

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11175 of 2015

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Rajesh Prasad son of Late Dwarika Prasad, Proprietor of M/s Shiv Shakti Arwa Rice Mill, resident of village Deshpur, P.O. Obra, P.S. Obra, District Aurangabad
..... Petitioner

Versus

1. The State of Bihar through District Magistrate District Aurangabad.
 2. The Bihar State Food and Civil Supplies Corporation Limited through its M.D., Bihar at Patna
 3. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Aurangabad, District Aurangabad.
 4. The District Certificate Officer, Bhojpur at Aurangabad District Aurangabad.
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Appearance :

For the Petitioner : Mr. Sumeet Kumar Singh, Advocate
For the State : Mr. Purnendu Singh, GP 27
Mr. Rakesh Kumar Sharma, AC to GP 27
For the BSFC : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-08-2015

Heard learned counsel for the petitioner, learned Government Pleader No.27 for the State, and learned counsel for the respondent-Corporation.

2. This writ petition has been filed for quashing the entire certificate proceeding initiated against the petitioner in Certificate Case No.33 of 2014-15 and for connected reliefs.

3. It is submitted on behalf of the petitioner that the notice under Section 7 issued in Form No.3 of Schedule II of the Bihar & Orissa Public Demands Recovery Act (For short, "the Act") does not meet with the statutory requirements as the same has been signed by the District Manager, Bihar State Food & Civil Supplies

Corporation, Aurangabad (For short, “the BSFC”) as evident from the copy of the certificate enclosed with the notice under Section 7 of the Act. The mere fact that the certificate has also been signed by the Certificate Officer, will not clothe it with validity.

4. As regards the certificate itself, learned counsel for the respondents submits that the same is valid inasmuch as it has duly been signed by the Certificate Officer.

5. This Court finds considerable force in the submissions of learned counsel for the petitioner. The fact that the certificate has been issued under the signature of the District Manager, BSFC, Aurangabad, who is not the Certificate Officer, denudes it of its validity. Under Section 5 of the Act, the District Manager could only have written and sent a requisition in Form No.2 to the Certificate Officer and there could have been no occasion for him at all to have signed a certificate issued in Form No.1. The certificate, no doubt, also contains the signature of the Certificate Officer below that of the District Manager, which rather shows lack of independent application of mind by the Certificate Officer. Section 6 of the Act requires the Certificate Officer to be satisfied that the demand is recoverable before he signs the certificate. In the present case, it is clear that he has merely signed the certificate mechanically below the signature of the District Manager.

6. In the above circumstances, the certificate issued in Form No.1 signed by the District Manager of the BSFC and the Certificate Officer in the manner aforesaid is held to be invalid and is hereby quashed. The matter is remitted to the Certificate Officer, Aurangabad for issuance of a fresh certificate as well as the notice under Section 7 of the Act and proceed in the matter in accordance with law.

7. It is made clear that in the meantime, the Certificate Officer, Aurangabad, shall not resort to any coercive action for recovery of the dues against the petitioner in Certificate Case No.33 of 2014-15

8. The writ petition stands disposed of.

(Vikash Jain, J)

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