

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.36 of 2016

IN

Civil Writ Jurisdiction Case No. 9543 of 2015

- =====
1. The State of Bihar through the District Magistrate cum Collector, Bettiah.
 2. The District Magistrate cum District Registrar cum Chairman, SCORE, West Champaran at Bettiah.
 3. The District Sub Registrar cum Secretary, SCORE, District Registry Office, West Champaran at Bettiah.

.... Appellants

Versus

M/s Apeksha International Foundation through its Director Ashraf Khan, Son of Late Ramzan Khan, Resident of Chakbasu Lane, Kachhi Sarai, Ramna, P.S. Sadar, District Muzaffarpur.

.... Respondent

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Appearance :

For the Appellants : Mr. Ravi Verma, AC to GP4
For the Respondent : Mr. Gautam Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Rahul Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 13-02-2017

Delay in filing the appeal is of 28 days. The Court is satisfied that the reasons of delay are condonable. I.A. No.87 of 2016 is allowed. The appeal is thereafter taken up on merits.

2. By the judgment dated 11.09.2015, passed by a learned Single Judge in the writ, by virtue of which the order passed by the District Magistrate dated 16.05.2015 as well as order dated 29.04.2014, which had the effect of altering the terms and conditions of the agreement dated 09.01.2014 have been quashed on the ground of irrationality and arbitrariness.

3. The State authorities especially the District Magistrate



unilaterally changed the terms and conditions of the agreement dated 09.01.2014 for payment from per day basis to per hour basis.

4. Vide agreement dated 09.01.2014, the private respondent being the lowest bidder was awarded the contract for supply of electricity through silent generators. The contract was for a period of 11 months. Electricity was required to be supplied through the generators between 9.30 A.M. to 6.30 P.M. subject to further requirements. This supply of power was on a stand by basis, meaning thereby that whenever there was load shedding or power cut, supply was required to be made by the private respondent.

5. However, on the basis of the experience and what was perceived by the State authorities, a dispute started between the parties on the payments on the basis of actual supply or the need for such supply, which led to a previous litigation. Matter was referred to the District Magistrate for taking a decision and in the process of taking a fresh decision, he has altered the terms and conditions of the contract. Besides there is dispute with regard to payment. This led to second round of litigation, which is CWJC No.9543 of 2015.

6. If a contract was executed between parties and terms and conditions therein were arrived at then the terms and conditions cannot be altered by any of the parties unilaterally. If the contract was found to be unworkable, the contract could have been rescinded but to change the terms of the contract midway merely because one party happened to be the State and had an upper hand would be allowing illegality to be committed



because the very essence of the contract arising out of terms of offer and acceptance gets vitiated.

7. In these backgrounds, therefore, the learned Single Judge came to a considered opinion that the two impugned orders dated 16.05.2015 and 29.04.2014 require to be quashed and the writ application allowed.

8. The Court does not find any justification in the decision of the District Magistrate, Bettiah to alter the terms and conditions of the contract after the contract was already executed between the parties with clear terms and conditions laid down therein. Such unilateral changes, therefore, does fore foul of Article 14 and it is this element of arbitrariness that became the reason for the learned Single Judge to interfere with the impugned order in a writ jurisdiction.

9. The learned Single Judge has committed no error in law, which warrants interference in appeal. Appeal is dismissed being devoid of merit.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2017
Transmission Date	NA

