

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.78 of 2013

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1. Kamleshwari Paswan Son of Late Soman Paswan Resident of Village and P.O.- Kushmaut, P.S.- Nima Chandpura, District- Begusarai

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Food and Consumer Protection Department, Bihar, Patna
2. District Magistrate, Begusarai
3. Sub-Divisional Magistrate, Begusarai
4. District Rural Development Agency, Begusarai, through Deputy Development Commissioner Cum Chief Executive Officer, Begusarai
5. Block Development Officer, Begusarai Block, Begusarai
6. Block Agriculture Officer, Begusarai Block, Begusarai
7. Panchayat Secretary, Kushmaut Panchayat, Begusarai
8. In-Charge, Nima Chandpura Police Station, District- Begusarai

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.623 of 2013

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1. Awadh Singh Son of Late Sahdeo Singh Resident of Village- Kulti, P.O.- Kulti, P.S.- Asthawan, Distt.- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Development Commissioner Cum Chief Executive Officer, Zila Parishad, Biharsharif, Nalanda
3. The District Manager, Bihar Food Corporation, Biharsharif, Nalanda
4. The Certificate Officer, Biharsharif, Nalanda
5. The Sub Divisional Officer, Biharsharif, Nalanda
6. The Block Development Officer, Asthawan, Nalanda

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.1593 of 2013

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1. Vidya Sagar Prasad Son of Sri Mathura Prasad Resident of Mohalla- Madhubani Ghat, P.S.- Muffassil, District- Motihari, East Champaran

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department of Rural Development, Patna
2. The District Magistrate, East Champaran, Motihari
3. The Certificate Officer, East Champaran, Motihari
4. The Block Development Officer, West Champaran, Motihari

.... Respondent/s

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Appearance :

(In CWJC No.78 of 2013)

For the Petitioner/s : Mr. Pravin Chandra Prasad, Adv.

For the Respondent/s : Mr. Indrajeet Bhushan, A.C. to G.P.12

(In CWJC No.623 of 2013)

For the Petitioner/s : Mr. Ajit Ranjan Kumar, Adv.

For the Respondent/s : Mr. Indrajeet Bhushan, A.C. to G.P.12

(In CWJC No.1593 of 2013)

For the Petitioner/s : Mr. Rakesh Kumar

For the Respondent/s : Mr. Indrajeet Bhushan, A.C. to G.P.12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

7 30-11-2015

Heard Mr. Pravin Kumar learned counsel for petitioner in

C.W.J.C.No.78 of 2013, Mr. Shanti Pratap learned counsel for petitioner in C.W.J.C.No.623 of 2013 and Mr Rakesh Kumar learned counsel for the petitioner in C.W.J.C.No.1593 of 2013 and Mr. Indrajit Bhushan A.C. to G.P.12 for the State in all the three writ petitions.

The petitioner in C.W.J.C.No.78 of 2013 prays for quashing of the letter dated 3.3.2011 of the Deputy Development Commissioner whereby he has been directed to deposit the price for 329.58 quintals of rice which was allotted to him under the Sampurna Gramin Rozgar Yojana, at the A.P.L. rate within three days.

The petitioner in C.W.J.C.No.623 of 2013 is aggrieved by the proceedings pending in Certificate Case No. 3 of 2012-13 before the Certificate Officer, Nalanda initiated for recovery of the price of the grains allotted to the petitioner under the Sampurna

Gramin Rojgar Yojana to the tune of 90 quintals.

The petitioner in C.W.J.C.No.1593 of 2013 questions the entire proceedings arising from Certificate Case No.131 (Food grains) of 2011-12 which has been initiated for recovery of the amount of Rs. 1,75,360/- stated to be the price of the food grains allotted to the petitioner under the Sampurna Gramin Rojgar Yojana.

Learned counsel for the parties do agree that this very issue was subject matter in a batch of writ petitions arising from **C.W.J.C.No.5638 of 2011 (Raiful Azam & Ors. Vs. State of Bihar & Ors.)** and analogous cases and the Bench vide judgment and order dated 21.9.2015 has disposed of the writ petitions while constituting a three member Enquiry Commission to be headed by Hon'ble Mr. Justice Uday Sinha (since retired), Mr. Sanjay Singh, I.A.S. (retired) and Mr. Arun Kumar Singh, an officer of the Indian Audit and Accounts Service for enquiry into the matter and to give their opinion on various facets of the matter which stands recorded in paragraphs 89 of the judgment.

For the sake of convenience this Court would do no better but to reproduce paragraphs 87, 88, 89 and the operative portion of the said judgment which directions of the Bench would cover the case of the petitioners as well and runs as follows:-

“87. Thus, in order to go to the root of the matter, this Court as agreed between the parties would constitute a Three Men Enquiry Commission headed by the Hon’ble Justice Uday Sinha, a retired judge of this Court, who shall be assisted by two members, namely, Mr. Sanjay Singh, a retired I.A.S. Officer and Mr. Arun Kumar Singh, an officer of Indian Audit and Accounts Service.

88. The aforesaid Enquiry Commission shall look into all the various facets of the supply and distribution of the rice, in question, under S.G.R.Y. through the P.D.S. dealers including the writ petitioners with a view to primarily fix the responsibility on the P.D.S. dealers vis-à-vis government officials in the matter of recovery of the price of rice which could not be distributed under the S.G.R.Y. Scheme and remained with the P.D.S. dealers, quantified by the C.A.G. to the tune of Rs. 321 crore and by the Government of Bihar to the tune of Rs. 215 crore.

89. The Enquiry Commission for this purpose shall also go into the following aspects:-

(i) The quantum of actual loss sustained to the government, in S.G.R.Y.

(ii) The terms and conditions of allotment of rice to P.D.S. dealers under S.G.R.Y. for its distribution to the beneficiaries.

(iii) The manner of allotment of rice to the PDS dealers.

(iv) The payment of transportation/handling/storage charges to PDS dealers.

(v) Price of rice on which recovery has to be made.

(vi) Whether 5994 PDS dealers alone will be responsible for recovery of the aforesaid loss or even the officials entrusted with the task of regulating and monitoring the SGRY scheme including 48 Divisional Commissioners, 204 Collectors, 202 Deputy Development Commissioners, 412 Sub Divisional Officer apart from 2640 Block Development Officers as well as concerned person of Zila Parishad/ Panchayat Samiti/Gram Panchayat including Panchayat Secretary and Mukhia.

(vii) The Enquiry Commission in fact will also have to fix the quantum of amount of recovery to be made from the PDS dealers and/or officials so that not only 5994 PDS dealers being subjected to at least 689 criminal cases and 4985 certificate proceedings alone are not made liable in isolation unless the Enquiry Commission comes to a

conclusion that the Government officials had discharged their duty religiously in the matter of monitoring and supervising SGRY scheme all over the State.

(viii) The Enquiry Commission may also go into any other related aspect for ensuring recovery of the total loss of revenue caused to the state exchequer in the execution and implementation of the S.G.R.Y. scheme all over Bihar in the period 2002 to 2006.

(ix) The Enquiry Commission shall also be free to make any interim as also final recommendation for recovery of entire loss of government revenue under S.G.R.Y. scheme.

90. The Enquiry Commission shall hold its sitting in the building situated in House No. 42, Harding Road, Patna or any other government building to be notified by the Secretary, Rural Development Department on or before 31.10.2015.

91. The State Government shall also provide all the facilities including a Secretariat with its Secretary, namely, Sri Sanjay Kumar Singh, the Deputy Secretary in the Department of Food and Civil Supplies.

92. The Chairman of the Enquiry Commission shall be provided with all the facilities in terms of salary and perks that are made available to the sitting judge of a High Court minus amount of his monthly pension.

93. The Chairman of the Enquiry Commission shall be free to utilize services of a stenographer of his own choice who shall be paid his monthly remuneration by the State Government.

94. Similarly, two members, being the retired government officials shall also be provided with salary and perks that is made available to the officer in the rank on the post from which they have retired minus the amount of their monthly pension.

95. The Three Men Enquiry Commission shall start functioning from 2nd November, 2015 and after deciding the manner of its functioning, it shall also proceed to conduct hearing district-wise by issuing a notice in the newspaper containing the name of the P.D.S. dealers of that district as also the officials who are found to be posted on different posts right from the Divisional Commissioner to the Block Development Commissioner/ Panchayat Secretary of that district. It is in this way that for each of the district, the Three Men Enquiry Commission shall judge the individual

responsibility of the P.D.S. dealers and/or government officials or both and on the basis of the evidence to be adduced by them.

96. It will be always open for the P.D.S. dealers including the writ petitioners as also the concerned government officials to file their separate applications before the Enquiry Commission explaining their cases as also adduced evidence before the Enquiry Commission on or before 30.11.2015 or by any further extended period under the order of the Enquiry Commission.

97. The Enquiry Commission in course of district-wise hearing shall afford an opportunity to both the P.D.S. dealers as well as officials of the State Government either in person or through authorized counsel.

98. The Enquiry Commission irrespective of filing of such individual application by the P.D.S. dealers shall process to conduct hearing on the photocopy of the complete records of these five writ applications which shall be made available to the Enquiry Commission by the Secretary of Rural Development Department.

99. The Enquiry Commission shall be assisted by Mr. Lalit Kishore, P.A.A.G. and Mr. Sidharth Prasad, AC to PAAG on behalf of the State Government who have appeared before this Court in course of hearing of the batch of the writ petitions.

100. The Secretary of the Rural Development Department and for that purpose any other authority of the State Government if required to produce any record or evidence before the Enquiry Commission shall be bound to produce those records for smooth functioning of the Enquiry Commission.

101. This Court hopes and believes that the proceeding before the Enquiry Commission shall be conducted on day to day basis and concluded within a period of six months commencing from 2.11.2015 in course of which the Enquiry Commission shall be at liberty to also dispose of the matter district-wise fixing the liability of the P.D.S. dealers and/or the concerned government officer or representative of local authority i.e. Zila Parishad or Panchayat Samiti or Panchayat including Chairman, Zila Parishad Pramukh of Panchayat Samiti or Mukhia of Gram Panchayat.

102. As noted above, under the different orders of the authorities as well as interim orders passed by this Court,

certain amount of payment has already been paid by the petitioners P.D.S. dealers for staying of the further proceedings of pending certificate cases.

103. Keeping all these aspects into consideration and that the exact liability of the P.D.S. dealers is yet to be determined, this Court, keeping in view that as of now only Rs. 1,13,12,67,834/- is sought to be recovered from PDS dealers as against quantified loss of Rs. 215.89 crores calculated by the State Government (see 8th supplementary counter affidavit and Para-64 of this judgment) and almost only one third amount of loss of Rs.321 crores quantified by CAG as of now has been passed on PDS dealers, would direct that such of the P.D.S. dealers who would deposit 50% of the total amount in the pending 4985 certificate proceeding and/or 689 criminal cases will have the protection of stay of their certificate /criminal proceeding till the final adjudication made by the Enquiry Commission and consequential revision of the amount of certificate dues, if any.

104. In order to enable the P.D.S. dealers including the petitioners to get stay of the certificate proceeding, the amount of deposit of 50% of the certificate amount can be paid in three equal monthly installments.

105. Upon receipt of the final report of the Enquiry Commission or part thereof being district-wise, the amount involved in the certificate proceeding if it is varied in the case of the petitioners and/or other P.D.S. dealers, the same shall be accordingly reduced or enhanced.

106. It is however made clear that if any P.D.S. dealers would be found to have paid any amount in excess to the liability of amount fixed by the Enquiry Commission, the same shall be refunded to the P.D.S. dealers within a period of three months from the date of report of the Enquiry Commission but, on the other hand, if it is found that further amount beyond 50% is payable the same shall be deposited by the PDS dealers failing which the same shall be recovered through pending and/or fresh certificate proceedings.

107. If the Enquiry Commission also finds such amount to be recovered from the concerned Government officials and they fail to deposit within three months, it will be open for the Government to recover the same from their payable salary/retirement dues of those officials as per the provisions made in the Bihar Government Servant

(Classification, Control & Appeal) Rules and/or Bihar Pension Rules.

108. With the aforementioned observation and direction, these applications along with other batch of cases listed today, 141 in number, are disposed of.”

Since the directions issued by the Bench in the case of **Raiful Azam** (supra) would cover the case of all the dealers who face charges of retention of the foodgrains received under the Sampurna Gramin Rojgar Yojana hence the directions so passed by the Bench in the case of **Raiful Azam** (supra) would cover the cases of the present petitioners as well and these writ petitions stands disposed of in terms of the order passed by this Court in the case of **Raiful Azam** (supra) and the directions contained therein would govern the present set of cases as well.

(Jyoti Saran, J)

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