

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21989 of 2011

=====

M/S Vikash Electric Works a proprietorship Firm having its office at Mohalla Sikandarpur Kunda, Town and District Muzaffarpur, Pin-842001 through its proprietor Sri Deepak Kumar, son of Late T.P. Verma, resident of Mohalla Sikandarpur Kundal, Town and District Muzaffarpur-842001.

.... Petitioner/s

Versus

1. Bharat Sanchar Nigam Limited through Executive Engineer (E), B.S.N.L. Electrical Division, GMTD Campus, Old Canteen Building, Ist Floor, Company Bagh, Muzaffarpur.
2. The Executive Engineer (E), B.S.N.L. Electrical Division, GMTD Campus, Old Canteen Building, Ist Floor, Company Bagh, Muzaffarpur.

.... Respondent/s

=====

with

Civil Writ Jurisdiction Case No.22075 of 2011

=====

M/S Vaishali Electrical Enterprises a proprietorship Firm having its office at Muhalla Daudpur Kothi, P.O.- M.I.T. , Town and District Muzaffarpur, Pin-842003, through its proprietor Sri Anjani Kumar Singh, S/O Sri K. K. Singh, Resident Of Mohalla Daudpur Kothi, P.O. M. I. T. , Town and District Muzaffarpur - 842003

.... Petitioner/s

Versus

1. Bharat Sanchar Nigam Limited through Executive Engineer (E), B. S. N. L. Electrical Division, GMTD Campus, Old Canteen Building, 1st Floor, Company Bagh, Muzaffarpur
2. The Executive (E) , B. S. N. L. Electrical Division , GMTD Campus, Old Canteen Building, Ist Floor, Comany Bagh, Muzaffarpur

.... Respondent/s

=====



Appearance :

For the Petitioner/s : Mr. Jashawir Singh Arora, Sr. Advocate
Mr. Manoj Kumar, Advocate
Mr. Gaurav Pratap, Advocate
For the Respondent/s : Mrs. Renuka Sharma, Advocate
Mrs. Sheweta Verma, Advocate
Mr. Nilanjan Chatterjee, Advocate

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

19 01-03-2017 In the present two writ applications the issue involved is virtually the same, therefore, with the consent of the parties both the applications are being disposed of in the following terms.

It appears that the two writ petitioners had entered into an agreement in pursuance to a notice inviting tender by the respondent-BSNL. In pursuance of the aforementioned agreement and on acceptance of the offer made by the respondents. A master agreement was signed between the parties and, thereafter, the contractors have performed their part of the agreement but they are now aggrieved only because the respondent-BSNL is seeking to alter the terms of the agreement and reduce payment to which they are legally entitled.

Mr. Jashawir Singh Arora, learned Senior Counsel appearing on behalf of the petitioners submits that the parties



were, as per terms of the agreement required to provide the backup through their diesel generator sets, for which the diesel was to be supplied by the BSNL through the contractor through respective petrol pumps and payments thereof would be made by the BSNL. It is further submitted that the aforesaid terms of the contract are not in dispute and, therefore, no deductions could have been made in their bills. However, the respondents, contrary to the terms of the agreement have arbitrarily reduced the quantity of diesel per hour to be supplied to the contractor which has resulted in substantial loss to the petitioners. The extra diesel which has been lifted by them from the respective petrol pumps are now sought to be recovered from their respective bills.

Learned Senior Counsel for the petitioner further submits that the BSNL cannot change the terms of the agreement and any action taken by them contrary to the terms of the agreement are perse illegal. They thus, seek relief under the extraordinary jurisdiction of this Court for appropriate direction to the respondents to redress their grievances.

Learned counsel appearing on behalf of the respondent-BSNL has filed a counter affidavit wherein they have categorically stated that the entire issue need not be gone into



under the extra ordinary jurisdiction of the Court as there are many disputed questions of fact which are involved and which can be resolved by means of arbitration for which a clause is available in the contract itself. Pointing to Clause -20 of the Contract, learned counsel for the respondent-BSNL submits that the matter which involves the disputed bills of the petitioners can well be resolved by means of amicable settlement as has been provided therein.

In response to submission made by the respondent learned counsel for the petitioners submits that they have met with no response despite repeated representations to the respondents. Further, since the petitioner's grievance was not redressed he was constrained to approach this Court under the extra ordinary remedy, seeking appropriate relief.

Be that as it may, the present situation is that there are several disputed issues to be involved in the present writ applications. The Clause- 20 also provides for a Third Arbitrator to be appointed so that the issue can be resolved, which is quoted hereunder :

"20. Dispute Resolution

a. In the event any disputes, differences or controversies should arise between the parties hereto, out of or in connection with the provisions of



this Agreement, or any action taken hereunder, the parties hereto shall thoroughly explore all possibilities for an amicable settlement. In case amicable settlement cannot be reached, such disputes, differences or controversies shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 including any amendment or re-enactment thereof. The number of Arbitrators shall be three with each party entitled to appoint one arbitrator. The two arbitrators so appointed shall appoint a third arbitrator who shall act as chairman of the arbitration proceedings.”

Accordingly these two cases are remitted back to the respondent-BSNL for further action in the matter and resolution of the dispute in terms of the contract between the parties.

It is made clear that if the said dispute and the representation made by the petitioners are not redressed or resolved within a period of three months positively, it shall be open to either of the parties to move for appointing third arbitrator in accordance with the terms of the contract. It is also made clear that the present order is being passed in presence of both the parties.

With the aforementioned directions, the present



applications stand disposed off.

(Anjana Mishra, J)

Jagdish/-

U			
---	--	--	--

