

GAHC010153592018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4723/2018

M/S. B.R.ENTERPRISE
REP. BY PROPRIETOR MRS. DIPIKA RABHA, AGED ABOUT 39 YRS, W/O-
MR. BIPUL RABHA, R/O- VILL- DIGHALI, PO AND PS DUDHNOI, DIST-
GOALPARA, ASSAM, PIN- 783124

VERSUS

LIFE INSURANCE CORPORATION OF INDIA AND 2 ORS.
REP. BY SENIOR DIVISIONAL MANAGER

2:THE MANAGER
OS/BOTH ARE LIC BONGAIGAON DIVISIONAL BRANCH
JEEVAN PRAKASH MAIN ROAD
BARPARA
PO BONGAIGAON
DIST- BONGAIGAON
ASSAM
PIN- 783380

3:SENIOR BRANCH MANAGER
LIC OF INDIA
DUDHNOI BO
PO AND VILL DUDHNOI
DIST- GOALPARA
ASSAM
PIN- 78312

For the Petitioner(s) : Mr. H. Das, Advocate

For the Respondent(s) : Mr. P. Mukherjee, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 03.01.2024

1. The instant writ petition has been filed by the Petitioner being aggrieved by the inaction on the part of the Respondent Authorities in not granting enhancement of the rent in respect to 25 KVA DG set which was supplied by the Petitioner.
2. It appears from the records that the Respondent Authorities had taken 25 KVA DG set on hire for a period of 5 years w.e.f. 16.06.2010 to 15.06.2015. It further appears that thereupon, the Respondent Authorities continued to use the services of the Petitioner in respect to the DG set even after the expiry of the said period and under such circumstances, on 18.06.2018, the Petitioner submitted a representation to the Respondent No.2 for enhancement of the hire charges by 40% above the rate which was fixed in terms with the agreement entered into on 15.06.2010. However, the Respondent Authorities did not grant the enhancement and on the other hand informed the Petitioner that the competent authority would consider the revision of rent w.e.f. 01.06.2018 and also informed the Petitioner that a tender would be issued for new DG set and the Petitioner was asked to participate in the said tender process. Being aggrieved, the Petitioner therefore has approached this Court seeking a direction upon the Respondent Authorities to pay the revise rent w.e.f. 16.06.2015 till May, 2018.
3. It appears that after filing of the instant writ petition on 18.07.2018, this Court had placed the matter before the Mediation Centre of the Gauhati High

Court. It is also apparent that on 01.11.2018, the mediator so appointed had submitted a report stating inter alia that that in spite of repeated endeavor, the matter could not be settled amongst the parties and hence the matter referred back to this Court.

4. The record further reveals that on 02.11.2018, this Court had issued notice however in spite of the passage of more than 5 years, the Respondents have not filed their affidavit.

5. During the course of the hearing, this Court had put a specific question upon Mr. H. Das, the learned counsel appearing on behalf of the Petitioner as to how this Court would be in a position to decide the extent of revision of the price as the same would entail adjudication of disputed questions of facts as regards the actual loss suffered by the Petitioner for not enhancing the rent that too when there is no indication in the earlier contract on the basis of revision of rent after the expiry of the period.

6. The learned counsel appearing on behalf of the Petitioner with all his fairness has submitted that these aspects of the matter cannot be decided in exercise of powers under Article 226 of the Constitution taking into account that there would require adjudication of various factual aspects as regards the hike in the diesel price as well as the other ancillary items.

7. Taking into account the above, this Court therefore is of the opinion that the instant writ petition would not be maintainable as the question which have been raised as regards the enhancement to the extent of 40% would require a decision on various factual aspects including going into the detail evidence as regards the loss suffered by the Petitioner on account of providing the services during the period from 16.07.2015 till the month of May, 2018. However, this

Court cannot also be unmindful of the fact that the Petitioner has been diligently and bonafidely pursuing the instant litigation.

8. In view of the above, the instant writ petition is not entertained on the ground of disputed questions of facts. However, the dismissal of the instant writ petition shall not prejudice the Petitioner in availing the remedies otherwise available under law.

9. This Court further taking into account that the Petitioner has been bonafidely and diligently pursuing the instant litigation and there being no affidavit filed by the Respondent Authorities which has led to the delay in the proceedings, is of the opinion that the Petitioner would be entitled to the benefit of Section 14 of the Limitation Act, 1943 during the period from the date of filing of the instant writ petition i.e. 18.07.2018 till today.

10. With above observations and directions, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant