

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15613 of 2015

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1. Neeraj Kumar Son of Sri Suresh Sharma, Proprietor of Maa Gayatri Arva Rice Mill, Siva, Rafiganj and resident of village - Siva, P.S. Barpa, District - Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, Government of Bihar, Patna
2. The District Magistrate, Aurangabad
3. The Managing Director, Bihar State Food Corporation, Bihar, Patna
4. The District Manager, Bihar State Food Corporation, Aurangabad
5. The Certificate Officer, Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Adv.
For the Respondent/s : Mr. Syed Arshad Alam, S.C. 3
For the Corporation : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 08-10-2015 Heard Mr. Krishna Chandra, learned counsel for the petitioner, learned counsel for the State and Mr. Shailendra Kumar Singh for the Corporation.

Charging the petitioner with default of the conditions of the agreement present at Annexure-1 in the matter of supply of Custom Milled Rice that a certificate proceeding was initiated against the petitioner giving rise to Certificate Case No. 63 of 2014-15 which is pending before the District Certificate Officer, Aurangabad. Although the order passed on 22.12.2014 reflects that notice was issued to the petitioner and was served and that the

petitioner appeared and prayed for some time but the said order is being contested by Mr. Krishna Chandra to submit that no such appearance was filed by the petitioner before the Certificate Officer nor any notice was served upon him.

Be that as it may, the fact remains that the certificate proceedings is yet pending before the District Certificate Officer and in between the petitioner by invoking the Clause 16 of the agreement so entered in between the Bihar State Food and Civil Supplies Corporation and the petitioner placed at Annexure-1 moved the District Magistrate under the Arbitration Clause. A copy of the agreement is placed at Annexure-5. Mr. Chandra learned counsel for the petitioner with reference to Clause 15 and 16 thereof submits that no doubt a right is vested in the Corporation to make recovery of the demand through certificate proceedings but that circumstance would only arise in case the arbitration proceeding would fail and which admittedly is pending.

Contesting the argument of Mr. Chandra it is argued by Mr. Singh that the arbitration proceeding has been mala-fidely initiated by the petitioner after initiation of the certificate proceeding to avoid the same.

I have heard learned counsel for the parties and I have perused the records.



Whether there is any demand due against the petitioner and what is its quantum are matters pending consideration in the certificate proceedings and this Court would refrain to express any opinion thereon. Suffice it to say that while the certificate proceedings are pending consideration before the District Certificate Officer, the petitioner by invoking arbitration clause has filed a miscellaneous application which is pending consideration before the Collector who has been jointly appointed as an Arbitrator under the agreement and his decision thereon is to be final on the issue so raised. Since the petitioner has admittedly taken recourse to the process of arbitration hence in my opinion the certificate proceedings would have to await its outcome.

Mr. Singh learned counsel for the Corporation submits that the attempt of the petitioner is only to delay the process of recovery and for which he has taken recourse to the Arbitration Clause. In my opinion, whatever be the reason but the fact is that an arbitration clause is present in the agreement which is binding on the parties and the petitioner has invoked the same. The Corporation thus can raise no grievance.

Considering that the required application has been filed by the petitioner before the District Magistrate, Aurangabad under Clause 16 of the agreement on 18.8.2015, as also taking into

consideration the nature of dispute, this writ petition is disposed of with a direction to the District Magistrate, Aurangabad to conclude the arbitration proceedings in accordance with law and after hearing the parties expeditiously and preferably within 3 months from the date of receipt/production of a copy of this order.

Since this order has been passed in the presence of the contesting parties, it is sufficient notice to them and they shall appear before the District Magistrate, Aurangabad along with the copy of this order on 19.10.2015 whereafter the District Magistrate, Aurangabad will proceed to dispose of the matter in the manner stipulated above.

The parties shall cooperate in the expeditious disposal of the matter and any default on the part of either of the parties would not preclude the District Magistrate to proceed in accordance with law for disposal of the arbitration case.

It goes without saying that until the disposal of the arbitration proceedings, further proceedings in Certificate Case No. 63 of 2014-15 pending before the District Certificate Officer, Aurangabad shall remain stayed.

(Jyoti Saran, J)

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