

GAHC010136522018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 4465/2018

1:M/S. BRAHMAPUTRA ENTERPRISE
FRANCHISEE UNDER APDCL, REP. BY SECY., MR. NAVA KUMAR DEKA,
S/O. SHRI JOYRAM DEKA, R/O. BHAKATPARA, P.O. DOLONGGHAT, DIST.
UDALGURI, BTAD (ASSAM).

VERSUS

1:ASSAM POWER DISTRIBUTION COMPANY LTD. (APDCL) AND 5 ORS.
REP. BY ITS MANAGING DIRECTOR, BIJULEE BHAWAN, PALTANBAZAR,
GHY-1, DIST. KAMRUP(M), ASSAM.

2:THE CGM(D)
ASSAM POWER DISTRIBUTION COMPANY LIMITED (APDCL) (LAR)
BIJULEE BHAWAN
PALTANBAZAR
GHY-1
DIST. KAMRUP(M)
ASSAM.

3:THE GENERAL MANAGER (COMMERCIAL AND REVENUE)
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI
DIST. KAMRUP(M)
ASSAM.

4:THE AGM
UDALGURI ELECTRICAL DIVISION
APDCL(LAR)
UDALGURI
ASSAM.

5:THE SDE
TANGLA ELECTRICAL SUB-DIVISION

APDCL (LAR)
UDALGURI
ASSAM.

6:THE DEPUTY GENERAL MANAGER
MANGALDOI ELECTRICAL CIRCLE
APDCL
MANGALDOI
DARRANG
ASSAM

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE UJJAL BHUYAN

ORDER

Date : 06-08-2018

Heard Mr R Sarma, learned counsel for the petitioner and Mr K D Sarma, learned Standing Counsel, Assam Power Distribution Company Limited (APDCL).

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of speaking order dated 06.09.2017, passed by the General Manager (Commercial-Revenue) APDCL, rejecting the claim of the petitioner for payment of contractual dues.

3. It appears that petitioner was entrusted by the APDCL to work as a franchisee in respect of 11kv Dollongghat feeder station of Mangaldoi Electrical Circle under the input based distribution franchisee scheme. In this connection, a Memorandum of Understanding (MoU) was signed between the parties on 07.06.2012. According to the petitioner, while it had been paid an amount of Rs. 6, 22, 808.00 in May, 2014, it had performed certain extra works outside the scope of Memorandum of Understanding (MoU), as per verbal order of the Deputy General Manager, Mangaldoi Electrical Circle, which was to the full knowledge of the respondent authorities. For this additional work, petitioner has raised its claim for an amount of Rs. 22, 56, 550.00.

4. Since steps were not taken for payment of the aforesaid amount, petitioner had approached this Court by filing WP(C) No. 5985 of 2014, which was disposed of vide order dated 12.05.2017, by

giving opportunity to the petitioner to submit a detailed representation before the General Manager (Commercial-Revenue), APDCL who was further directed to consider and take a decision on such representation by passing a speaking order.

5. Pursuant thereto, petitioner had made the required representation, which was, however, dismissed by the General Manager vide the impugned speaking order dated 06.09.2017.

6. When the writ petition was moved on 30.07.2018, learned counsel for the petitioner was granted time to examine the provisions of the Electricity Act, 2003 as well as the Memorandum of Understanding (MoU) entered into between the parties to see whether there is any provision for redressal of grievance in such matters arising out of or relating to the contract.

7. Today, when the matter is called upon, Mr Sharma, learned counsel for the petitioner has taken the Court to Clause K of the Memorandum of Understanding (MoU) dated 07.06.2012, which deals with dispute. It says that any dispute or difference between the parties arising from the Memorandum of Understanding (MoU) shall be settled amicably through consultations and negotiations.

8. From the above, what is discernible is that the spirit of the contract as manifest through the Memorandum of Understanding (MoU) is that any dispute or difference between the parties arising out of the Memorandum of Understanding (MoU) or from the Memorandum of Understanding (MoU) shall be settled amicably through consultations and negotiations, i.e., the spirit of Memorandum of Understanding (MoU) is amicable settlement of dispute.

9. In the light of the above, Court is of the considered opinion that the present is a fit case, where a settlement through mediation could be achieved and should be explored. Accordingly, the case is referred to the Mediation Cell, Gauhati High Court.

10. Registry shall do the needful.

11. Case be listed again before the Court along with the report of the Mediator, after 2 (two) months, on 31.10.2018.

JUDGE

Comparing Assistant