IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5323 of 2016

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Smt. Meena Devi Wife of Maheshwari Prasad Yadav resident of village - Sihe, P.S. & District - Supaul, Proprietor of Bakaur PACS Rice Mill

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna
2. The District Magistrate, Supaul
3. The Certificate Officer, Supaul
4. The Managing Director, Bihar State Food & Civil Supplies Corporation, Patna
5. The District Manager, Bihar State Food & Civil Supplies Corporation, Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Verma, Sr. Advocate Mr. Prashant Sinha, Advocate
For the State	:	Mr. Birju Prasad, GP-13 Mr. Ashok Kumar, AC to GP-13
For the BSPC	:	Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 29-08-2016

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner has approached this Court for quashing the order dated 28.12.2015 passed by the Certificate Officer, Supaul in Certificate Case No. 54 of 2014-15 by which the objection filed by the petitioner has been rejected and for further consequential orders and also for staying the further proceedings of the Certificate Case.

Learned counsel for the Bihar State Food and Civil

Supplies Corporation raises a preliminary objection that the impugned order is subject to statutory appeal under the provisions of the Bihar and Orissa Public Demand Recovery Act and thus, the writ application is not maintainable.

Learned counsel for the petitioner, on the other hand, submits that the petitioner is not a private Rice Mill owner rather it is a PACS which is running the Rice Mill and thus public interest demands that the respondents should act in a fair and just manner towards such a Primary Agriculture Co-operative Society (PACS) . It is submitted that the petitioner had already paid approximately Rs. 22 lacs with regard to the paddy lifted for supply of custom milled rice (CMR) and carrying the rice to the godown of the State Food Corporation which has been done on the trucks of the petitioner and for which a huge amount of milling charge and transportation bill is also pending to be paid by the respondents.

It is further submitted that the respondents are raising bills of more than Rs. 50 lacs, including cost of transportation and milling which has been done by the petitioner which, on account of the respondents' action, have put the petitioner in a very sorry state of affairs and at least they should be directed to recover the amount only after adjusting the transportation bills raised by the petitioner as also the charges for milling the rice.

Learned counsel for the petitioner further submits that on account of the pending bills, the financial situation of the petitioner PACS has deteriorated as it had taken huge amount of loan for running the Mill and interest is also being paid for the same.

Learned counsel for the respondent-Corporation, on the other hand, submits that the Corporation itself has to take loan for procurement of the paddy on which it is paying a heavy amount as interest and thus while the Corporation would be willing to adjust the amount with regard to transportation and milling charges but the petitioner must be held liable to pay the interest at the rate which is chargeable under the Certificate Proceedings, i.e., at the rate of 12% on the amounts that are due.

By filing an interlocutory application, being I.A. No. 6974 of 2016, the petitioner has further sought quashing of the order dated 15.2.2016 issued by the District Magistrate, Supaul under which the Rice Mill of the petitioner has been restrained from work of procurement on account of its being in default and for consequential directions.

It is submitted by learned counsel for the petitioner that if the Rice Mill of the petitioner is not in operation then how it would be possible for the petitioner to pay the amount due which depends upon the profits that may be generated from the operation of the Rice Mill.

On a consideration of the facts and circumstances and the submissions of learned counsels for the parties, the writ application is disposed of with a direction to the respondents to raise a fresh demand upon the petitioner after excluding therefrom the transportation charges incurred by the petitioner as also the milling charges for the rice and serve the said demand notice upon the petitioner.

Let the said demand be raised within a period of four weeks from today for which the petitioner shall co-operate with the respondent-Corporation in arriving at the same and supply whatever documents including challan, etc. with respect to transportation fee as may be required, if not already supplied. Thereafter, whatever amount is found due and payable by the petitioner, shall be repaid by the petitioner in six equal instalments starting from the period of two weeks from the raising of the fresh demand after making the necessary adjustment along with interest at the rate of 12% until the payment of the amount.

In the meantime the certificate proceedings in Certificate Case No. 54/2014-15 shall remain in abeyance. Upon failure of the petitioner to deposit any instalment, the said certificate proceeding shall stand revived.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.10.2016
Transmission Date	