

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.503 of 2015

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Dhirendra Kumar Dhiraj Son of Sashi Bhushan Singh Resident of Village-
Bajitpur Khurd, P.O.-Mukundpur Gorahi, P.S.-Jandaha, Dist.-Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. North Bihar Power Distribution Company Ltd. (Commercial Dept.)
though Chief Engineer (Commercial)
3. The Electrical Executive Engineer, Electric Supply Division, Hajipur,
Vaishali.
4. Accounts Officer, Electric Supply Division Hajipur, Vaishali.
5. Assistant Electrical Engineer, Electric Supply Sub-Division, Mahnar,
Vaishali.
6. Junior Electrical Engineer, Electric Supply Sub-Division, Mahnar,
Vaishali.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 20-01-2015 Heard learned counsel for the parties.

2. No one appears for respondent nos. 2 to 6.

3. The State of Bihar being a formal party is being
represented by its counsel.

4. The prayer of the petitioner in this writ
application reads as follows:-

*“Quashing/Setting aside the order issued through
letter no.280 dated 05.08.2013 issued by Asst. Electrical
Engineer (Respondent No. 4) by which agreement entered
between the petitioner and Respondents were terminated on
most fictitious, hypothetical and on imaginary ground,
arbitrarily, unfairly and that too without observing certain
aspects of rules of natural justice.*

*To direct the Respondents to pay the dues of the
Petitioner and further refund the Excess Paid amount of Rs.
21,49,978/- along with security deposit amount.”*



5. Learned counsel for the petitioner has explained that there was subsisting agreement between the petitioner and respondent no. 2, North Bihar Power Distribution Company Ltd. (N.B.P.D.C.L) for the period of one year commencing from 08.01.2014, but such agreement for franchise was terminated in the order dated 05.08.2014, on account of which the petitioner has been deprived from working for the rest of the period, i.e., 06.08.2014 to 07.01.2015. He has also submitted that such action was taken by the Assistant Electrical Engineer even without giving any show cause notice and/or affording opportunity of hearing.

6. In the considered opinion of this Court, there are two facets of this writ application. Firstly, premature termination of the agreement. For this purpose, if the petitioner had filed this writ application during the currency of the agreement, probably this Court could have gone into the aspect as with regard to justification of the impugned order dated 05.08.2014. Today when

this writ application has been filed on 09.01.2015, after expiry of the period of one year on 07.01.2015, no useful purpose would be served in at least testing the reasons given in the impugned order.

7. The second aspect will be as to whether the petitioner is entitled to any amount as being claimed after cancellation of contract or whether the company would be entitled to recover any amount as has been sought to be raised in the impugned order. For this purpose, since the franchise agreement of the petitioner itself contains a clause of resolution of the dispute, being clause no. 32, which reads as follows:-

“32.RESOLUTION OF DISPUTES:

i) *Electrical Executive Engineer, Electric Supply Division of the area shall be Despite Resolution Officer who will resolve the all the disputes of the Rural Revenue Franchisee, within thirty days after the receipt of the petition of the Rural Revenue Franchisee disputing any issue concerning his operation or service bills.*

ii) *Electrical Superintending Engineer, Electric Supply Circle will be the Appellate Authority who will settle the appeal against any decision delivered by the Electrical Ex. Engineer, Electric Supply Division of the area in the matter of such dispute.”*

8. As a matter of fact the presence of arbitration



clause will make the writ application not maintainable, as was held by the Division Bench of this Court in the case of the State of Bihar & ors. vs. M/s Ram Barai Singh and Company, L.P.A.No. 762 of 2009, disposed of on 12.1.2011, wherein it was held as follows:

“Having heard counsel for the parties and on a perusal of materials available on record, we are of the opinion that as in the agreement between the parties, an arbitration clause had been provided and the respondents writ petitioner had moved this Court without availing the remedy of arbitration clause, the writ petition itself was not maintainable. The refusal of the writ jurisdiction under Article 226 of the Constitution in a case where the parties are bound by an earlier agreement providing for arbitration by now is a well settled law. Reference in this connection may be made to the judgment of the Apex Court in the case of State of U.P. v. Bridge and Roof Co.(India) Ltd., reported in (1996)6 SCC 22, wherein the Apex Court had held as follows:-

“Further, the contract in question contains a clause providing inter alia for settlement of disputes by reference to



arbitration. The arbitrators can decide both question of fact as well as question of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 228. The existence of an effective alternative remedy- in this case, provided in the contract itself- is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226.”

The same view in fact has been reiterated by the Apex Court even in the case of ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and others, reported in (2004)3 SCC 553, where it had been held as follows:

“it is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration, unless of course both the parties to the

dispute agree on another mode of dispute resolution.”

9. Thus, the writ application both on account of delay as also on the ground of arbitration clause cannot be entertained.

10. At this stage learned counsel for the petitioner has submitted that the petitioner has already filed a representation for resolution of the dispute before the Electrical Executive Engineer.

11. If that be so, this Court expects that the resolution of the dispute sought by the petitioner through means of arbitration as per Clause 32 will be made under the order of the Electrical Executive Engineer. As a matter of fact when there is also an appeal provided against such decision of the Electrical Executive Engineer before the concerned Superintending Engineer, the petitioner has adequate remedy in the inter-party agreement which will come in the way of the petitioner in getting any relief from this Court in exercise of its power under Articles 226 of the Constitution of India.

12. That being so, this application is disposed of
that the petitioner may avail the remedy as provided in
Clause 32 of the Agreement.

(Mihir Kumar Jha, J)

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