IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16600 of 2016

M/s. Mehrotra Engineering Works Pvt. Ltd., a registered company having its registered office at Bela Industrial Estate, Muzaffarpur through its one of the Directors namely Sunil Mehrotra, S/o Dwarika Nath Mehrotra. Resident of Juran Chapra Road No. 1, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The North Bihar Power Distribution Co. Ltd. having its Office at 3rd floor, Vidyut Bhawan, Bailey Road, Patna through its Managing Director.
2. The Managing Director, North Bihar Power Distribution Co. Ltd having its Office at 3rd Floor, Vidyut Bhawan, Bailey Road, Patna.
3. The Essesl Vidyut Vitran (Muzaffarpur) Ltd, a distribution Franchisee of the North Bihar Power Distibution Co. Ltd., Power House Chowk, Opposite Govt. Circuit House, Gobarshahi Road, Maripur, Muzaffarpur through the Head Commercial.
4. The Chief Engineer (Commercial) North Bihar Power Distribution Company Ltd. Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Sanjay Kumar Giri, Advocate
For the Respondent No.-3: Ms. Vagisha Pragya Vacaknavi, Advocate

---

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 15-12-2016

Heard Mr. Gautam Kumar Kejriwal, learned counsel appearing for the petitioner and Mr. Sanjay Kumar Giri, learned counsel appearing for the respondents.

A three-fold prayer has been made in this writ petition, namely:

(a) Interest on security deposit of Rs.5,83,002/- deposited on 16.9.2009 vide Annexure-2 to the writ petition to which representation on being presented by the petitioner before the Franchisee, respondent no.3, has been transferred for disposal to the respondent no.1,

WEB COPY

the Managing Director, North Bihar Power Distribution Company Limited as per the own admission of Franchisee at paragraph 5 of the counter affidavit;

(b) Grant of exemption from payment of electricity duty under the Industrial Policy of 2006 and 2011 vide Annexure-3 to the writ petition which is the representation again filed before the Franchisee; and

(c) Restoration of electricity which stands disconnected since 16.1.2016 for non-payment of the energy charges to the tune of Rs.11,17,993/- as it stood on 10.9.2016 which is reflected from a legal notice served on the petitioner vide Annexure-8.

Although the matter could have been disposed of by mere direction to the authorities concerned to consider the grievances raised but since this Court notices a peculiar stand of the Distribution Licensee in shirking from its responsibility to shoulder of even the statutory obligation cast upon them under 'the Act' to its Franchisee, thus the discussion.

Mr. Sanjay Kumar Giri, learned counsel appearing on behalf of the respondent no.1 has in reference to the statements made in paragraphs 6 and 7 of the counter affidavit submitted that as per the agreement entered in between the respondent no.1 and

WEB COPY

the distribution Franchisee, the respondent no.3, the responsibility to grant any subsidy or exemption from payment of electricity duty under the Industrial Policy of the Government of Bihar, would now vest in the distribution Franchisee. In my opinion, there cannot be a more absurd stand taken by the Distribution Company than as mentioned in paragraphs 6 and 7 of the counter Affidavit.

Section 2(27) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') defines a 'Franchisee' and also explains the area within which a franchisee has to function. A Franchisee under section 2(27) of 'the Act' means a person authorised by a distribution licensee to distribute electricity on their behalf in a particular area within their area of supply. The definition of a 'Franchisee' by itself restricts his function and his area of operation, which is mere distribution of electricity.

The other provision which would be relevant for consideration is section 14 of 'the Act' which empowers the appropriate commission to grant licence to any person for transmission, distribution or trading in electricity. The 7th proviso to the statutory provisions even though enables the distribution licensee to get the work of distribution of electricity supply done through another person but the responsibility of distribution of electricity supply yet rests with the distribution licensee. Meaning thereby a Franchisee who has been authorised to effect distribution

WEB COPY

of electricity in specified area merely becomes an executor of the work of distribution of electricity on behalf of the distribution licensee but can, in no circumstance, assume statutory function and obligation cast on the distribution licensee under 'the Act', which continues to vest with the distribution licensee.

In view of the eloquent provisions of 'the Act', the agreement entered in between the respondent no.1 and the respondent no.3 present at Annexure-A to the counter affidavit of the Distribution Company, cannot be construed to delegate the statutory powers of a Licensee including powers to grant or refusal of benefits arising under the Industrial Policy.

The respondent no.3 being a stranger to the authorities recognised under the Industrial Policy, it cannot be vested with any jurisdiction exercisable under the policy, be it a case of grant or refusal of subsidy or a case of grant of exemption from payment of electricity duty. These are sovereign State function and cannot be delegated to a private franchisee. The agreement entered in between the respondent no.1 and the distribution Franchisee, the respondent no.3 to the extent it conceives of delegation of sovereign powers exercisable by the respondent no.1, is clearly illegal and would run counter not only to the Industrial Incentive Policy but also the statutory provisions underlying 'the Act'.

In the circumstances discussed and having heard

WEB COPY

learned counsel for the parties and considering that the relief prayed and noted at item no.(a) and (b) requires a disposal by the respondent no.1, this Court deems it proper to dispose of the prayer made by the petitioner in this writ petition by issuing the following directions:

(i) As per the own admission of the Distribution Franchisee, the respondent no.3, the claim of the petitioner for interest on security deposit has been forwarded to the respondent no.1, the Managing Director, North Bihar Power Distribution Company, he would be advised to dispose of the claim in accordance with law and by a speaking order within a period of six weeks from the date of receipt/production of a copy of this order.

(ii) Regarding the claim of the petitioner from exemption of electricity duty under the Industrial Policy of 2006 and 2011, this Court in consideration of the stipulations present in the Industrial Incentive Policy, a copy of which has been placed on record vide Annexure-10 to the rejoinder would grant liberty to the petitioner to raise his claim before the distribution licensee i.e. the respondent no.1 and which would be considered and disposed of by the respondent no.1, the

WEB COPY

Managing Director, North Bihar Power Distribution Company Limited either by himself or by assigning it to any other authority competent to do so but which disposal has to be after affording opportunity of hearing to the petitioner and should preferably be disposed of within a period of six weeks from the date of filing of the claim by the petitioner.

(iii) In so far as the prayer for restoration of electricity made at (c) is concerned, this Court disposes of the prayer by issuing the following directions: :

(a) The petitioner would make a deposit of Rs.4,00,000/- by 31st of December,2016 by account payee cheque/ bank transfer or RTGS or any other mode as deem fit and no sooner the amount is transferred with the respondent no.3, that the electricity connection of the petitioner shall be restored within 48 hours of the realisation of Rs.4,00,000/- which deposit should accompany an undertaking before the Franchisee of abiding by the schedule of payment fixed hereunder;

(b) The petitioner shall deposit Rs.3,00,000/- by 31st January, 2017 together with payment of current charges which should be deposited within the time stipulated in the bill; and

WEB COPY

(c) The balance arrear bills as it exists today should be paid in equal monthly instalment(s) of Rs.1,00,000/- payable by the 15th of each month with effect from February, 2017, until the clearance of the entire balance arrears.

It goes without saying that any default on the part of the petitioner in making payment of either the instalment(s) or the current bills, would grant liberty to the Franchisee to disconnect the electricity.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22-12-2016
Transmission Date	NA

WEB COPY