IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.341 of 2012

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1. Md.Sanaullah Ahsan Md. Abbas Al Ahsan Opposite Katra School Mewa Sah Lane, P.S. Sultanganj, Sultanganj, Patna

.... Petitioner/s

Versus

1. The Bihar State Food & Civil Supplies Corporation, Sone Bhawan, Birchand Patel Marg, Patna
2. The Managing Director, Bihar State Food & Civil Supplies Corporation, Sone Bhawan, Birchand Patel Marg, Patna
3. The Chief of Administration, Bihar State Food & Civil Supplies Corporation, Sone Bhawan, Birchand Patel Marg, Patna
4. The Chief of Claims, Bihar State Food & Civil Supplies Corporation, Sone Bhawan, Birchand Patel Marg, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Prasad, Sr. Adv.
Mr. Kamala Kant Tiwari, Adv.

For the Respondent-Corporation : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-08-2016

Heard Mr. Uma Shankar Prasad, learned Senior Counsel for the petitioner and Mr. Shailendra Kumar Singh learned counsel for the Bihar State Food and Civil Supplies Corporation.

The petitioner is aggrieved by the order bearing Memo No.169 dated 6.1.2005 passed by the respondent Chief of Administration, Bihar State Food and Civil Supplies Corporation (hereinafter referred to as the 'Corporation') whereby the petitioner has been subjected to interest at the rate of 18% on the alleged loss suffered by the Corporation on the storage of foodgrains. The order of the Chief of Administration is affirmed on appeal by the Chief of Claims who vide order bearing

No.3064 dated 6.4.2009 has confirmed the order.

The facts briefly stated is that the petitioner who at the relevant time was holding the post of Assistant Manager for Patna and Samastipur, was held guilty for causing wastage of stored foodgrains resulting in financial loss to the Corporation quantified at Rs. 4, 59,066.61 as detailed in paragraph 14 of the counter affidavit. Recovery was made of the loss so quantified to the tune of Rs. 5, 30,989/- as is again manifest from paragraph 15 of the counter affidavit and which further admits that an excess recovery of Rs. 71,922.39 was made from the petitioner. Perhaps, the Corporation was not in a mood to return this amount recovered from the petitioner and thus the two orders are passed whereby the petitioner has now been saddled with interest on the alleged loss stated to have been caused by the petitioner.

Mr. Prasad learned Senior Counsel for the petitioner has referred to certain orders passed by the Jharkhand High Court on identical issue being raised and which has also been affirmed by the Supreme Court. Learned counsel with reference to the judgments submits that it has been held that when a person is charged with having caused a loss, the charge by itself conceives a quantification in consideration of the fault in the totality of the circumstances. He submits that a recovery of alleged financial loss from any person, is a penal proceeding and would presume to take into consideration the loss quantified by the Corporation. It is argued that once a decision was taken by the

Corporation to recover the loss from the petitioner and an order was passed to that effect and even recovery effected, the Corporation was acting wholly arbitrarily to now proceed to recover the interest on the said alleged loss from the petitioner.

I have heard learned counsel for the parties and perused the records. The opinion of the Jharkhand High Court is placed on record at Annexure-8 to the rejoinder and which opinion stands confirmed by the Supreme Court when the Special Leave Petition of the Corporation was dismissed. In my opinion this undisputed fact situation itself is sufficient to allow the writ petition. It is rather surprising that even when Annexure-2 which is put to challenge before this Court, very clearly admits that there is no allegation of misappropriation or defalcation against the petitioner and that the loss quantified has also been recovered but yet the board of the Corporation proceeds to further order for recovery of interest on the alleged financial loss even when the loss is already recovered and the reasons are missing. The decision is arbitrary and is a clear afterthought by the Corporation to make unjust gains on a recovered amount. Even otherwise where the Corporation has proceeded to recover a loss caused to them by the alleged acts of the petitioner, its a self contained order incapable of being supplemented by any other penal order. The word financial loss is purposive in character and is a cumulative expression reflecting all elements relevant for such quantification.

For the reasons so discussed, the order dated 6.1.2005 impugned at Annexure-2 as affirmed in the order bearing Memo No.3064 passed by the Chief of Claims vide order dated 6.4.2009 placed at Annexure-4 cannot be upheld and are accordingly set aside. Since apparently, the corporation has recovered an excess amount of Rs. 71922.39 from the petitioner, the said amount should be refunded to him positively within three months from the date of receipt/production of a copy of this order failing which it would accompany an interest at rate of 6% per annum calculated from the date of recovery until the date of payment.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

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