IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6849 of 2015

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1. Birendra Kumar Singh, son of Late Rajendra Prasad Singh, resident of Mohalla New Market, P.O. & P.S Katihar, District Katihar, the proprietor of M/s Jeevan Jyoti Seva Sansthan, New Market, Katihar

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Katihar
3. The Bihar State Power Holding Company Ltd., through its Chairman-cum-Managing Director, Vidyut Bhavan, Jawaharlal Nehru Marg, Patna-800021
4. The North Bihar Power Distribution Company Ltd., through its Managing Director, Vidyut Bhavan, Jawaharlal Nehru Marg, Patna-800021
5. Electrical Superintending Engineer, Electric Supply Circle, Purnea
6. Electrical Executive Engineer, Electric Supply Division, Katihar
7. Assistant Electrical Engineer, Electric Supply Sub- division, Katihar (Town)
8. Accounts Officer, Electric Supply Circle, Purnea

.... Respondents

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Appearance :

For the Petitioner : Mr. Hemendra Prasad Singh, Sr. Advocate.
For the BSPHCL : Mr. Anand Kumar Ojha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL ORDER

3 17-07-2015 Heard Mr. Hemendra Prasad Singh Senior Counsel for the petitioner and Mr. Anand Kumar Ojha for the respondent Bihar State Power Holding Company Limited (for short 'the Company').

The petitioner entered into an agreement with the respondent Company for discharge of certain jobs assigned to the petitioner (the franchisee). The job mainly related to meter reading, generation of bills, distribution of bills, collection of the revenue and deposit thereof. The respondent-Company found some serious dereliction of duty and infringement of the conditions by the franchisee, which pertains to withholding of the revenue collected by the petitioner. An FIR was lodged on 21.3.2015 against the petitioner under diverse penal provisions of the IPC. The petitioner was thereafter put on notice dated 15.4.2015 to submit his explanation against the termination/cancellation of the agreement. The petitioner replied thereto on 17.4.2015 (Annexure-6) The respondent Company thereafter passed the order dated 20.4.2015 (Annexure-1) cancelling/terminating the agreement. The said order is under challenge in the present writ petition.

Mr. Singh appearing for the petitioner while assailing the impugned order submits that under the terms of the agreement the petitioner was required to give a notice before such cancellation. In other words, adequate opportunity was required to be given to the petitioner to explain the circumstances under which the respondent –Company propose to terminate/cancel the agreement. In the case, at hand, the notice was given on 15.4.2015 giving only two days time to submit the reply which was also complied with and the reply was filed on 17.4.2015 (Annexure-6). The respondents without considering the explanations given in the show cause passed the impugned order. With regard to the withholding of the amount he referred to clause 6.1 of the agreement and submitted that the Company could have ordered an audit in the matter before taking action against the petitioner for cancellation/termination of the agreement. The same has not been done. In other words, the action of the respondent is arbitrary and requires interference.

Mr. Ojha, per contra, contends that from the pleadings it would appear that the petitioner franchisee collected the huge amount of revenue and retained the same with him for objectionable period of time. This fact is almost admitted. Such withholding of the huge amount constituted a gross misconduct in terms of the provisions of the agreement and caused material harm/prejudice to the respondent-Company. In such circumstance, the petitioner was put on notice vide Annexure-5 in due compliance of the terms of the agreement and after receiving the reply thereof and due consideration thereof the impugned action has been taken. If petitioner is aggrieved thereby he has remedy of invoking the Dispute Resolution clause contained in the agreement itself under clause 9.2 of the agreement.

I have heard the parties.

Clause 9.2 of the agreement reads as under:-

> "9.2. Dispute Resolution
> (A) Any dispute between the Franchisee and the BSPHCL arising out of /or in connection with this Agreement shall be first tried to be settled through mutual negotiation.
> (B)In the event of such differences or disputes between the Franchiseee and the Electrical Superintending Engineer not settled though mutual negotiations within thirty days of such dispute, the matter shall be referred individually (or jointly) to the G.M.-cum-C.E. for a decision.
> (C) The Franchisee and the BSPHCL shall undertake to carry out any decision relating to such dispute without delay."

The counsel for the petitioner has rightly not disputed the contention of the respondents that the agreement contemplates a mechanism for resolution of the dispute arising out of the conditions of contract some of which are considered as one causing material prejudice to the party to the contract. He has, however, tried to explain that the revenue collected when brought to the notice of the petitioner was immediately deposited which is also reflected from the First Information Report lodged against the petitioner. The contention is that the petitioner was not granted adequate opportunity before taking the impugned action.

In my view, it is not a ground available to the petitoner. Even if they are the same can effectively be raised before the arbitrator as provided in the contract. Moreover, the parties are bound by the terms of the agreement. The law in this regard is settled beyond cavil. This Court is , therefore, not burdening the order on this legal principle. Further the issue raised herein cannot be appreciated in writ jurisdiction of the Court. The relief as prayed for is therefore denied leaving the parties to avail the remedy as provided under the agreement. The writ application is disposed of.

When the order was passed Mr. Singh has pointed out that certain commission amounts payable to the petitioner has been arbitrarily retained by the respondent Company. In my view, the aforesaid grievance can be raised either before the authority/forum where the dispute shall now be raised or by filing appropriate representation before the appropriate authority of the Company for consideration and disposal by a reasoned order.

(Kishore Kumar Mandal, J)

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