

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17653 of 2015

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Gudiya Sharma Wife of Sri Pawan Kumar Sharma, Proprietor of M/s Shivam Rice Mill, Rafiganj and resident of village - Gulab Bigha, P.S. - Rafiganj, District - Aurangabad.

.... Petitioner

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 and Civil Supplies Corporation, Aurangabad.
5. The Certificate Officer, Aurangabad.

.... Respondents

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Appearance :

For the Petitioner : Mr. A.K.Thakur, Advocate
Mr. Krishna Chandra, Advocate
For the State : Mr. Binay Kumar, AC to SC4
For the BSFC : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-11-2015

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for the Bihar State Food & Civil Supplies Corporation.

2. The present writ petition has been filed for quashing the entire Certificate proceeding arising out of the Certificate Case No. 67 of 2014-15 pending before the learned Certificate Officer, Aurangabad on the ground that the same has been instituted contrary to the terms of the Agreement entered between the parties.

3. The petitioner is the proprietress of M/s Shivam Rice Mill, Rafiganj, District Aurangabad and is in the business of milling of paddy as well as sale and purchase of C.M.R. The petitioner entered into an



agreement with the respondent Corporation wherein the Corporation was required to supply paddy and in return the petitioner had to deliver proportionate quantity of C.M.R. The authorities have held the petitioner responsible for non-supply of C.M.R. within time and fixed liability on the petitioner in respect of the same amounting to Rs. 54,52,880/-. It is stated that the petitioner has duly invoked the Arbitration Clause in terms of application dated 18.08.2015 as contained in Annexure-5 of the writ application and duly intimated the Certificate Officer in that regard.

4. It is submitted on behalf of the petitioner that resort to recovery and certificate proceedings is wholly arbitrary and illegal in the backdrop of Clause 16 of the Agreement requiring the parties to settle the issues through mutual discussions and in case of failure of the same, then through the forum of arbitration. It is stated that without observing the procedure agreed upon, the authorities have instituted the present certificate proceedings and in connection with which distress warrants have also been issued against the petitioner.

5. In similar circumstances, this Court by its order dated 08.10.2015 passed in CWJC No. 15613 of 2015 has observed as follows –

"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."

6. In the above view of the matter and with consent of the parties, the present writ petition is also disposed of in line with and on the same terms as the aforesaid CWJC No. 15613 of 2015.

(Vikash Jain, J)

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