

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8789 of 2015

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Md. Raja Hussain @ Raja Hussain, son of Iزار Hussain, resident of Kalibag, Ward No. 3, P.S. - Bettiah (Town), District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Urban Development, Govt. of Bihar, Patna.
2. The District Magistrate -cum- Collector, West Champaran at Bettiah.
3. The Sub-Divisional Officer, Bettiah, West Champaran.
4. The Chairman of Bettiah Municipal Council, Bettiah, West Champaran.
5. The Executive Officer of Bettiah Municipal Council, Bettiah, West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey
For the Respondent-State : Mr. Sanjeet Kr. Singh, AC to AAG-10
For the Municipal Council : Mr. Dhananjay Kumar No.2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-08-2015

Heard Mr. Bimlesh Kumar Pandey, learned counsel appearing on behalf of the petitioner, learned counsel for the State and Mr. Dhananjay Kumar No.2, learned counsel appearing for the Nagar Parishad, Bettiah.

The petitioner is aggrieved by the order dated 16.5.2015 of the Executive Officer, Nagar Parishad, Bettiah, District- West Champaran, whereby pursuant to a resolution passed by the Empowered Standing Committee of the Nagar Parishad that the terms of contract entered in between the petitioner and the Nagar Parishad as reflected from the office order bearing no.240 dated 31.3.2015 has been altered to the prejudice of the petitioner.

It is the grievance of the petitioner that the Bettiah Nagar Parishad entered into an agreement with the petitioner in respect of collection of parking fee from the vehicle owners from 1.4.2015 to 31.3.2016 at rates which is reflected in the office order granting the contract dated 31.3.2015 placed at Annexure-1:

निर्धारित दर

बड़े वाहनो (ट्रक) से पार्किंग शुल्क	- 80.00 (अस्सी) रु०
मिनी ट्रक 609, 407 DCM वाहन से पार्किंग शुल्क	- 60.00 (साठ) रु०
छोटे वाहनो से पार्किंग शुल्क (पिकअप भान, TATA A.C.E. मैजिक, मालवाहक ट्रैक्टर, झाझामेल, टैम्पू हाफ ढाला)	- 50.00 (पचास) रु०

The office order confirms that the terms and conditions of contract were final.

The petitioner following such agreement deposited the settlement amount as desired by the Nagar Parishad on 31.3.2015 itself to the tune of Rs.32,02,786/-, the receipt of which is placed at Annexure-2 series and Rs.96,084/- towards stamp fee. Nothing remained thereafter except execution of a formal agreement. It is two months thereafter that the Nagar Parishad got wiser and a decision was taken in the meeting of the Empowered Standing Committee to lower down the parking rates. It is following such



decision of the Empowered Standing Committee taken on 9.5.2015 that the petitioner was communicated by the Executive Officer vide letter no.369 dated 16.5.2015 that the earlier office order bearing no.240 dated 31.3.2015 whereunder the terms of contract had been finalized stands cancelled and that he would have to collect the parking charges on the basis of rates that was prevailing during the financial year 2014-15, a copy of which has been placed by the petitioner as a part of Annexure-3. The office order while exempting the heavy vehicles from any charges also fixed the charges for the light motor vehicles at a rate lower by Rs.10/-. The petitioner being aggrieved is before this Court.

A very short argument has been made by Mr. Pandey, learned counsel appearing for the petitioner to question the order which is taken in pursuance of the resolution of the Empowered Standing Committee of the Nagar Parishad and i.e. that once the terms and conditions of contract have been finalized in between the Nagar Parishad and the petitioner and have been acted upon whereunder not only the settlement amount but also the stamp duty for execution of the agreement has been deposited by the petitioner on 31.3.2015 any subsequent decision cannot be made retrospective. He submits that even if for future contracts the rates so fixed in the resolution of the Nagar Parishad may be a guiding factor but it

would not in any manner effect the contract already entered in between the Nagar Parishad and the petitioner.

Mr. Dhananjay Kumar No.2, learned counsel appearing for the Nagar Parishad, Bettiah strenuously tried to defend the order impugned by submitting that it is following the resolution of the Empowered Standing Committee, the Principal Governing Body that a decision to such effect was taken but in my opinion, law is well settled and any subsequent decision of the Committee cannot alter the terms of the contract which has already been entered in between the parties and has been acted upon and is operative from 1.4.2015 to 31.3.2016. The contract between the parties stands concluded and any alteration in the terms and conditions of such contract which has already taken its effect can only be with the consent of the parties and cannot be made unilaterally. Law is very well settled on the issue and reference is made to the judgment reported in **(2004) 1 SCC 12, paragraph 47 (CITI Bank vs. Standard Chartered Bank)**.

The other issue which Mr. Dhananjay Kumar No.2 seeks to raise is that whereas in the previous financial year the bid amount was over rupees fifty-four lacs, in the present financial year it has been lowered down and which has prompted the Empowered Standing Committee to take a resolution to such effect.

I am at loss to appreciate as to how the quantum of settlement amount would have nexus with alteration of terms of contract. In case the bid offered was not satisfactory it was open for the Executive Officer not to finalise the contract and the Nagar Parishad could have gone fresh bid but once having settled the contract they cannot retract their stand and force the petitioner to lower the collection charges in tune with the rates of the previous financial year which has no nexus in the present context.

For the reasons so discussed hereinabove, the order dated 16.5.2015 passed by the Executive Officer, Nagar Parishad, Bettiah bearing letter no.369 dated 16.5.2015 impugned at Annexure-3 to the writ petition cannot be upheld and is accordingly set aside. Since the petitioner has already completed his part of duty of depositing the settlement amount as well as the stamp duty the Nagar Parishad is directed to execute the contract.

The writ petition is allowed.

(Jyoti Saran, J)

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