

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 7693 of 2022

Atish Kumar Beuray

.....

Petitioner

Mr. S.K. Dash, Adv.

Vs.

State of Odisha and others

.....

Opposite parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER
04.04.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Dash, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate.

3. In this writ petition, the petitioner has challenged the order of discontinuation of bus service vide Annexure-5 dated 30.04.2021 in terms of LoA No.OCPL/Proj-ser/228/206 dated 16.03.2018 and sought for direction to the opposite parties to disburse his monthly charges due till completion of the contract i.e. 17.07.2021 in terms of extension of engagement period vide letter No. OCPL/522 dated 26.06.2020.

4. Mr. S.K. Dash, learned counsel for the petitioner contended that the petitioner had entered into an agreement with opposite party no.3 pursuant to notice inviting tender under Annexure-1. As per Clause-N of the agreement, the contract may be terminated by Odisha Coal and Power Limited (OCPL) giving one month notice if the performance of the agency failed to meet the requirements specified in the conditions. The petitioner, in terms of the said contract, continued with opposite party no.3. Vide Annexure-3 dated 26.06.2020, the petitioner was granted extension of contract period for hiring of 01(one) no. AC Bus for conveyance of employees till 17.07.2021 at a monthly hire charges of Rs.1,88,000/-, excluding GST, which shall be paid extra at actual, and all other terms and conditions of the LoA shall remain unchanged

during the extension period. Though such letter/order was issued in June, 2020, but on 28.04.2021 vide Annexure-4, the petitioner was disengaged from bus service with effect from 30.04.2021 with request to take back the bus at CoB before three month's expiry of the terms of the contract. It is contended that as per Clause-N of the terms of contract, the contract may be terminated by OCPL only when the performance of the petitioner fails to meet the requirements of the contract after giving one month notice. As a consequence thereof, the petitioner is entitled to get the benefit of three months monthly charges. But the same was not adhered to, rather the contract was cancelled on 30.04.2021 without giving one month's notice. Therefore, it is contended that if the contract was cancelled without complying the provisions contained in the terms of contract, that itself is illegal and the petitioner is entitled to get hire charges till 17.07.2021.

5. Mr. P.P. Mohanty, learned Additional Government Advocate contended that the petitioner was fully aware that the contract period was extended till 17.07.2021, but the same was not worked out during pandemic period. Therefore, opposite party no.3 terminated the contract w.e.f. 30.04.2021. It is further contended that even though the contract was cancelled w.e.f. 30.04.2021, the petitioner approached this Court by filing this writ petition on 30.03.2022, which is near about one year after the cancellation of contract. Thereby, the writ petition should not be entertained, even though the petitioner claims damages for the loss sustained by him.

6. Having heard learned counsel for the parties and after going through the records, it appears that admittedly the petitioner had entered into agreement with opposite party no.3 for hiring of one AC Bus for conveyance of the employees and on the request made by the petitioner, the contract period was extended till 17.07.2021 vide Annexure-3 dated 26.06.2020. But, the contract was terminated w.e.f. 30.04.2021 vide Annexure-4. The reason for cancellation of the contract was due to pandemic situation. But fact remains, opposite

party no.3 extended the period of contract till 17.07.2021 vide letter/order dated 26.06.2020 and if cancellation of such contract is made that should be in terms of the contract, that means, it requires one month's notice as per Clause-N of the contract. But the petitioner states that such condition has not been complied with. Even though the contract was cancelled w.e.f. 30.04.2021, the petitioner waited till 29.03.2022 to file the writ petition. Thereby, after lapse of so many months, this Court is not inclined to entertain this writ petition. However, liberty is granted to the petitioner to pursue his remedy before the appropriate forum claiming damages, if any, he has sustained due to cancellation of agreement.

7. With the above observation, the writ petition stands disposed of.
Issue urgent certified copy as per rules.

Alok/Puspa



(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE