

GAHC010158982021



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

Case No. : WP(C)/5302/2021

ADILUR RAHMAN
S/O- HAJI MAHAMMAD IBRAHIM, VILL AND P.O. HERAPATI, P.S. NAGAON
SADAR, DIST.- NAGAON, ASSAM, PIN- 782001

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, POWER
DEPTT., DISPUR, GHY-6

2:THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)
BIJULEE BHAWAN
GHY-01

3:THE CHIEF GENERAL MANAGER (COM AND EE)
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)
BIJULEE BHAWAN
GHY-01

4:THE CHIEF GENERAL MANAGER (D AND S)
ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL)
BIJULEE BHAWAN
GHY-01

5:THE GENERAL MANAGER
NEZ
APDCL
CAR
NAGAON
DIST.- NAGAON
PIN- 782001

6:THE CHIEF EXECUTIVE OFFICER
NEC
APDCL
CAR
NAGAON
DIST.- NAGAON
PIN- 782001

7:THE ASSTT. GENERAL MANAGER
NAGAON ELECTRICAL DIVISION-1
APDCL
CAR
NAGAON
DIST.- NAGAON
PIN- 782001

8:THE DY. MANAGER
NAGAON ELECTRICAL SUB-DIVISION-II
APDCL
CAR
NAGAON
DIST.- NAGAON
PIN- 78200

Advocate for the Petitioner : MR. J AHMED, MS A HUSSAIN,MR Z RAHMAN

Advocate for the Respondent : SC, APDCL, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

21.08.2024

1. Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. A. Kashyap, learned counsel appearing on behalf of Mr. S.P. Sarma, learned counsel for the APDCL and Mr. S.R. Baruah, learned counsel for the respondent No.1.
2. The petitioner's case is that he was engaged as an agent under the APDCL in it's Nagaon Electrical Sub-Division for Development of Collection Based

Distribution Franchisee (DTR). However, vide communication dated 07.08.2021, the respondent No.7 confirmed the termination of the contract agreement signed between the petitioner and the respondent APDCL. Being aggrieved with the termination of contract, the petitioner has preferred this writ petition, challenging the termination order as well as for a direction to be issued to the respondent authorities, to release the pending dues of the petitioner amounting to Rs.25 lakhs.

3. The affidavit of the respondent Nos. 2-9 in Para 8 have stated that the bills raised by the petitioner are not correct as the bills did not contain correct documents and information. However, the bills submitted by the petitioner contained lots of anomalies and as such, the bills submitted by the petitioner could not be accepted. Moreover, as per Clause 6 of the agreement dated 20.02.2017, the petitioner was supposed to deposit fresh load security as performance security within 7 days. However, the petitioner had not submitted the security deposit. Further, as per Clause 4(ii) of the agreement, the bills were to be prepared by the petitioner through official ID in the software provided by the APDCL and as such, the contention of the petitioner that the bills were prepared by the authority was vehemently denied. The respondent Nos. 2 to 9 also stated that as there was a dispute clause in the agreement, the petitioner should have availed the same.

4. Mr. J. Ahmed, learned counsel for the petitioner submits that though the petitioner had submitted an application to the appellate authority in terms of Clause 15 of the agreement, the application has not been decided by the concerned authority till date. He submits that the writ petition can be closed, if the petitioner is allowed to submit a fresh representation in terms of Clause 15

of the agreement, for settlement of the disputes between the parties.

5. Mr. A. Kashyap, learned counsel for the APDCL submits that he has got no objection to the submission made by the petitioner's counsel.

6. I have heard the learned counsels for the parties.

7. The claim of the petitioner with regard to his unpaid bills has been denied by the respondents. The above being said, there is an alternative remedy available by way of Clause 15 of the agreement executed by the parties, wherein the disputes or differences between the parties arising out of the agreement can be resolved through Clause 15. Accordingly, this Court is of the view that the petitioner should avail the alternative remedy available, for resolving the disputes between the parties, especially when there has been no admission of the dues payable to the petitioner by the respondents.

8. Clause 15 of the agreement states as follows:-

“15. Dispute

i) Any dispute or difference between the parties arising from the agreement shall be tried to be settled amicably through consultations and negotiations by the AGM of the franchised area,

ii) If remains unsettled it shall be first referred to the CEO of the franchised area for amicable settlement.

iii) If the dispute still remains unresolved after negotiation between the franchisee and CEO of the franchised area, it shall be referred to the General Manager (Com-Rev). APDCL for final settlement.”

9. In view of the submission made by the counsel for the petitioner, which is not objected to by the counsels for the respondents, the petitioner is given the

liberty to avail the alternative remedy available, by invoking the provisions of Clause 15 of the agreement for settlement of disputes, by filing a fresh representation within a period of 15 days. In the event the petitioner files a representation within 15 days, the concerned authority should decide the issue raised by the petitioner at the earliest and not later than 4 months from the date of receipt of a certified copy of this order along with the representation.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant