IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9620 of 2015

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1. M/s A One Rice Mill, Village- Bhagwanpur, P.S.- Sour Bazar, Distrct- Saharsa, through its proprietor Sahindra Kumar Yadav son of Late Parmeshwari Yadav, resident of village- Bhagwanpur, P.S.- Sour, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, New Secretariat, Patna.
2. The Bihar State Food and Civil Supplies Corporation Limited, Patna.
3. The Managing Director, Bihar State Food and Civil Supplies Corporations Limited, Patna
4. The District Manager, State Food Corporation Limited, Saharsa.
5. The Managing Director, Food Corporation of India Exhibition Road, Patna.
6. The District Certificate Officer, Saharsa.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Chandra Mohan Jha
For the Respondent/s : Mr. SMT. NAMRATA MISHRA- GA13

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 22-07-2015

The petitioner is the Rice Mill which entered into a contract with the respondent Bihar State Food and Civil Supplies Corporation Ltd. (for short 'the Corporation') for supply of Customed Mill Rice (CMR) at agreed rate/percentage on receipt of paddy from the Corporation. The petitioner failed to deposit the same. Resultantly, F.I.R. was lodged against the petitioner and the present certificate proceeding vide Case No. 18 of 2014 was initiated. The respondent District Certificate Officer vide notice dated 19.8.2014 called upon the petitioner to file the objection/show cause. Indisputably, the petitioner responded to the said notice and filed the objection as required under Section 9 of the Public Demand Recovery Act (for short 'the Act') vide Annexure-6. The same has been considered and rejected under order dated 21.4.2015 (part of Annexure-7). Aggrieved thereby, the present writ petition has been filed.

Heard Mr. Ansul for the petitioner and Mr. Shailendra Kumar Singh for the respondent Corporation.

Counsel for the petitioner has contended that the order does not set out reasons for rejecting the objections of the petitioner. The same is, therefore, not an order in the eye of law.

Conversely, Mr. Singh has drawn attention of the Court to the show cause/objection filed by the petitioner (Annexure-6) in order to highlight that the objection/show cause filed by the petitioner was not supported by any document for consideration. He also contends that the entire record which incorporate different receipts were produced before the Certificate Officer for perusal whereafter the impugned order rejecting the objection of the petitioner was passed. One of the contentions of the Counsel for the respondent Corporation is that any order passed under Section 10 of the Act is appealable before the Appellate Authority where all questions of facts and law can be raised, considered and decided. The time prescribed therefor has already elapsed but the Court may in the interest of justice condone the delay for filing such appeal.

Mr. Ansul points out that for filing an appeal, the petitioner is required to deposit certain percentage of certificate debt money which, in the present case, would be onerous, particularly, when the petitioner, for getting the privilege of anticipatory bail, is required to deposit certain percentage of the alleged defalcated sum/amount as depicted in the First Information Report. He also points out from the interlocutory application that the Certificate Officer has already passed an order for attachment of the Rice Mill and for issuance of distress warrant against the petitioner.

The petitioner has a remedy of filing appeal for consideration and adjudication by the Appellate Authority who is the Collector of the district where all issues as raised in the present writ application can be raised for consideration and adjudication. The contention of the petitioner that the order is non-reasoned can also be a ground for challenging the same before the Appellate Authority. The petitioner, in such circumstances, should invoke the aforesaid statutory remedy and file appeal before the Appellate Authority in terms of Section 60 of the Act.

Another issue which has been raised by the petitioner needs attention of the Court. It has been stated that the order being non-reasoned and the petitioner having been relegated to the statutory remedy of filing appeal thereagainst, the percentage of the certificate debt money which is required to be deposited prior to filing of such appeal be appropriately reduced in the interest of justice.

Having given anxious consideration to the said submission and considering the interest of justice, this Court disposes of the present writ application by the following order:-

Let the petitioner file an appeal before the Appellate Authority within six weeks from today subject to payment of 25 % of the certificate debt money. No sooner the petitioner deposits the said amount and produce a receipt before the Certificate Officer, further proceeding of the Certificate Case no.18 of 2014-15 shall remain stayed including the order of attachment as also the order for issuance of non-bailable warrant/distress warrant against the petitioner until the Appellate Court decides the appeal of the petitioner in accordance with law. Further, for a period of five weeks from today, the distress warrant/non-bailable warrant issued against the petitioner shall not be given effect to.

(Kishore Kumar Mandal, J)

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