IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5870 of 2016

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Tunni Kumar Son of Munna Ram, resident of Village- Dharamaraychak, P.O- Lakhisarai, P.S.- Lakhisarai, District- Lakhisarai.

... ... Petitioner/s

Versus

1. The Chief General Manager, State Bank Of India and Ors
2. The General Manager, Network-1, State Bank of India, Regional Head Office, Patna.
3. The Deputy General Manager, State Bank of India, Zonal Office, Bhavesh Bhawan, Bhagalpur.
4. The Regional Manager, Region-II, State Bank of India, Munger.
5. The Branch Manager, Branch Manager, Gopalpur Branch, State Bankof India, Jamui.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Sinha
For the Respondent/s	:	Mr.Anjani Kumar Mishra
		Mr.Vijay Bardhan Pandey

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 08-04-2024

The writ application is filed for issuance of writ of Certiorari quashing the letter dated 05.07.2014 passed by the respondent no. 5 cancelling/terminating the agreement dated 30.11.2010 entered by the petitioner and respondent no. 5 which was signed by the erstwhile Branch Manager of the respondent Bank i.e. The State Bank of India for supplying electricity to the ATM of Gopalpur Branch, State Bank of India and further for quashing the letter dated 24.02.2016 vide letter no. 7350 passed by the respondent no. 4/The Regional Manager, State Bank of India, Munger who in turn confirmed that the termination of the agreement is in accordance with the terms for not supplying uninterrupted and sufficient supply of electricity during the hours of need and further for issuance of writ of Mandamus to direct the respondents to pay arrears of the contractual amount @ 22500/- w.e.f April, 2014 till the finalisation of issue.

2. The brief facts culled out of the petition is that petitioner executed an agreement dated 30.11.2010 with the respondent no. 4 for providing a Generator set to supply electricity for ATM Gopalpur Branch, State Bank of India, Jamui vide Annexure-1. As per the said agreement, the petitioner installed a brand new Generator Set along with standby Generator set to meet any failure in/of the main Generator. Accordingly, the petitioner supplied electricity to the respondents, with full satisfaction and therefore, they agreed to pay Rs. 19,500/- per month, which was subsequently, enhanced to Rs. 22,500/- per month. The supply of electricity was uninterrupted till March, 2014. One Vinay Kumar joined as Branch Manager in the said branch on 15.01.2014 who issued legal notice to the petitioner on 29.04.2014 for termination of the said agreement vide Annexure-2. The petitioner has given reply to the legal notice on 12.05.2014 denying all the allegations. Further, the petitioner reported to the Branch Manger on

14.05.2014 for payment of the admitted service charge for the month of April, 2014 vide Annexure-4. The petitioner has sent legal notice to the respondent no. 5 clarifying each and every point and requested the respondents to pay the admitted dues vide Annexure-5. In spite of the best efforts of the petitioner, the respondent-Bank did not pay the balance dues and the respondent no. 5 issued letter dated 21.06.2014 directing the petitioner to change the Generator for which the petitioner also replied vide Annexure-7. Respondent no. 5 vide its letter dated 05.07.2014 terminated the agreement dated 29.11.2010 with immediate effect without considering the representations of the petitioner due to which the petitioner was constrained to file writ application CWJC No. 12806 of 2014 challenging the termination order. The same was heard by this Court and was disposed of on 31.07.2014 directing the bank authorities to examine the matter and decide the same in accordance with law. In spite of the order of this Court, the respondents have not passed any order and after the lapse of eighteen months, the representation of the petitioner was rejected by the respondent no. 5. The said representation of the petitioner was rejected upholding the order of respondent no. 4 for which the petitioner was constrained to prefer the present writ application against the respondents.

3. On the other hand, a detailed counter affidavit has been filed by the respondent/The State Bank of India. The contention of the counter affidavit disclose that the then Branch Manager of State Bank of India had signed the agreement for installing the Generator Set and the respondent no. 4 terminated the agreement as there is no continuous or sufficient supply of electricity during the working hours. It is the specific mention in the counter affidavit that the petitioner cannot be granted the relief, on account of his unfair business activity for which the Bank was constrained to cancel the agreement. It is also contended that despite repeated requests by the Bank, petitioner did not improve his performance and also stopped supply of energy to the Bank's ATM as a result the Bank sustained losses. Further, petitioner is not entitled for any contractual amount as the entire amount towards the contract has been paid to him for the period of services rendered by him.

4. As per the agreement dated 30th November, 2010 which was entered between the petitioner and the then Branch Manager of the respondent-Bank, petitioner agreed to supply the electrical energy through the brand new 12 KVA DG Set of Kirloskar with the support of 10 KVA stand by DG Set at the rate of Rs. 19,500/- during the load-shedding or in case of low voltage supply of electrical energy. It was also agreed inter alia that in case of unsatisfactory service, the Bank reserves its right to terminate the contract, on 15 days notice and option was also given to each party to terminate the agreement by giving one month's notice. Initially, the petitioner had provided satisfactory services to the Bank, the rental was increased from Rs. 19,500/- to Rs. 22,595/- as the fuel price was also increased. Later, by an agreement dated 3rd July, 2013, the petitioner's wife Smt. Savita Kumari was given contract to provide electrical energy to ACs to the Bank through 20 KVA, New Acoustic Kirloskar Greaves on a monthly rental of Rs. 37,900/-. Further, by agreement dated 16th November, 2013, the petitioner himself signed another contract to provide electrical energy through 15 KVA New Kirloskar/Greeves for the branch premises on a monthly rental of Rs. 34,900/-. The said Gopalpur Branch of the State Bank of India was availing power back up through Generator services. Initially, the bank was functioning without any problem so far back up power supply was concerned, but thereafter, various issues related to back up power supply arose. As the bank was facing power supply problem due to the deficiency in the services of the service provider, the bank asked the provider to install a new DG set as per the terms and conditions of the agreement. Further the bank also sent letters to the petitioner and his wife on 3rd April, 2014, 07th June, 2014 respectively, but the service provider did not improve their services.

5. It is also contended in the counter affidavit that the Regional Manager, Munger instituted an enquiry to be conducted by Chief Manager of Jamui Branch, who in turn conducted the enquiry, examined the witnesses and submitted his report on 23.06.2024. As per the enquiry report, there are deficiencies in the service of Generator provided at the branch which had been causing great inconvenience in operation of day to day work. Pursuant to the report of the Enquiry Officer, the Branch Manager/respondent no. 4 cancelled the agreement dated 29th November, 2010 and the said information was given to the petitioner.

6. The counter affidavit also disclose that petitioner initially filed a writ petition challenging the termination order dated 5th July, 2014 of the bank and the same was not entertained and the petitioner was directed to withdraw the writ application with liberty to move before the bank authorities including Chief General Manager who will examine the matter and decide the same in accordance with law. The respondent-bank vide letter dated 30.07.2014 informed that the rental for ATM has been paid upto March, 2014, but the rental for the months of April and May, 2014 has not been paid to him due to unsatisfactory services and non-installation of standby Generator as per the terms of agreement.

7. Heard learned counsel for petitioner as well as respondents and perused the materials available on record.

8. It is the specific contention of the learned counsel for the petitioner that initially agreement was entered between the then Branch Manager and the petitioner and petitioner was getting rentals from time to time and the new Branch Manager has terminated his services.

9. On the other hand, learned counsel for the respondent-bank contends that due to unsatisfactory services of the petitioner, the bank was constrained to terminate the services of the petitioner.

10. On perusal of the agreement i.e. Annexure-1, it is evident that the agreement was signed by the petitioner as well as by the Branch Manager and as per Clause-10 of the agreement which reads as follow:-

> “A stamped agreement will be executed by me for 10 years but in case of unsatisfactory service the bank may reserve the right to terminate the contract on 15 days notice. Each party has option to terminate the agreement by giving one month notice."

11. Admittedly, the petitioner has supplied the electricity through Generator till March, 2014 and as per the said clause the bank can terminate the agreement, in case, there is unsatisfactory service. The agreement dated 30.11.2010 and subsequent rental agreement are not before the Court. Admittedly, on 05.07.2014 respondent no. 5 passed order of termination which was affirmed by the respondent no. 4 after considering the enquiry report. Therefore, the petitioner cannot claim any right for renewal of his agreement or as against the termination order. However, the petitioner has given electricity supply through Generator upto May, 2014 but the payment was made upto March 2014. Therefore, the petitioner is entitled for balance payment for two months ie. April and May, 2014, therefore, respondent no. 4^{th} is directed to pay due amount to the petitioner forthwith or on before three months from the date of receipt of the order copy.

12. With the aforesaid observation, the writ petition stands disposed of.

(G. Anupama Chakravarthy, J)

vinita/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.04.2024
Transmission Date	