

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6844 of 2015

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1. M/s Bakaur PACS Rice Mill, through its proprietor, Smt Meena Devi,
W/o- Maheshwari Prasad Yadav, R/O- Vill- Sihe, P.O.- Bakaur, P.S.-
Supaul Sadar, District- Supaul.

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Food and Consumers
Department, Govt. of Bihar, Patna.
2. The District Magistrate-cum- District officer, Supaul
3. Certificate officer, Supaul
4. Managing Director, Bihar State Food & Civil Supplies Corporation(HQ),
Patna.
5. District Manager, Bihar State Food Corporation Ltd, Supaul.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Kumar Verma, Sr. Advocate
For the BSFC : Mr. Shailendra Kumar Singh, Advocate
For the State : Mr. J.S. Barnwal- Ga5

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 20-07-2015 Heard Mr. Rajiv Kumar Verma, Senior Counsel for
the petitioner, Mr. Shailendra Kr. Singh for the respondent nos. 4
and 5 and Mr. Barnwal GA-5 for the State.

Petitioner has questioned the legality of the order
dated 13.4.2015 passed by the respondent Collector (Annexure-9)
and the consequential demand notice dated 20-04-2015 issued by
the respondent Certificate officer (Annexure-10).

The petitioner had earlier moved this Court raising
the identical/similar grievance vide C.W.J.C. No. No.12355 of
2014 which was considered along with the batch of writ petitions

and disposed of by order dated 22.7.2014 (Annexure-6). Paragraph nos. 12 and 13 whereof read as under:-

“12. Mr. Pradhan has, in fact, assured that if the petitioner would file his representation against the demand notice, the same shall also be disposed of expeditiously so that if the petitioner becomes aggrieved on account of refusal of settlement of dispute by the Corporation, he can take recourse to arbitration proceedings. He has also assured that till disposal of the representation, no further coercive action will be taken against the petitioner beyond what has already been taken against him in terms of the agreement.

13. It is, however, made clear that if in the mean time any criminal case or certificate proceeding has already been initiated against the petitioners, the same shall not be in any way adversely affected, in keeping with Clause 12 and 15 of the agreement which empowers the Corporation to take legal action including recovery of the amount due from the petitioners by way of certificate proceedings under the Bihar Public Demand Recovery Act, 1914.”

It has been submitted that in the light of the said order the petitioner initially moved the officials of the Corporation for conciliation and thereafter the respondent-Collector invoking arbitral clause of the agreement. The respondent Collector completely failed to notice diverse contemplations of the agreement and disposed of the proceeding on the ground that the offer made by the Corporation was not acceptable to the petitioner.

It has also been wrongly noticed in the award/order that after filing of the proceeding under the Bihar Public Demand Recovery Act, 1914 (for short 'the Act') the petitioner has approached for resolution of the dispute by arbitration.

Mr. Shailendra Kumar Singh, counsel for the Corporation, on the other hand submits that from bare perusal of the order (Annexure-6) it would appear that in terms of the provisions of the agreement the proceeding under the Act is sustainable. It has also been pointed out that in the light of the order of this Court the petitioner filed a claim for arbitration before the respondent Collector (Annexure-6/1 of the supplementary affidavit) whereon the order has been passed by the respondent-Collector.

On a consideration of the rival submissions, it appears to this Court that the respondent Corporation in view of the terms of the agreement is entitled to invoke the proceeding under the Act. Indisputably a proceeding was lodged before the Certificate Officer vide Certificate case no. 54 of 2014-15 which is pending consideration. However, it appears that in the light of the order passed by the respondent Collector (Annexure-9) whereby the arbitration proceeding was disposed of, the respondent-Certificate Officer issued a demand notice dated 20-



04-2015 (Annexure-10) Mr. Shailendra Kumar Singh, the counsel for the Corporation submits that earlier to this a notice under Section 7 of the Act was issued to the petitioner. Pursuant thereto the petitioner rice mill filed the objection. However, without consideration thereof in the light of the order passed by the respondent Collector the impugned notice (Annexure-10) has been issued. It has been vehemently argued by Mr. Verma that until and unless the objection filed by the petitioner rice mill under Section 9 of the Act is considered and disposed of, no final demand notice can be issued. The contention of Mr. Singh learned counsel for the Corporation is that the order contained in Annexure-9 may be considered as consideration and disposal of the objection. In my view, the said contention of learned counsel for the Corporation is not well founded.

Taking into account the facts evidencing from the record, in my view, the ends of justice shall be sub-served if the writ application is disposed of by the following order :-

Let the petitioner file a fresh objection under the Act within three weeks for consideration and disposal by the respondent-Certificate Officer whereafter the Certificate Officer will proceed to examine the same and take appropriate decision thereon. In doing so the demand notice dated 20.4.2015

(Annexure-10) shall not preclude the respondent-Certificate Officer from taking a fresh decision on the objection of the petitioner in accordance with law. In other words, the order contained in Annexure-10 shall remain in abeyance until a fresh order is passed by the respondent Certificate Officer.

Before parting with this case this Court would record that diverse submissions were made by the parties on the legality of Annexure-9 passed by the respondent Collector. This Court refrains from expressing any view on the said order leaving it to the party to get it either implemented or set aside before the appropriate forum in accordance with law.

(Kishore Kumar Mandal, J)

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