

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13833 of 2016

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Balmukund Concast Private Limited having its Registered Office at 108, Kalyani Complex, Exhibition Road, Patna-800001 through its Managing Director Ajay Kumar Jhunjhunwala son of Late Lok Nath Jhunjhunwala.

.... Petitioner/s

Versus

1. South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Chairman cum Managing Director.
2. Chief Engineer (Commercial), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. Electrical Superintending Engineer, Electric Supply Circle, Patna, District- Patna (Bihar).
4. Electrical Executive Engineer, Electric Supply Division, Bihta, District- Patna.
5. Assistant Electrical Engineer, Electric Supply Sub Division, Bihta, District- Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Raju Giri, Adv.

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-12-2016

Heard Mr. Y.V. Giri, learned senior counsel for the petitioner who appears along with Mr. Raju Giri, Advocate on Record and Mr. Vinay Kirti Singh, learned senior counsel for the respondent Distribution Company who appears along with Mr. Akhileshwar Singh, Advocate .

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order bearing letter no. 2315 dated 13.7.2016 of the Electrical Superintending Engineer, Patna whereby the prayer for mutation of the name of the company M/s. Balmukund



Concast Private Limited in the official records has been rejected, vide order impugned at Annexure-15 to the writ petition. The petitioner has also questioned the order of the same authority bearing letter no. 2503 dated 29.7.2016 impugned at Annexure-16 whereby the prayer of the company for enhancement of the contract load from 8400 KV to 13400 KVA, has been rejected *inter alia* on grounds of arrears dues.

Two fold submissions has been made by Mr. Giri, senior counsel appearing on behalf of the petitioner to question the two orders rejecting the prayer of the petitioner.

Mr. Giri in support of the prayer of the petitioner for mutation of the name of the petitioner in the official records to read as M/s Balmukund Concast Private Limited, has referred to the Companies Act, 2013, the extract of which is placed at Annexure-10 and with reference to Section 18(3) thereof, it is submitted that the apprehensions of the respondent Distribution Company should be put to rest inasmuch as a mere conversion of a company would not wipe away its past liability. He submits that notwithstanding the change in the name of the company from M/s Balmukund Concast Limited to M/s Balmukund Concast Private Limited would not make any change insofar as the liability of the newly incorporated company is concerned, inasmuch as these liabilities of the predecessor company is automatically transferred to the successor company.



Mr. Giri in support of the second prayer regarding enhancement of load has referred to an amendment made to the Bihar Electricity Supply Code, 2007 vide Bihar Electricity Supply Code, 5th Amendment, 2016, a copy of which is placed at Annexure-17, submits that clause 7.11(3) of the amended provisions prohibits the respondents from refusing a prayer for enhancement of the contract load *inter alia* on grounds that the company was in electricity arrears.

Mr. Giri submits that in view of the positions reflecting, there should be no reason for the respondents to refuse the prayer of the petitioner and the orders impugned rejecting the same is unsustainable. It is the argument of Mr. Giri that even when the arrears against the predecessor company, is pending consideration before this Court in different writ petitions and the recovery has been stayed, yet the respondents are resorting to coercive measures, to deny the prayer made herein.

The argument of Mr. Giri is contested by Mr. Vinay Kirti Singh, learned senior counsel and the only reason advanced by Mr. Singh is the arrears pending against the predecessor company M/s Balmukund Concast Limited. He submits that since there are huge arrears against the company, who is the consumer with the respondents, the recovery would be a difficult proposition. He, however, admits that the dues whatsoever are pending consideration



before this Court. The arguments of Mr. Singh primarily revolve towards protection of the revenue of the respondent Company.

I have heard learned counsel and I have perused the records. Two fold prayer has been made by the petitioner herein, namely; (a) mutation of its name in the official records of the respondents; and (b) for load enhancement from 8400 KVA to 13400 KVA. In my opinion, both the prayers are fit to be allowed and the reasons are not too many. Annexure-15 and 16 impugned herein reflect that whereas the prayer for mutation is refused by the respondents on grounds of outstanding dues, insofar as the prayer for enhancement is concerned, while making reference to the legal opinion tendered, the prayer is rejected because the mutation has not taken place as well as arrears dues. Both the refusals are thus overlapping each other. Mr. Giri in the course of argument has referred to a recommendation made by the Executive Engineer, a copy of which is placed at Annexure-12 and who has recommended the relief prayed.

In my opinion, in view of amended clause 7.11(3), the prayer for enhancement of load cannot be refused.

So far as the mutation issue is concerned, in view of Section 18(3) of the Companies Act, 2013 as well as the operation of stay orders on the collection of dues, the refusal of the prayer of the petitioner by the respondents is not only contrary to the statutory



provisions but also an attempt to overreach the stay orders.

The interest of the respondents stands protected under Section 18(3) of the Companies Act, 2013 which carries forward the liability of the predecessor company to the successor Company. Thus, merely because the consumer before the respondents has by incorporation, converted into a private limited Company allowing the prayer for mutation in the official records, accordingly, would cause no prejudice to the respondents because as per Section 18(3) of the Companies Act, 2013, mere conversion in the identity of the Company would not wipe of its liability. Nonetheless, considering the apprehensions expressed by Mr. Singh, let the petitioner file an undertaking in form of an affidavit, that it shall clear the past liabilities of the predecessor Company subject to the outcome in the pending proceedings.

In view of the discussions hereinabove, the objection taken by the Electrical Superintending Engineer, Patna on the mutation and on enhancement of contract load, impugned at Annexure-15 and 16 respectively becomes unsustainable and is accordingly quashed and set aside. It goes without saying that no sooner the affidavit containing the undertaking is filed by the petitioner that the respondents would take expeditious steps for mutation of the name of the petitioner in the official records as well as for enhancement of load



as per the prayer made by the petitioner and which should preferably be completed within four weeks from the date of receipt / production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

AFR	
CAV DATE	NA
Uploading Date	
Transmission Date	NA

