

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14566 of 2015

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Jai Ram Rai son of Wachas Rai Proprietor of M/s Jai Maa Tara Chandi Mini Rice Mill, resident of Village- Siddhi, P.O.- Gori, P.S.- Krahgahar, District- Rohtas at Sasaram.

.... Petitioner

Versus

1. The State of Bihar through District Magistrate, District- Rohtas (Sasaram).
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, Rohtas (Sasaram), District- Rohtas at Sasaram.
4. The District Certificate Officer, Rohtas (Sasaram), District- Rohtas (Sasaram).

.... Respondents

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Appearance :

For the Petitioner : Mr. Sumeet Kumar Singh, Advocate
For the State : Mr. Vijay Bharti, AC to SC 26
For the BSFC : Mr. Nirmal Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-09-2015

Heard learned counsel for the petitioner, learned A.C. to Standing Counsel No.26 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.63 of 2014-15 and for connected reliefs.

3. The immediate concern of petitioner in this case is that a warrant of arrest has been issued against him in connection with the dues amounting to Rs. 36,20,708.04 recoverable in terms of the notice dated 28.05.2015 issued by the Certificate Officer, Rohtas at Sasaram in Certificate Case No. 63 of 2014-15.



4. It is submitted on behalf of the petitioner that the certificate proceeding is wholly illegal and unsustainable in law. It is stated that the mandatory notice under Section 7 of the Bihar & Orissa Public Demands Recovery Act (for short, “the Act”) has not been served upon the petitioner. On getting knowledge in respect of the certificate proceeding, a certified copy of the certificate was obtained by the petitioner which discloses that the same has been signed by the District Manager of the Bihar State Food & Civil Supplies Corporation, Rohtas at Sasaram (for short, “the BSFC”). It is submitted that the mere fact that the certificate has also been signed by the Certificate Officer will not clothe it with validity.

5. Learned counsel for the respondents on the other hand submits that the certificate is valid inasmuch as it has duly been signed by the Certificate Officer.

6. 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, Rohtas at Sasaram, 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 the certificate issued in Form No.1. The certificate, no doubt,

also contains the signature of the Certificate Officer beside 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 beside the signature of the District Manager.

7. 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, Rohtas at Sasaram for issuance of a fresh notice and to proceed in the matter in accordance with law.

8. It is made clear that in the meantime, the Certificate Officer, Rohtas at Sasaram, shall not resort to any coercive action for recovery of the dues against the petitioner in Certificate Case No.63 of 2014-15

9. The writ petition stands disposed of.

(Vikash Jain, J)

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