. 19-9-97 (Annexure 5). This test report will be of relevance when we discuss the issue relating to disciplinary proceedings by the Board against its officials. The Board had accordingly informed the petitioner company, vide letter No. 1477, dt. 25-9-97 (Annexure 6), that it had approved the aforesaid inspection report dt. 19-9-97 (Annexure 5), and had called upon the petitioner company to supply the 15 sets of Isolators of 132 KV. Paragraphs 1 and 2 of the said letter are relevant in the present context, and are set out hereinbelow for the facility of quick reference :-

'.....with reference to above, this is to inform you that test report submitted against the above order have been approved. A copy of the approved test report is enclosed with the letter.'

'2. Please note that approval of the test report does not absolve you from your contractual obligations towards the satisfactory performance of the materials being supplied by you.'

The petitioner company had supplied the aforesaid 15 sets of Isolators of 132 KV on 27-10-97, and had received full payment on 25-3-98. The petitioner company never received any complaint from the Board with respect to the first instalment of the 15 sets, and is not in issue in the present writ petition. This much by way of background.

4. The remaining 30 sets of Isolators of 152 KV were yet to be supplied and are in question in the present writ petition. The petitioner company manufactured the same, and informed the Board to arrange for pre-despatch inspection of the 30 sets in its factory premises. The Board had deputed Vivekanand, Electrical Executive Engineer, Transmission Zone III, Gaya, for inspection of the 30 sets which took place on 6-4-98, 9-4-98, 13-4-98, 21-4-98, 28-4-98, 4-5-98 and 8-5-98. The 30 sets were qualitatively adjudged to be in perfect order, as is manifest from the inspection report dt. 8-5-98 (Annexure 10). This test report will again be of relevance when we discuss the issue relating to departmental proceeding against the Board's officials. Consequently, the Board had issued its letter No. 776 EB-Patna, dt. 25-5-98 (Annexure 11), to the petitioner company that the 30 sets of

Isolators of 132 KV had been qualitatively approved by the Board, and had called upon to supply the 30 sets as per the detailed instructions therein. Paragraphs 1 and 2 of the same are set out hereinbelow for the facility of quick reference :-

'With reference to above, this is to inform you that test reports submitted against the above order for 30 sets of 132 KV Isolators have been approved and a copy of the approved test report is enclosed with this letter.

'2.00 Please note that the approval of the test report does not absolve you from your contractual obligations towards the satisfactory performance of the materials being supplied by you.'

5. The writ petition further asserts that out of the 30 sets, 15 had been supplied by the petitioner company to the Board sometime in July, 1998, and payment of which has been withheld by the Board. As to the remaining 15 sets, the same have, as stated above, been inspected and qualitatively adjudged and approved by the Board, are lying in the factory premises of the petitioner company, and have not been lifted by the Board in spite of its aforesaid inspection report dated 8-5-98 (Annexure 10), and the order dated 25-5-98 (Annexure 11).

6. It appears from the writ petition that after the supply of 15 sets were made, i.e. the second Instalment of 15 sets, trouble arose between the parties. The petitioner company had written its letter dt. 28-12-98 (Annexure 13), to the Board to the effect that the goods are covered by the warranty clause and the petitioner company is prepared to rectify the defects and replace the parts which may be pointed out by the Board. Paragraphs 3 and 4 of the said letter dated 28-12-98 (Annexure 13), are relevant in the present context and are set out hereinbelow for the facility of quick reference :-

'(3) While there is no provision for return of the supplies in the P.O., there certainly is the guarantee clause under which we are to rectify or replace defects which may be notified to us.

We have not been informed of any defect in our supplies and, therefore, the guarantee clause has not been activated and yet you are asking us to take away

supplies made specifically as per your order.

'(4) In case defects have actually been detected in our supplies, kindly consider informing us-

- at what stage of acceptance/use of the Isolators these defects were noticed.
- who was the authorised engineer to have noticed these defects.
- a detailed description of the defects.

Upon receiving these details, we shall not fail to fulfil our responsibility of rectifying the defects as enjoined in the P.O.'

The matter rested with this letter, the petitioner company did not receive any reply informing it of the defects and calling upon the petitioner company to rectify the defects or replace any parts in the equipments supplied to them. The warranty clause is accompanied with a period of limitation.

7. The writ petition further states that the petitioner had learnt that the Board was proceeding to blacklist the company and, therefore, submitted its letter dt. 9-12-98 (Annexure 14), to the Board. Paragraphs 4 and 7 of the said letter dealt with the warranty clause and the obligation of the petitioner company to rectify the defects or replace the defective parts in the equipments supplied to the Board, and that the same had not been invoked by the Board. The petitioner company assured the Board that they were prepared to rectify the defects, if any, as per the warranty clause. It stated that the Board had not informed the petitioner of the defects at all. Paragraphs 4 and 7 of the letter dt. 9-12-98 (Annexure 14). are set out hereinbelow for the facility of quick reference :-

'(4) Even should the charges be found to be substantiated, it will not indicate anything more sinister than genuine mistakes on our part. Recourse is clearly spelt out in the guarantee clause of the Purchase Order (P.O.). Kindly note that the clauses contained in the P.O. are contractually binding on us as well as on the Board.

'(7) It is reasonable that were we to fail to respond to a call under the Guarantee Clause. a penal action against us may be considered.

8. On the heels of the same came the office order No. 8, dated 29-1-99 (Annexure 15), and impugned herein, whereby the petitioner company has been 'blacklisted and the business dealings between the petitioner company and all business dealings of B.S.E. Board with the firm and its associates are debarred.' Hence the writ petition.

9. While assailing the validity of the Impugned order, learned counsel for the petitioner submitted that the impugned order is bad in law for violation of the principle of natural justice and fair-play. The petitioner was never noticed and was never afforded a reasonable opportunity to meet the charges. He relies on a Division Bench judgment of this Court, reported in AIR 1983 Pat 203 (M/s, Shriram Refrigeration Industries v. S.B.I.). He next submitted that some of the functionaries of the Board at the relevant point of time were interested in a particular manufacturer and had, therefore, set their faces against the petitioner. Hence the arbitrary impugned order. This position, in his submission, is manifest from various annexures adverted to hereinabove. He further submits that in view of the Warranty Clause, the petitioner should have been informed of the defects and called upon to rectify the defects and/or replace the defective parts which has not been invoked by the respondent authorities and had straightaway passed the impugned order. He further submitted that the Board may be directed to make full payment of the 15 sets supplied to the Board in July, 1998, and be further directed to accept the remaining 15 sets duly approved and orders placed for.

10. Learned counsel for the Board submitted that it is true that the Board had failed to issue a show cause notice to the petitioner company,' but having come to know of the proposed action, the petitioner company has sent its letter dated 9-12-98 (Annexure 14), to the Board which is tantamount to showing cause. He relies on an unreported judgment dt. 29-7-1985 of a Division Bench of this Court, passed in CWJC No. 2590 of 1985 (Dr. Ratneshwar Mishrav. Chancellor). He further submitted that in view of the limited prayer made in the writ petition seeking quashing of the impugned order above, the petitioner is not entitled to pray for the

direction for payment of the 15 sets already supplied by the petitioner, and the further direction to accept the remaining 15 sets lying with the petitioner. Relying on paragraph 6 of the counter-affidavit, he further submitted that the payment for all the 45 sets have already been made to the petitioner company and nothing is due.

10.1 Learned counsel for the Board further submitted that the inspection reports had been collusively obtained, and the petitioner company was in league with the officials of the Board. After the same was detected, the Board has taken action against all the erring officials who were responsible for such collusion with respect to the supplies made by the petitioner company as well as M/s. Hindustan Electrical and Switchgear Corporation (hereinafter referred to as 'the Corporation'), another firm dealing in similar products as the petitioner. He has placed on record a supplementary affidavit in an effort to explain the action taken by the Board against the eight officers. He further submits that the Board contemplates prosecution of all concerned. He has categorised them into three groups. First is the proceeding for major penalty against three of them, namely, Ram Kripal Singh, Electrical Executive Engineer, Mithilesh Prasad, Electrical Executive Engineer, and Bhim Prasad, Asstt. Electrical Engineer, who were responsible for producing collusive inspection reports. In the second category are four persons, namely, D. Pandit, Electrical Executive Engineer, N. Sinha, Electrical Executive Engineer, A. K. Jha, Asstt. Electrical Engineer, and Hare Ram Pandey, Asstt. Electrical Engineer, against whom proceeding for minor penalty were taken, and minor punishment has already been inflicted. They were guilty of receiving defective goods in their stores. Thirdly, the Board contemplates to start prosecution against all the erring persons. The Board has also produced before me a copy of the enquiry report dt. 6-6-98 (Annex-ure B), submitted by one S. P. Seth, Member (Fin. Acctt. and Revenue) and on the basis of which action was taken against the Corporation as well as the petitioner.

11. Learned counsel for the petitioner submitted in reply that the Board is trying to mix up the supply of 30 sets of Isolators of 33 KV in contradistinction to the 45 sets of Isolators of 132 KV. In so far as the 30 sets of Isolators of 33 KV are concerned, the petitioner company had received payment on 31-1-98 and is not at all in

dispute. In so far as the latter is concerned, i.e. order for supply of 45 sets of 132 KV Isolators are concerned, 15 sets had been, supplied on 27-10-97, and the full payment of which has already been made by the Board on 25-3-98, and is not at all in dispute. So far the next instalment, i.e. the second instalment of 15 sets of Isolators of 132 KV are concerned, the same have already been supplied to the Board in July, 1998, and the payment of which is still awaited. So far as the remaining 15 sets of Isolators of 132 KV are concerned, the same have been qualitatively adjudged to be in order vide Annexure 10, which was fully approved and the petitioner ordered to supply vide Annexure 11, but the Board has refused to receive the same, and are lying in the factory premises of the petitioner. It is the latter, i.e. 30 sets of Isolators of 132 KV, which are in question. In his submission, therefore, the counting of supply and payment of 45 sets of Isolators shown by the Board includes the 30 sets of Isolators of 33 KV and the fifteen sets of Isolators of 132 KV.

11.1 Learned counsel for the petitioner has further submitted in reply that the Board has made the overriding mistake of mixing up the case of the Corporation with that of the petitioner. In his submission, it is manifest from a plain reading of the aforesaid report, dt. 6-6-98 (Annexure B) of S. P. Seth that the same was entirely directed against the Corporation, who were duly noticed and heard. During the course of discussion in the report, the petitioner company incidentally figures, only because the Corporation made nebulous efforts to compare its products with those of the petitioner, and has been indicted on the basis of the submissions of Gauri Shankar Pathak, the Corporation's representative. He further submitted that the disciplinary proceedings were directed against the erring officials who were responsible with respect to the products of the Corporation. The Board has not taken action against Vivekanand, Electrical Executive Engineer, who had inspected the 30 sets of Isolators of 132 KV manufactured by the petitioner, had submitted the inspection report dt. 8-5-98 (Annexure 10), which was duly approved by the Board vide Annexure 11. He further submits that mala fides are writ large on the face of it, inasmuch as the petitioner has been indicted on the basis of a report against the Corporation, the impugned order is based on this report, and which was passed without giving him an opportunity to explain his position. Mala fides are further discernible on account of the refusal on the part of the Board to

invoke the Warranty Clause inspite of the persistent requests on behalf of the petitioner. In his submission, some forces were then working against the petitioner company.

12. Having considered the rival submissions, I am of the view that this writ petition has to be allowed. This Court is in no doubt that the impugned order is in utter violation of the principles of natural justice. The admitted position is that the Board had not issued any show cause notice to the petitioner company. It appears that having come to know of the impending action, the petitioner did write its letter dt. 9-12-98 (Annexure 14), to the Board seeking to present its case before the Board. I am unable to accept the contention of the learned counsel for the Board, relying on the aforesaid unreported judgment to the effect that if the petitioner had come to know of the charges and made a representation before the authority concerned, the impugned action shall not be treated to be in violation of the principles of natural justice, even though a show cause notice was not issued. This proposition does not apply to the facts and circumstances of the present case. It is manifest from a bare reading of the said letter dt. 9-12-98 (Annexure 14), that the same was written without being definite of the precise nature of the charges. Secondly, there is not the slightest indication in the impugned order that the Board had taken into account the contents of the said letter dt. 9-12-98. In such circumstances, the proposition laid down in the aforesaid unreported judgment does not at all apply to the facts and circumstances of the present case.

13. Learned counsel for the petitioner is right in his submission that some force was working in the Board against the petitioner company for undisclosed reasons. This is evident from a large number of facts on record. First of all, it is manifest from a plain reading of the enquiry report of S. P. Seth (Annexure B), that the enquiry was entirely and only directed against the products supplied by the Corporation who were duly noticed and were represented by one Gauri Shankar Pathak. The same was not at all directed against the products supplied by the petitioner company and, therefore, there was no occasion to issue show cause notice to the petitioner and has yet been indicted on the basis of the submission of Gauri Shankar Pathak, and the findings with respect to the products of the Corporation. The petitioner company incidentally figures in the report because of

the deposition of Gauri Shankar Pathak in comparing his products with those of the petitioner company in an effort to establish his defence. This Court is in no doubt that the same cannot be the basis to indict the petitioner in the report of S. P. Seth, nor can the same be the basis on which the impugned order can be passed. I feel tempted to note the following portion occurring in the report of S. P. Seth ' . . . towards the end of his deposition, Sri Palhak had claimed that . . . the custodian of B.S.E.B.'s store at Digha (namely, Sri Shrivastava, etc.), with a view to cause wrongful loss/damage to their manufacturing unit and with a view to cause illegal benefit to other parties, had changed some parts of Isolators, with inferior ones, in connivance with other parties (last para at 45/D). All this speaks volumes.

14. In so far as the action taken by the Board against its officials is concerned, the same does not inspire confidence for a number of reasons. The Board has not been able to connect the officials proceeded against with the products of the petitioner. The Board has again mixed up the Corporation's case with that of the petitioner. In the present case, the inspection report dt. 8-5-98 (Annexure 10), which had cleared the 30 sets of Isolators of 132 KV and are in question, were inspected and cleared by Vivekanand, Electrical Executive Engineer. There is not the slightest doubt that he was the main and perhaps the only person who conducted the quality inspection, and no action at all has been taken against him. The irresistible conclusion is that the Board never faulted the inspection report dt. 8-5-98 (Annexure 10). The same was duly approved by the Board vide Annexure 11, and the petitioner was directed to supply the 30 sets. There is not the slightest material on record except the impugned order, showing adverse reports about the performance of the 132 KV Isolators supplied by the petitioner. If there were such complaint, any prudent person would have first of all invoked the warranty clause, so fairly and fiercely pressed by the petitioner althrough. Where there is then the scope for action against the petitioner company? Secondly, it has not been explained to this Court as to in what manner Ram Kripal Singh, Mithilesh Prasad, and Bhim Prasad were connected with the inspection of the products supplied by the petitioner company. There is no knowing beyond issuance of the charge-sheets about the progress i'n the proceedings against them. Annexure 10 is the only inspection report regarding the products in question of the petitioner, and was

submitted by the said Vivekanand. As discussed in paragraph 3 hereinabove, E wish to advert at this stage to the relevance, or the complete irrelevance, of the inspection report dt. 19-9-97 (Annexure 5). This is the only report on record submitted by Ram Kripal Singh, Electrical Executive Engineer, with regard to the products of the petitioner. The same was with respect to the first instalment of 15 sets of Isolators of 132 KV which are not at all in question. Therefore, any action against Ram Kripal Singh surely could not have been in relation to the products in question of the petitioner. Nor the relevance with respect to the minor penalty inflicted on the four officials, namely, D. Pandit, N. Sinha, A. K. Jha and Hare Ram Pandey, has been established. Thirdly, the orders of suspension passed against Ram Kripal Singh, Mithilesh Prasad and Bhim Prasad were lifted with utmost alacrity. The action taken against D. Pandit, N. Sinha, A. K. Jha and Hare Ram Pandey are of very minor nature and, above all, it is not possible for this Court to distinguish the cases of the Corporation and the petitioner. Fourthly, insofar as the proposed prosecution is concerned, there is no material on record to indicate the same. Moreover, so much of time has lapsed and yet nothing tangible has taken place and, above all, the two suppliers have once again been mixed up.

15. Learned counsel for the Board had submitted in the alternative that it is true that the impugned order does not give any indication that the Board had considered the petitioner's letter dt. 9-12-98 (Annexure 14), while passing the impugned order. In such circumstances, following the aforesaid Division Bench Judgment, reported in AIR 1983 Pat 203, the Impugned order may be set aside and the matter may be remitted back to the Board for consideration after affording reasonable opportunity of hearing to the petitioner. The contention on the first flush appears to be acceptable, but I am unable to accept the same in the peculiar facts and circumstances of the case, and refuse to remit the matter back to the Board. It is manifest from the materials on record that, and as has been found hereinabove, that the impugned order is in utter violation of the principles of natural justice. The basic norms of fair play had not been observed in this case. Secondly, it is manifest from the materials on record, as has been summarised hereinabove, that 30 sets of Isolators of 132 KV were duly inspected by the functionaries of the Board, were qualitatively approved vide Annexure 10, and approved and orders were placed by the Board for supply of the 30 sets by Annexure 11. In spite of

repeated offers of the petitioner to rectify the defects and/or replace the defective parts, the Board has for undisclosed reasons refused to invoke the warranty clause. Therefore, this Court is of the view that the Board is bound to honour its commitment, make payment of the 15 sets already supplied to it in July, 1998, and accept the remaining 15 sets. The bona fides of the petitioner are writ large on the face of it, because they have been repeatedly emphasizing the warranty clause which, for reasons best known to the Board, has not been invoked. It is further manifest on the face of it that the Board never conveyed any complaint to the petitioner about the quality of the products till such time it came down heavily with the impugned order. This aspect of the matter, apart from various others indicated elsewhere in the judgment, indicates complete absence of bona fides on the part of the functionaries of the Board who were managing the affairs then. This Court is in no doubt that some forces were then relentlessly operating against the petitioner. In such circumstances, I find that it is not a fit case in which the matter may be remitted back to the Board. The Board's contention is, therefore, rejected.

16. Counsel for the Board has also contended that in view of the limited prayer made in the writ petition, seeking quashing of the impugned order alone, it is not open to the petitioner to seek direction to the Board to release payment of the 15 sets already received, and for the further direction commanding the Board to accept supply of the balance 15 sets. I am unable to accede to the contention for the reason that law is well settled that the language in which the formal portion of the prayer portion of the writ petition is couched does not determine the nature of reliefs to be granted by the Court. If the reliefs being sought emanate from the facts stated in the writ petition, nay the pleadings of the parties, then appropriate relief cannot be withheld on account of the failure on the part of the petitioner to make a formal prayer in that benefit. That would be piling unreason upon technicality. Reference may be made to the judgments, reported in AIR 1943 Pat 305 (*Babu Lal Ray v. Bindhyachal Ray*); AIR 1952 SC 47 (*Kedar Lal Seal v. Hari Lal Seal*) and AIR 1956 SC 593 (*Nagubhal Animal v. B. Shama Rao*). This Court is in doubt that the said reliefs sought for in the present case do emanate from the pleadings of the parties. The facts averred in the writ petition, the documents annexed thereto, the counter-affidavits, the rejoinder, and the further affidavits make it abundantly clear that the parties have been alive to these issues, and

have been effectively thrashed during the course of oral arguments. The Board's contention is, therefore, rejected.

17. This takes me on to the next contention advanced on behalf of the Board that it has made full payment of the 45 sets to the petitioner and, therefore, there is no question of any direction to the Board to make further payment. I am once again unable to accede to the contention for the reason that the contention mixes up the two different orders placed by the Board with the petitioner company. It is manifest from the pleadings that the Board had placed orders with the petitioner for supply of 30 sets of Isolators of 33 KV which were supplied to the Board on 31-1-98. and the entire payment had been received by the petitioner company. It is not in the least in dispute in the present writ petition and should be completely forgotten.

17.1 This writ petition really relates to the supply of 132 KV Isolators which are in three parts, and the orders for supply of 45 sets were placed vide Annexure 1. Insofar as the first consignment of 15 sets are concerned, (the first instalment), the same were supplied on 27-10-97, and the petitioner had received full payment on 25-3-98. This also is not in the least in dispute, and should be completely forgotten. Insofar as the remaining 30 sets are concerned, the functionaries of the Board had inspected the 30 sets on 6-4-98. 9-4-98, 13-4-98. 21-4-98, 28-4-98, 4-5-98 and 8-5-98, and were found to be qualitatively up to the mark, vide inspection report dt. 8-5-98 (Annexure 10). The same was fully approved by the Board and the decision was conveyed to the petitioner company vide aforesaid letter dt. 25-5-98 (Annexure 11), enclosing thereto a copy of the inspection report, and placing orders for supply of the 30 sets. In such circumstances. I have no hesitation in concluding that the Board had placed orders for 30 sets of 132 KV Isolators after full inspection, and being fully satisfied about its quality. Out of these 30 sets, 15 sets (the second instalment) were supplied by the petitioner company in July. 1998, which have been installed by the Board, and the petitioner company still awaits payment of the same. As found hereinabove, the Board has not been able to satisfy at all that any complaint had been received about its performance, and that the Board has for mala fide reasons failed to invoke the warranty clause. The Board is, therefore, bound to make payment of the second instalment of 15 sets. Insofar as the 3rd instalment of 15 sets are concerned, which are equally covered

by Annexures 10 and 11, and are lying in the factory premises of the petitioner company, have got to be accepted by the Board. The same are tailor-made to suit the requirements of the Board. It is made clear that all the 45 sets of Isolators of 132 KV are subject to the warranty clause. The petitioner company has wholeheartedly owned the same, and has most fairly been repeatedly pressing for the same to be invoked by the Board, as is manifest from Annexures 1, 6, 11 and 13. The Board for undisclosed reasons, and with inexorable tenacity, refused to invoke the warranty clause. There is not the slightest effort in the Board's counter-affidavit to explain the same. The warranty clause after all is meant to take care of such situations. The petitioner may have been blameworthy, had the Board invoked the warranty clause and the petitioner failed to respond. This Court is convinced about the bona fides of the petitioner, and is equally convinced that some force in the Board was working against it.

18. It is thus manifest that such a Draconian measure has been taken against the petitioner without verifying the facts and without giving any opportunity at all to the petitioner to present its case. On the contrary, as stated above, the petitioner has been indicted in an enquiry which was entirely directed against the Corporation, and the enquiry report was made the basis for the impugned action. The disciplinary proceeding taken against the eight officials of the Board, speaking euphemistically, do not inspire confidence. The Board has not been able to connect the eight officials of the Board proceeded against with the products of the petitioner. Vivekanand, the Electrical Executive Engineer, who inspected the 30 sets of Isolators of 132 KV (vide Annexure 10), the only functionary connected with the products of the petitioner, has not been proceeded against. Suspension orders against the three officials proceeded against for major penalty, and unconnected with the products of the petitioner, was lifted with utmost alacrity. By mixing up the supply of 30 sets of Isolators of 33 KV with that 45 sets of Isolators of 132 KV, the Board attempted to mislead this Court that the entire payment of the latter has been made, whereas the Court has hereinabove found that the Board has made payment of the said 30 sets of Isolators of 33 KV and 15 sets of Isolators of 132 KV. The Board thus juggled with the count of 45 sets of isolators of 132 KV in an attempt to take this Court down the garden path. The overriding factor which has governed it all like a Colossus is the Board's deliberate mishandling of the entire

situation by repeatedly, at every stage and in every aspect of the matter, in mixing up the case of the Corporation with that of the petitioner. The irresistible conclusion, therefore, is that the Board although acted with a sinister motive against the petitioner, this Court is in no doubt that some force was working against the petitioner, and misused the Corporation's case to the petitioner's destruction. The Board although purposely allowed itself to be misled with blinkers on its eyes, and made an equally brazen attempt to take this Court down the garden path. The Board should have treated the petitioner with consideration and fairness, find this Court with greater deference.

19. In the result, this writ petition is allowed with costs, and the impugned order dated 29-11-99 (Annexure 16), is hereby set aside. The Board is directed to make payment of the second instalment of 15 sets of Isolators of 132 KV to the petitioner company within a period of two months from today. Insofar as the third instalment of 15 sets of Isolators of 132 KV are concerned, the Board is bound to accept supply of the same for which requisite orders shall be issued within a period of one month from today, and the payment shall be made within two months from the date of supply, all subject to the warranty clause with its brooding omnipresence. Interest will be payable according to terms of the agreement inter parties. Costs assessed at Rs. 10,000/- to be paid along with the bills of the petitioner. The Board is further directed to deposit a sum of Rs. 10,000/- with the Patna High Court Council of Legal Aid and Advice, within a period of one month from today.

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