

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 418 of 2015**

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Sri Sunil Chandra Mishra S/o Late Sri Bir Chandra Mishra, R/o Village- Dhakraji,  
P.O. Dkakjaji, Via Benipatti, District- Madhubani.

.... .... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary (Dept. of Energy), Govt. of Bihar, Patna, Bihar.
2. The Managing Director, North Bihar Power Distribution Company Limited, Patna, Bihar.
3. The Chief Engineer, (Commerce), NBPDC, Patna, Bihar.
4. The Assistant Engineer (Electric Supply Sub-D), Benipatti, Madhubani.
5. The District Magistrate, Madhubani, Bihar.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Mrigank Mauli,<br>Mr. Prince Kumar Mishra,<br>Mr. Sanjay Kumar, Advocates. |
| For the Board        | : | Mr. Anand Kumar Ojha, A.S.C.                                                   |
| For the State        | : | Mr. Abinash Kumar Sinha, A.C. to G.P. 29.                                      |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date: 04-01-2016**

Heard learned counsel for the parties.

The challenge in the present writ application is to the amendment of Clause 7.5 of the terms and conditions of the Rural Revenue Franchisee Scheme, 2013 (hereinafter referred to as the 'Scheme') which has been brought about by Letter No. 109/2013-1844 dated 01.12.2014.

Learned counsel for the petitioner submits that there was a concluded agreement between the parties beginning from 03.08.2013 for 24 billing months with regard to meter reading, bill distribution and bill collection and the rates were as per Clause 7.5 of the Scheme which gave incentive on collected amount @ 6% of the relevant monthly assessment and which is

enhanced if the target exceeds 60%.

It is submitted that in the revision, said rate was sought to be modified by creating two fresh categories and reducing the percentage of incentive on the collected amount by introducing an incentive of Rs. 3.50 per meter reading and Re. 1 for the distribution of bill and reducing of incentive on collection from 6% to 3%. It is submitted that the said revision, as far as the petitioner is concerned, was not permissible in law as there was a concluded agreement and even if there was any change in the policy, the same could have operated only with prospective effect and could not have unilaterally modified any term of a valid concluded agreement especially as it was prejudicial to the interest of the franchisee, i.e. the petitioner.

Learned counsel for the respondent- North Bihar Power Distribution Company Limited, Patna, Bihar submits that the original policy was required to be modified in view of the experience of the Company relating to the work and efficiency of the franchisee concerned inasmuch as it was found that there was only interest in monthly collection of revenue rather than meter reading and bill distribution, which area was totally neglected and the reason was lack of incentive given to them on those two heads. It is thus submitted that the change in the Scheme is rather more equitable and in the interest of franchisee also that they are being paid incentive even on meter reading and bill distribution which initially was not available to them. Learned



counsel submits that as this is also in public interest, no notice or show cause is required to be given to the franchisee, i.e., the petitioner as it cannot be categorized under a situation where there was violation of the principles of natural justice. For such proposition, learned counsel has also relied upon a decision of the Hon'ble Supreme Court in the case of **S. L. Kapoor v. Jagmohan** reported in **A.I.R. 1981 S.C. 136**. Learned counsel has further submitted that if the power is vested in the authority to frame a policy or scheme, the power to modify or rescind is also inherent and also that there is no estoppel against the authority.

Having considered the rival contentions, this Court finds that once there is a concluded agreement between the parties and specific rates have been fixed with regard to incentive payable to the petitioner under the Scheme, the period not having elapsed, there cannot be any unilateral revision or modification in the said scheme. It is not the case where the authority did not have the power to enforce the fresh terms if it would find that the franchisee was neglecting the job of meter reading and bill distribution which clearly would amount to 'unsatisfactory performance' and thus the agreement itself could have been terminated under Clause 25 or even Clause 24 of the said Scheme. The respondents could also negotiate with the franchisee concerned with regard to the new changes in the policy and if he had agreed, the agreement could have continued till the remaining period or in the alternative if there was sufficient

material before the respondent Company, the agreement itself could have been terminated. However, in the considered opinion of the Court, revision of the rates could not have been enforced with regard to the present petitioner till the validity of the agreement i.e. 02.08.2015 or earlier but only after due termination in accordance with law.

The decision relied upon by learned counsel for the Company in the case of **S. L. Kapoor** (supra) is not apt in the present facts and circumstances of the case as there is no question of there having been any violation of the principles of natural justice and even that is not the case of the petitioner that there is any violation of natural justice by not asking for show cause and rather it is his simple case that a concluded agreement has been unilaterally modified which is not in accordance with law. With regard to the other contentions of learned counsel for the respondent-Company, the principles enunciated by him are *per se* not in dispute but the issues are neither relevant nor involved in the present case.

Accordingly, in view of the discussions made hereinabove, the Court holds that revised scheme/policy as contained in Letter No. 109/2013-1844 dated 01.12.2014 shall not be applicable with regard to the petitioner for the period during which he had an agreement with the respondent-Company relating to meter reading, bill distribution and collection of bills and the parties shall be bound by and adhere to the original

terms.

The writ application stands disposed off in the  
aforementioned terms.

**(Ahsanuddin Amanullah, J.)**

Anand Kr.

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