

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15888 of 2015

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1. Badri Kumar Mittal Son of Sri Pawan Kumar Mittal, Resident of Flat No.G-2A, Pushp Vihar Colony, Exhibition Road, Gandhi Maidan, District - Patna. Director of M/s Om Shree Gram Udyog Food Processor Co-Operative Society Ltd., having its Rice Mill at Nasriganj, P.S. - Danapur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Banka.
2. The Certificate Officer, Banka.
3. Bihar State Food & Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna - 800 001.
4. The Managing Director, Bihar State Food & Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna - 8000 001.
5. The District Manager, Bihar State Food and Civil Supply Corporation, Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pawan Kumar
For the Respondent/s : Mr. Sandeep Kumar- GA8
For the Corporation : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 13-10-2015 Heard learned counsel for the parties.

The petitioner is aggrieved by the notice issued under Section 7 of the Bihar & Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as 'the Act') issued by the Certificate Officer, Banka arising from Certificate Case No. 2 of 2013-14.

A very short submission has been made by Mr. Pawan Kumar relying upon a Bench decision of this Court rendered in a case arising from C.W.J.C.No.13746 of 2013 (**Sone Valley Rice Mill Versus State of Bihar & Ors.**) to submit that the agreement

entered in between the petitioner and the Corporation is present at Annexure-1 which was for the period 2011-12 and which does not contain any clause that makes the demand as public demand and enables the Corporation to take recourse to the certificate proceeding for realization of the due amount. He submits that this issue came up for consideration in the case of **Sone Valley** (supra) when this Court held that in absence of any such stipulation present in the agreement, the alleged due cannot be in the nature of a public demand nor any certificate proceeding would be maintainable under 'the Act'.

There can be no contest on the submission so made rather the argument of Mr. Pawan Kumar stands confirmed by the agreement present at Annexure-1 and the judgment rendered in the case of **Sone Valley** (supra) on the issue raised.

In result the entire proceeding arising out of Certificate Case No. 2 of 2013-14 including the requisition, the certificate and the notice issued thereunder cannot be upheld and are accordingly set aside. This writ petition is allowed.

This order however, would not preclude the authorities of the Corporation to take recourse to such other remedy that may be available to them in law for recovery of the dues.

The writ petition is allowed.

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(Jyoti Saran, J)