

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.536 of 2018

IN

Civil Writ Jurisdiction Case No. 18406 of 2017

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Jai Matadi Investment Company Private Limited, a registered company under the companies Act 1956 having its registered office at/ Mohallah-Jai Maa Durga Hotel, Vijay Nagar, P.O-Bahadurpur Housing Colony, P.S-Patrakar Nagar, Kankarbagh, Town and District-Patna, Pin Code-800026 (Bihar), Through its Director, Mahesh Prasad Singh son of Late. Ramautar Singh, R/O Village/Mohallah- Jai Maa Durga Hotel, Vijay Nagar, P.O-Bahadurpur Housing Colony, P.S-Patrakar Nagar, Kankarbagh, Town and District- Patna, Pin Code-800026 (Bihar).

.... Appellant/s

Versus

- 1.The State of Bihar through the Principal Secretary, Forest Department, Government of Bihar, Patna.
2. Sanjay Gandhi Biological Park, Bailey Raod, P.S-Shastri Nagar, Town and District-Patna, Pin Code-800023 (Bihar).
- 3.The Director, Sanjay Gandhi Biological Park, Bailey Road, P.S, Bihar
- 4.The Director, Ecology and Environment Department of Forest, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akash Chaturvedi, Advocate

For the Respondent/s : Mr. Servesch Kr.Singh -AAG13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 01-05-2018

Challenge in this present Letters Patent Appeal is to the judgment dated 16.03.2018 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.18406 of 2017 by which the learned Writ Court has refused to interfere with the order dated 06.09.2017 as contained in Memo No.1254 issued by the Director of Sanjay Gandhi Biological Park, Patna, (hereinafter referred to as “the Park”).

The writ-petitioner had earlier approached the learned Writ



Court for the following reliefs:-

“ (i)The order dated 06.09.2017 contained in Memo No.1254 passed by the Director, Sanjay Gandhi Biological Park be quashed.

(ii) The petitioner further be allowed to operate 9 Battery operated vehicles in the park during pendency of this writ application.

(iii) That respondent authorities be restrained from interfering in operating the Battery operated vehicles in the park in question.

(iv) The petitioner be paid the cost of legal proceeding throughout.

(v) The petitioner be also granted any other relief/s permissible under the facts and circumstances of the case.”

It appears that the basic contention of the writ-petitioner before the learned Writ Court was that he had started operation of 12-seater, three battery operated vehicles only after permission from the competent authority vide Letter No.768 dated 19.07.2011 and for that he was made to pay Rs.1,500/- per month instead of Rs.1,000/- as per the contract. Further the petitioner claimed that he added three more vehicles of 12-seater and further three vehicles for which he was paying enhanced amount of fee per month. It is the case of the petitioner that he was allowed to add vehicles and to operate two new added 15-seater battery operated vehicles on the prescribed rate fixed by the committee headed by the Principal Chief Conservator of Forest and, therefore, according to the petitioner the show cause Letter No.801 dated 06.06.2017 as contained in Annexure-3 to the writ application was wrongly issued without appreciating that the



petitioner was operating the vehicles in question with the knowledge of the respondents and upon paying the requisite fee. The petitioner was informed vide MemoNo.1254 dated 06.09.2017 as contained in Annexure-6 to the writ application that he should keep only 12-seater four vehicles and should remove other vehicles from the premises of the park forthwith.

On the other hand, in the counter affidavit filed on behalf of respondent no.3 a stand has been taken that in terms of the agreement entered into between the authority and the petitioner vide Annexure-2 to the writ application, the petitioner was allowed to operate only four eight battery operated new vehicles with condition that additional of vehicles may be done with the prior permission of the Director of the Park. It is stated that as per tender and agreement the petitioner deposited security amount of Rs.9,000/- only for operating three vehicles. As per agreement the petitioner was required to operate only 8-seater vehicle but on his own, without obtaining any permission from the Director of the Park, he was found operating 12-seater vehicle. It is only, thereafter, the Director of the Park vide his Letter No.768 dated 19.07.2011 allowed the petitioner to operate 12-seater vehicle on enhanced rate of monthly charges/payment to the Biological Park. Again on 01.09.2011 the petitioner increased three 12-seater vehicles without prior permission



of the authority and, thereafter, on 03.04.2013 he added two 12-seater vehicles again without permission of the authority. He has not been granted approvals for increasing the number of vehicles and the seating capacity.

The petitioner has further increased two 15-seater vehicles without permission of the authority, therefore, the show cause notice was rightly issued to the petitioner. It is the case of the respondents that the petitioner has been repeatedly violating the terms and conditions of the agreement which cannot be allowed to continue.

The learned Writ Court having noticed the facts of the case was not inclined to interfere in the matter as according to the learned Writ Court it is a purely contractual matter and has no public law element involved.

Mr.P.K.Shahi, learned Senior Counsel assisted by Mr.Akash Chaturvedi, learned Advocate representing the appellant submits that the learned Writ Court could not appreciate that the petitioner was granted permission to run 12-seater vehicle on enhanced fee and, therefore, if the Director of the Park had accepted the enhanced fee at the rate of Rs.1,500/- per month, the respondents cannot have a grievance against the petitioner. It is submitted that the impugned order passed by the Director of the Park calling upon the petitioner to remove the additional vehicles is not justified in the facts



and circumstances of the case.

On the other hand, learned counsel representing the respondents submits that on perusal of Letter No.768 dated 19th April, 2011 as contained in Annexure-A to the counter affidavit it would appear that at the relevant time also the petitioner was found operating 12-seater vehicle instead of 8-seater vehicle which was in violation of the terms of the agreement. Since it was a case of increase of seats only and not a case of addition of vehicles, at the relevant time the petitioner was directed to deposit fee at the rate of Rs.1,500/- per month instead of Rs.1,000/- per month which was fixed for 8-seater vehicles. It is submitted that Annexure-A cannot be taken as a permission to violate the terms of agreement which is in writing and the essence of the agreement is to abide by the same. It is submitted that the learned Writ Court has committed no error by refusing to interfere with the impugned order in the present case.

Having heard learned Senior Counsel for the appellant and learned counsel representing the State we are in agreement with the view taken by the learned Writ Court that the issue involved in the present case is in the nature of a private dispute between the two contracting parties and no public law element is involved in the facts of the present case. It appears that the petitioner has been found acting in violation of the written agreement as contained in Annexure-2 to



the writ application and, therefore, the respondents have taken action and directed the appellant to act in terms of the agreement alone.

In these circumstances, we do not find any reason to interfere with the judgment passed by the learned Writ Court. The Letters Patent Appeal has no merit. It is, accordingly, dismissed.

At this stage, learned Senior Advocate representing the appellant submits that the appellant may be allowed to file a representation for redressal of his grievance before the competent authority. We are not required to make any comment on such representation or request which the appellant wants to make to the competent authority. It is for the contracting parties to choose the terms and conditions of their contract and to ensure that the contract entered into is adhered to.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
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