

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6494 of 2017

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1. M/s Raghubanshi Vishnu Mobile through The Proprietor Rajnish Kumar S/o late Kedarnath Sinha R/o Chand Chaura, Vishnu Medical Gaya, P.S.- Vishnu Pad, District- Gaya.

.... Petitioner/s

Versus

1. The Chief General Manager, Bihar B S N L (B T C), Patna.
2. The Chief Managing Director, B.S.N.L. Corporate Office, New Delhi.
3. General Manager, S & M Corporate Office, B.S.N.L. New Delhi.
4. Principal General Manager, B.S.N.L. Telcom District- Gaya.
5. M/s Raghubanshi Oil Distributer, Magadh Lok Complex, Nayee Godam, Maharani Road, Gaya, P.S.- Kotwali, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar Upadhyay
For the BSNL : Mr. Sachidanand Prasad Singh
For the respondent : Mr. Lakshmindra Kumar Yadav

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-07-2017

Heard the parties.

In the present writ petition, petitioner is challenging the order dated 1.4.2017 (Annexure-8) passed by the Principal General Manager, Telecom, Gaya by which he has illegally reversed the earlier order passed by the competent authority.

Petitioner and respondent no.5 are franchisee of Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL). As per claim of the petitioner, he was allotted Franchisee ship of Sherghati and Imamganj 7 BTS whereas respondent no.5 was allotted Franchisee of Gaya and Wazirganj territory 62 BTS. In



2009 a policy decision was taken by BSNL that each Franchisee should have equal territory in order to maintain equality. This policy was again reiterated in letter dated 3.10.2012 where it has been mentioned as follows: “It is also desired that the trend of revenue falling should be arrested immediately by creating equal opportunity and competitive environment for the franchisees. It was felt that a review of franchisees territories is needed to ensure that franchisees got balanced business opportunity to each, for motivating them to perform and keep their interest in business with B.S.N.L., same has already been in implemented in SSAs”

In pursuance of this policy decision as per the petitioner vide letter dated 7.7.2015 the area of both Franchisees were redefined as aforesaid letter reflects the same.

Learned counsel for the petitioner has submitted that comparative data of earning mentioned in Annexure 7 itself indicates that petitioner has earned money of Rs., 8 crores and odd whereas respondent no.5 has earned only Rs.3.67 crores, so petitioner has a better performance then respondent no.5. It has further been said that without giving notice the DGM, Gaya has issued an order dated 1.4.2017 whereby it has been recorded that after seeing significant improvement in the performance of M/s ROD after demarcation on 7.7.2015, hence the original territory



distribution among the two franchisee i.e. M/s ROD and M/s RVM as it was before 7.7.2015 as per para 4.2 (viii) of Section 4 of S & D police 2012 is restored with immediate effect. It has further been mentioned that we direct to close operations in Gaya town and shift the show-room in Sherghati immediately.

Learned counsel for the petitioner has further submitted that before passing the order dated 1.4.2017, the petitioner was not given any notice, when his performance is better than to respondent no.5 The order itself does not indicate that in what manner DGM (HQ) Gaya has recorded the statement of significant improvement of business of respondent no. 5 whereas record attached itself indicates that recovery of the petitioner is in higher side.

Learned counsel for the respondent and BSNL submits, by the order impugned, only earlier position has been restored on significant improvement in the performance but no where in the counter affidavit of BSNL it has been stated that before passing the order dated 1.4.2017 the petitioner was given any opportunity of hearing and show-cause as this order will certainly cause adverse effect on the business of the petitioner.

Certainly this Court should maintain self restrain in the contract matter but if adverse order has been passed without



giving any notice then in that circumstances the power of judicial review would require the court should interfere in the matter.

In such view of the matter, the order dated 1.4.2017 is set aside and matter is referred to Chief General Manager, Bihar BSNL (BTC), Patna who will examine the performance of both persons and after giving notice to them will pass the order in accordance with law.

With the aforesaid observation and direction this writ petition is disposed of. This Court is not giving any opinion on the merit of the case.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.7.2017
Transmission Date	NA

