

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17889 of 2018

Virendra Kumar Pandey aged about 55 years, S/o Late Jagan Nath Pandey,
Resident of Village and P.O.-Dumra, P.S.-Kotwa, District-East Champaran,
Bihar. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17767 of 2018

Uday Kumar aged about 29 years, S/o Bhola Prasad, Resident of Village and P.O.- Shankar Saraiya Kalwari Tola, P.S.- Turkauli, District- East Champaran, Bihar. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17243 of 2018



Rakesh Kumar aged about 34 years S/o Bipin Bihari, Resident of Village and P.O.- Balua Chowk, Gopalpur, P.S.- Nagar Thana Motihari, District- East Champaran, Bihar. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17821 of 2018

Lalit Kishore Sharma aged about 36 years, S/o Shivjee Thakur, Resident of Village and P.O.- Samara, P.S.- Banjaria, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17851 of 2018



Deepak Kumar aged about 18 years, S/o Madan Chaudhari, Resident of Village and P.O.- Singhiya Ward No.10, P.S.- Banjaria, District- East Champaran, Bihar Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17823 of 2018

Krishna Kumar Nishad aged about 28years, S/o Jung Bahadur Sahani, resident of Village and P.O.- Siswa, P.S.- Banjariya, District- East Champaran, Bihar. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17922 of 2018



Ramesh Kumar aged about 30 years S/o Paspas Sah, resident of Village and P.O.- Siswa, P.S.- Banjaria, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Qess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17227 of 2018

Ram Pukar Kumar aged about 26 years, S/o Chandrika Prasad, resident of Village and P.O.- Siswa, P.S.- Banjaria, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Qess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17229 of 2018



Raj Kumar Kushwaha aged about 40 years, S/o Prabhu Prasad Kushwaha,
resident of Village and P.O.- Kararia, P.S.- Kotura, District- East Champaran,
Bihar. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17840 of 2018

Prakash Kumar Pandey aged about 25 years, S/o Ajay Pandey, Resident of
Village and P.O.- Panchmandir Chowk, P.S.- Motihari, District- East
Champaran, Bihar. Petitioners

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17949 of 2018



Ajay Kumar aged about 25 years, S/o Badri Paswan, Resident of Village and P.O.- Chand Saraiya, P.S.- Pipra Kothi, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17796 of 2018

Raghav Sharan Prasad aged about 41 years, S/o late Narsingh Sah Resident of Village and P.O.- Siswa, P.S.- Banjaria, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17896 of 2018



Md. Junaid Alam aged about 28 years, S/o Md. Manjur Ali Resident of Village and P.O. - Hardia, P.S.- Turkaulia, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17825 of 2018

Aman Kumar aged about 23 years, S/o Vinay Kumar Mishra, resident of Village and P.O.- Manguraha, P.S.- Govindgunj, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17412 of 2018



Pramod Kumar aged about 24 years, S/o Lal Babu Rai resident of Village and
P.O. Gokhula, P.S. Siswa, District - East Champaran, Bihar.

... .. Petitioner

Versus

1. North Bihar Power Distribution Company Limited, Third Floor Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
2. The Managing Director, North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, (Commerce), North Bihar Power Distribution Company Limited, Third Floor, Vidyut Bhawan, Bailey Road, Patna
4. The Electrical Executive Engineer, Electric Supply Division, Motihari.
5. The Assistant Engineer (Revenue), Electric Supply Division, Motihari.
6. The Junior Electrical Engineer (Revenue)-Cum-Engineer-in-Charge, Electric Supply Division, Motihari.
7. M/s Quess Corp Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at 3/3/2, Bellandur Gate, Sarjapur Main Road, Bangalore, Karnataka-560103

... .. Respondents

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Appearance :

For the Petitioners	:	Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate Ms. Deepika Sharma, Advocate
For the Respondent/s	:	Mr. Anand Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 15-04-2019 A supplementary affidavit has been filed on behalf of

the petitioner in C.W.J.C. No. 17889 of 2018 stating therein that

from the tracking report as contained in Annexures '18' and 18/A'

to the supplementary affidavit it would be evident that the private

respondent no. 7 has been duly served with the notice issued by

this Court.

Learned counsel for the petitioners submits that in all

these cases the private respondent no. 7 is the same and one party.

It is submitted that in view of the affidavit of the petitioners the



respondent no. 7 be taken to have been duly served. It is further submitted that despite knowledge of these cases, respondent no. 7 chosen not to enter appearance.

This Court has perused the supplementary affidavit and the office notes. It appears that notice was issued to respondent no. 7 on 12.03.2019. The registered covers sent on the address of respondent no. '7' has not returned un-served. In addition, now there is an affidavit of the petitioner in C.W.J.C. No. 17889 of 2018 showing the tracking record as contained in Annexures '18' and '18/A' respectively and showing the delivery of notice on respondent no. '7'. In such circumstances the notice on respondent no. '7' be taken as validly served.

Thereafter, the matter proceeded for hearing for disposal on merit.

Heard learned counsel for the parties.

These writ applications have been preferred for issuance of a writ in the nature of Certiorari to quash and cancel the order dated 23.07.2018 as contained in Annexure '10' to the writ application being C.W.J.C. No. 17889 of 2018 and similar orders impugned in other writ applications which are being heard as analogous matter, by which the Electrical Executive Engineer, Electricity Supply Division, Motihari (respondent no. 4) has cancelled the agreement dated 21.02.2014 entered into between



the petitioner(s) and respondent no. 4 in terms of Rural Revenue Franchisee Scheme, 2013 in C.W.J.C. No. 17889 of 2018 and similar agreements in case of other petitioners.

Normally, in the matters arising out of cancellation of agreement, this Court sitting under Article 226 of the Constitution of India would not interfere in absence of there being any public law element available in the matter. What is settled in law is that even in case of contract if the decision suffers from arbitrariness and on the face of it, it is found that the decision making process suffers from infirmities such as violation of principles of natural justice and such cancellation has taken place dehors to the statutory scheme and are mala fide decisions, the Court under Article 226 of the Constitution of India may go for judicial review and will definitely consider the legality and validity of such decision keeping in mind the judicial pronouncement on the subject.

In these cases what have been revealed from the pleadings available on the record would take this Court to conclude that it would be a fit case in which the decision making process of the respondents be looked into and be subjected to judicial review keeping in mind the Scheme under which the agreement was executed with the petitioner(s).

The petitioner(s) in all these writ application(s) are the



residents of the local area within the jurisdiction of the Electrical Executive Engineer, Electric Supply Division, Motihari. It is stated that to give effect to the provisions of the Electricity Act, 2003, the Government of Bihar notified the Rural Electrification Plan for the State. A copy of the same has been brought on record as Annexure '1' to the writ application in C.W.J.C. No. 17889 of 2018. For sake of convenience this Court will refer the annexure number of C.W.J.C. No. 17889 of 2018. According to clause 5 of the said Plan, Franchisee are required to be deployed for management of local distribution in rural areas in order to ensure revenue sustainability and improved services to the consumers. The Franchises are responsible for meter reading, bill distribution and bill collection. In tune with what was envisaged by the State in the Rural Electrification Plan, the respondent Power Company came out with a Rural Revenue Franchise Scheme, 2013 (hereinafter referred to as 'the Scheme') with effect from 24.07.2013 vide notification date 03.08.2013. A copy of the scheme is placed on record as Annexure '2' to the writ application(s).

Learned counsel for the petitioner(s) has drawn the attention of this Court towards the various provisions of the Scheme, however, for purpose of the present case, this Court would notice two provisions of the Scheme. Clause 19.2 of the



Scheme would show that the Franchisees are entitled for commission and bonus subject to the collections per month provided in the table under clause 7.5. There is also a provision for imposition of penalty for under performance which would come in operation after three months from the date of commencement of the contract period. Clause 19.2 provides that the appointed Rural Revenue Franchisee performing very poorly i.e. not able to achieve 80% of meter reading and bill distribution in consecutive three months after initial period of three months may be debarred from the execution of the work by cancellation of the work order and the work may be awarded to other valid applicants for which panel will be prepared.

(emphasis supplied)

Clause 13.1 of the Scheme lays down the order of preference in which the selection of Rural Revenue Franchisee is to be made. According to this provision, the first preference will be given to the eligible person running a village level enterprises/Village Vasudha Kendras in or around the local village, (ii) second preference will given to eligible individual running cyber cafe in or around the local village and (iii) in absence of the suitable candidate as aforesaid, eligible individual of the District will be selected as the Rural Revenue Franchisee in the Rural Franchisee Villages or the Rural Franchisee feeder.



Learned counsel for the petitioner(s) has drawn the attention of this Court towards certain facts stated in the writ application(s) which are not in dispute. It is not in dispute that the petitioner(s) were appointed as a Rural Revenue Franchisee in the year 2014. An agreement was executed between the petitioner(s) and the respondent no. 4. A copy of the agreement is available on the record as Annexure '6' to the writ application in C.W.J.C. No. 17889 of 2018. Similar agreements are there with other petitioners.

The petitioner(s) in all the writ application(s) were continuing and claimed that they were carrying on their duties responsibly and diligently with some discrepancies. It is the case of the petitioner(s) that they were served with a show cause notice on 11.07.2018 whereby they were called upon to submit their reply. It was alleged in the show cause notice a copy of which contained in Annexure '8' to the writ application being C.W.J.C. No. 17889 of 2018 that they were required to do 100 % billing and collect revenue but in the given months from January, 2018 to May, 2018 they had not achieved the target and the slow work on their part had resulted in loss of revenue.

The petitioner(s) claimed and it is not in dispute that they submitted their reply to the show cause notice vide Annexure '9' and '8' to the writ application(s) respectively. They pointed



out to the authorities that they had been given burden to carry on the duties in other areas which were not falling within their areas and further that because of number of defective meters which have not been removed, no billing is being done. They also submitted that in some of the houses the meters have been installed inside the residential portion because of which they found it difficult to get the billing done. It is also pointed out that in the show cause notice the work done by them in the month of June has not been taken note of.

It is the case of the petitioner(s) that even though they had submitted reply to the show cause notice, the respondent no. 4 vide his letter no. 1220 dated 23.07.2018 as contained in Annexure '10' in C.W.J.C. No. 17889 of 2018 and similar order in the analogous matters with different letter numbers and date communicated to the petitioner(s), one line order stating that in the interest of the Department the agreement is being cancelled with effect from 01.08.2018.

In the pleadings the petitioner(s) have come with a specific plea that even though the agreement with them were cancelled on 23.07.2018 and likewise w.e.f. 01.08.2018, the private respondent no. '7' was awarded the same work on 20.07.2018 itself, meaning thereby that even before taking a decision to cancel the agreement of the petitioners, the respondent



authorities had allotted the work to private respondent no. '7' which was a company and not an individual dehorse to the Scheme. It is stated in paragraph 31 of the writ application. This is where the submission is that the mala fide writs a writ large on the face of the authorities dealing with the matter, they had been acting with pre-meditated mind and issuance of show cause notice was nothing but an empty formality.

Learned counsel submits that whatever would have been the result of the consideration of their reply would be a different matter. They are not questioning the power of the respondent company to dispense with the services of the petitioner(s) in case their performance was not satisfactory but before passing of the order to that effect, the authorities were liable to consider the reply of the petitioner(s). It is submitted that in no case the work could have been allotted to a company as has been done in the present case when the Scheme clearly provides the criteria on which the individual of the local area and the District should be given preference. It is also submitted that prior to awarding the work to respondent no. 7 no advertisement or notice were published by the authorities. Thus, it is nothing but a back door negotiation and appointment of respondent no. 7.

Mr. Anand Kumar Ojha, learned counsel representing the Power Company tried to impress upon this Court by drawing



the attention of this Court towards the achievements of the petitioner(s), which, according to him, were not satisfactory and because of which the authorities decided to cancel the agreement but as the Court was of the considered opinion that the power of the respondent authorities to come out of the agreement is not in dispute rather it is the decision making process in the present case which has fallen for a scrutiny before the Court, learned counsel realised that Annexures '10' in C.W.J.C. No. 17889 of 2018 and similar orders in other analogous matters which are totally non-speaking orders cannot be sustained on this solitary ground of violation of principles of natural justice.

As regards the provisions of the Scheme whereunder it is clearly stipulated that it is the individual who were to be given preference in the given manner and such preference has not been given in the present case, as also nothing has been brought to the notice of this Court with the counter affidavit to show that the respondent no. '7' was an applicant and was enlisted in the panel, learned counsel is unable to counter the submission of Mr. Agrawal, learned counsel representing the petitioner that the entire process and procedures adopted by the respondent authorities in the matter of cancellation of agreement and appointment of respondent no. '7' even before cancellation of agreement suffers from arbitrariness and cannot be sustained.



This Court in order to get clarity requested learned counsel for the official respondents to inform the Court after seeking instruction as to whether prior to appointment of respondent no. '7' as a Rural Franchisee any advertisement inviting tender was issued, learned counsel has informed this Court that no such exercise were undertaken.

Having heard learned counsel for the parties and on perusal of the records, in the given facts and circumstance of the case, this Court finds that the orders as contained in Annexures '10' in C.W.J.C. No. 17889 of 2018 and similar orders impugned in other analogous matters are liable to be set aside on the solitary ground of violation of principles of natural justice. It is well settled that the principles of natural justice is like a brooding omnipresence which prevails everywhere. Even the thin line of distinction between the quasi judicial powers and administrative powers has obliterated after the decision of the Hon'ble Supreme Court in the case of **A.K. Kraipak and Others. Vs. Union of India & Ors.** reported in **AIR 1970 150**. In contractual matters as well the instrumentality of State is bound by the twin principles of our Constitution i.e. relevance and reasons and in case the decision making process suffers from arbitrariness and mala fide, this Court can go for a judicial review.

In the present case what is apparent from the record is



that the issuance of show cause notices as contained in Annexures '8' in C.W.J.C. No. 17889 of 2018 and similar notices to petitioners of other writ application(s) were a mere empty formality as the authorities had already made up their mind to allot the work to private respondent no. '7'. This finding of the Court is strengthened from the fact that even before issuance of the order dated 23.07.2018 (Annexure '10' in C.W.J.C. No. 17889 of 2018) and similar orders in analogous matters the work was already allotted to private respondent no. '7' on 20.07.2018 itself. Respondent No. '7' is a company and not an 'individual' and in terms of the Scheme only 'Individual' could have been impaneled.

This Court also finds from the modified Franchise Scheme, 2018, a copy of which has been brought on record on behalf of the petitioner in C.W.J.C. No. 17889 of 2018 with the rejoinder as Annexure '17' to the rejoinder that even in the modified Scheme the Franchisee is to be an individual.

Nothing has been brought on record before this Court to demonstrate that prior to going for fresh allotment of work to respondent no. '7', the respondent no. 4 has followed the procedures as provided in the Scheme / modified Scheme. With the rejoinder the petitioner has brought on record a copy of the letter no. 722 dated 27.02.2018 addressed to private respondent



no. '7' whereby the work in question has been allotted to respondent no. '7' on 20.07.2018 itself. On perusal of the letter no. 722 dated 20.07.2018 (Annexure-14 in C.W.J.C. No. 17889 of 2018) no doubt remains in the mind of this Court in taking a view that the respondent authorities had already made up their mind to allot the work to respondent no. '7' after removing the petitioner(s). Issuance of show cause notices were thus, an empty formality. It has been found that prior to engagement of respondent no. '7' the North Bihar Power Distribution Company Ltd. had not published any notice inviting tender. No transparency seems to have been followed. In haste the authorities allotted the work to private respondent no. '7' even before taking a decision upon proper consideration of the replies of the petitioner(s). Since this Court comes to a conclusion that cancellation of agreement of the petitioner(s) is liable to be set aside, the order by which the same work were allotted to respondent no. '7' is also liable to be set aside. There are sufficient pleading available on record to take this view. Thus, in the given facts and circumstance, this Court find that the order as contained in Annexure '14' is liable to be held, bad in law, result of a arbitrary decision making process and appointment of respondent no. '7' even before issuance of the letter of cancellation of agreement with the petitioner(s) is nothing but a mala fide exercise of power is a malice in law if not in fact.



In result, Annexures '10' (in C.W.J.C. No. 17880 of 2018) and similar impugned orders of cancellation in other analogous matters as well as Annexure '14' of the rejoinder which has been brought to the notice of this Court are liable to be quashed, those are accordingly, quashed.

The quashing of the order of termination as contained in Annexure '10' (in C.W.J.C. No. 17880 of 2018) and similar orders in other analogous matters would, however, not come in the way of the respondent authorities in proceeding afresh and taking an independent fresh decision in accordance with the Scheme and to go for fresh appointment if occasion so arises in accordance with the terms of the Scheme.

These writ applications are allowed to the extent indicated above.

All admitted payments will be made to the petitioners, if not already made, within a period of 30 days from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J)

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