

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9543 of 2015

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M/s Apeksha International Foundation through its Director Ashraf Khan S/o late Ramzan Khan R/o Chakbasu Lane, Kachhi Sarai, Ramna, P.S. Sadar, Dist - Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate cum Collector, Bettiah.
2. The District Magistrate cum District Registrar cum Chairman, SCORE, West Champaran at Bettiah.
3. The District Sub Registrar cum Secretary, SCORE, District Registry Office, West Champaran at Bettiah.

.... Respondents

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Appearance :

For the Petitioner : Mr. Shailesh Kumar, Advocate
Mr. Gautam Kumar Kejriwal, Advocate
Mr. Satish Kumar Sinha, Advocate
For the Respondent s : Mr. Manish Kumar- GP8
Mr. Prashant Kumar Choudhary, AC to GP 8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 11-09-2015

Heard Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner and Mr. Manish Kumar, learned Government Pleader 8 for the respondents.

2. The present writ petition has been filed for quashing the order dated 16.05.2015 passed by the District Magistrate, West Champaran at Bettiah, inter alia, directing that deduction of Rs. 500/- per hour be made from the amount payable to the petitioner in respect of the contract entered into with the petitioner for supply of electricity through Generator sets as also for quashing letter No. 412 dated 29.04.2015 by which the



terms of the agreement dated 09.01.2014 providing for payment to the petitioner on per day basis has been unilaterally changed to per hour basis for the said supply of electricity; as also for release of the payment of Rs. 5,77,077/- being the admissible amount in terms of the agreement dated 09.01.2014 against the bills submitted by the petitioner upto January, 2015.

3. It is submitted on behalf of the petitioner that the action of the District Sub Registrar-cum-Secretary (respondent no. 3) unilaterally revising the terms of contract between the parties is wholly unauthorized. Learned counsel for the petitioner invites attention to the advertisement dated 02.08.2013 as also the letter of intent dated 25.10.2013 which provided for payment of rental charges in respect of supply of electricity through Generator set on per working day basis. It is also not in dispute that the petitioner started the work from November, 2013 by providing silent Generator services at three places within the district of West Champaran against which payments have been received on per working day basis without any objection. All of a sudden and for reasons best known to the respondents, the terms of payment of rental charges has been changed with effect from 02.05.2014 to be calculated on per hour basis.

4. Learned counsel for the petitioner further submits that the impugned order dated 16.05.2015 is also wholly arbitrary



and illegal. It is submitted that the very terms of the contract required supply of electricity through Generator sets on alternative basis during working hours between 9.30 A.M. and 6.30 P.M. subject to further requirement beyond such hours and on holidays. It is therefore submitted that the petitioner was required to supply the electricity on standby basis as and when there was a power cut leading to interruption of normal power supply and it is not the case of the respondent no. 3 in the impugned order that the petitioner was found to have failed in making supply as an alternative measure at any time when normal electricity was not available.

5. Learned counsel for the respondents on the other hand submits that the claim of the petitioner at best arises from interpretation of the terms of contract for which the petitioner ought to be relegated to the alternative ordinary remedy available to him. It is submitted that the impugned order of respondent no. 3 dated 16.05.2015 has rightly observed that when the contract itself required the petitioner to supply power through Generator sets during the working hours from 9.30 A.M. to 6.30 P.M., any failure in that regard by the petitioner by not keeping the Generator sets working during such period amounted to default of the terms of the contract leading to action by way of deduction @ Rs. 500/- per hour for non-supply of electricity by the petitioner in terms of the contract itself. It is

submitted that any other view of the matter would render penal clause providing for such deduction otiose. Moreover, it is pointed out that the agreement dated 09.01.2014 had a validity period of only 11 months which has since elapsed.

6. Having heard the parties and on consideration of the materials on record, this Court is of the view that the writ petition is maintainable in the facts and circumstances of the case where the very jurisdiction of the District Magistrate-cum-District Registrar-cum-Chairman (respondent no. 2) to alter the terms of the contract unilaterally is in issue. As noticed above, the advertisement as well as the letter of intent provided for payment of rental charges on per day basis, but for no ostensible reason and without reference to the petitioner, the terms of the agreement have been unilaterally altered to per hour basis. Except a bald denial in the counter affidavit, the specific averments in this regard as contained in paragraphs 20 and 23 of the writ petition have not specifically been explained and the action has simply been sought to be justified on the basis of the impugned order of the District Magistrate-cum-District Registrar-cum-Chairman (respondent no. 2) which in turn is itself silent on the issue.

7. In these circumstances, this Court has no hesitation in holding that in absence of any provision in the agreement dated 09.01.2014 empowering the respondent authorities to alter the

terms thereof and that too unilaterally, the decision of the District Sub Registrar-cum-Secretary (respondent no. 3) as contained in letter No. 412 dated 29.04.2014 cannot be sustained and is hereby set aside.

8. This Court is also of the view that the reasoning of the District Magistrate-cum-District Registrar-cum-Chairman (respondent no. 2) in his impugned order dated 16.05.2015 cannot be approved. Apart from the fact that the petitioner was required to supply electricity through Generator sets as an alternative measure, it would be completely unreasonable to expect the petitioner to keep the Generator sets running even during the period when normal electricity was available. This is not only contrary to ordinary prudence, but also to the common understanding of the manner in which a Generator set is to be ordinarily used, namely, as a standby to be switched on for supply of electricity at times of power cut and when normal electricity supply is unavailable. It is also not the case of the respondents that the electricity supply from Generator sets was meant to be used for some dedicated purposes unconnected with normal electricity supply and in such circumstances, expecting the Generator sets to be kept running would merely entail wastage of national resources by way of fuel apart from adding to avoidable pollution. Such a view would manifestly be contrary to public interest and such interpretation can only risk being

termed irrational, perverse and improper.

9. In the above circumstances, the impugned order dated 16.05.2015 is also set aside with liberty to the petitioner to file a fresh representation with regard to his claim for rental charges and if such a representation is filed, the same shall be considered and disposed of by the District Magistrate-cum-District Registrar-cum-Chairman (respondent no. 2) within a period of eight weeks from the date of receipt/production of a copy of this order in the light of the observations contained herein.

10. The writ petition stands allowed.

(Vikash Jain, J)

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