IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1576 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 13746 of 2013

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1. The Bihar State Food and Civil Supplies Corporation through its Managing Director, Sone Bhawan, 5th Floor, Birchand Patel Path, Patna.
2. The District Manager, State Food Corporation Kaimur at Bhabhua.

.... Respondents- Appellants

Versus

1. Sone Valley Rice Mill at and P.O. Sahuka Ramgarh District Kaimur (Bhabhua) through its Proprietor Sudhakar Singh son of Sri Jagdamba Singh At & P.O. Sahuka, P.S. Ramgarh, District Kaimur (Bhabhua).

… … Writ Petitioner- Respondent

2. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
3. The Certificate Officer cum Senior Deputy Collector, Kaimur at Bhabua.
4. The Circle Officer, Ramgarh, District Kaimur at Bhabua.

.... Respondents- Respondents

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Appearance :

For the Appellants	:	Mr. Anjani Kumar, Senior Advocate Mr. Shailendra Kr Singh, Advocate
For the Respondent No.1- Rice Millers	:	Mr. Y. V. Giri, Senior Advocate Mr. Jitendra Singh, Senior Advocate Mr. Sumit Kumar Singh, Advocate Mr. K. M. Mishra, Advocate Mr. Shashi Bhushan Prasad, Advocate
For the Respondents–State	:	Mr. M. K. Singh, A.C. to S.C.-6
For the Food Corporation of India	:	Mr. Prabhakar Tekriwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-05-2016

This order shall dispose of 40 analogous cases arising out of an order passed by the learned Single Judge on 22nd July, 2014 setting aside the recovery certificate issued by the Certificate Officer.

2. Since the issues raised are identical, for brevity, the facts are taken from CWJC No.13746 of 2013 giving rise to L.P.A. No.1576 of 2014.

3. The writ petitioner-respondent no.1 herein (for short, hereinafter referred to as 'the Miller') entered into an agreement with the appellant Bihar State Food and Civil Supplies Corporation Limited (for short, hereinafter referred to as 'the appellant') on 22.12.2011 regarding lifting of paddy and delivery of rice after custom milling of paddy. Since the entire claim is based upon interpretation of the agreement, the same is extracted in its entirety after correction of spelling mistakes:

> "Execution of bond framed under terms and conditions with the District Manager, Bihar State Food & Civil supplies Corporation Ltd. District Office, Bhabua regarding lifting of Paddy and delivering of advance Rice against paddy lying in the godowns/procurement Centres under District Office of Bihar State Food & Civil Supplies Corporation Ltd. Bhabua under custom milling of paddy.
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> I, the proprietor of M/s Sone Valley Rice Mill declared that I am willing to mill, Bihar State Food & Civil Supplies Corporation Ltd. Paddy lying at the Ramgarh centre under, Bihar State Food & Civil Supplies Corporation Ltd. District Office Bhabua on delivery of Rice RBC/RRC in advance as per Govt. of India specification and as per terms and conditions of Bihar State Food & Civil Supplies Corporation Ltd. in vogue.
>
> 1. M/s Sone Valley Rice Mill Registration No. 100311100565 dated 05/06/2009 valid upto ………… issued by Directors of Industry, Govt. of Bihar, (VAT No. 10181599084) will deliver advance rice raw/par boiled confirming to Govt. of India uniform specification for KMS 2011-12 in 50 Kg. net packing.
>
> 2. After delivery of advance rice proportionate paddy will be issued

to the miller by Bihar State Food & Civil Supplies Corporation Ltd. Bhabua.

3. Rice will be accepted in the same Gunny Bags in which the paddy is delivered by the corporation. For the First consignment/ lot, rice will be delivered by the miller in new SBT gunnies. The excess gunny will be paid by the miller or deducted from the bills submitted by the miller.

4. The miller has already deposited Rs. 50,000/- as security money through DD No. 368252 dt. 21.12.2011 Rs. 50,000/- in favour of District Manager Bihar State Food & Civil Supplies Corporation Ltd. Bhabua.

5. Out turn ratio for par boiled rice is 68% and for raw rice in 67% on “As is where is basis” and by product, broken etc. obtained from milling shall be property of miller.

6. Rs. 25/- per quintal of paddy milling charge will be paid for par boiled rice and Rs. 15/- per quintal milling charge will be paid for raw to the miller after getting the proper bill from the miller.

7. Rice shall be bagged in standard weight of 50 Kg. and all bags are to be double machine stitched in green thread and bags should be duly stenciled with green colour showing name of the miller and station, crop year, net weight commodity, variety and lot no.

8. Price of Excess Gunny bags (in which paddy supply to miller) will be deducted by the Corporation at the rate of 60% of new gunny bags price.

9. This miller will supply rice to be tagged depot of Food Corporation of India in advance within 7 (seven) days on getting release order from Bihar State Food & Civil Supplies Corporation of receipt of rice at F.C.I. and proportionate paddy will be actually released by Bihar State Food & Civil Supplies Corporation Ltd. Bhabua to the miller from different procurement Center.

10. Transportation charge @ 17 paise per quintal per kilometer for distance upto 100 Kms excluding 8 K.M. is admissible for milling of paddy. Transportation charges in respect of delivery of rice will be restricted to the nearest F.C.I. rice receipt centre.

11. In case of any deviation from above agree to terms and conditions any default on the part of the miller, security money deposited

by the miller will be forfeited by the corporation and legal action against the miller shall be taken.

12. The miller also agreed to abide by the instruction issued from time to time by the Bihar State Food & Civil Supplies Corporation/relating to miller of procured paddy.”

4. In terms of Clause 12 of the agreement, the stand of the appellant is that vide communication dated 07th December, 2011 issued by the Food and Consumer Protection Department, Government of Bihar, all the Commissioners and the District Collectors were informed that the procurement of paddy is expected to be 30 lakhs Metric Ton on the minimum support price, therefore, it should be ensured that paddy is purchased from the farmers and not from the middlemen and agents. It is also communicated that for the purpose of purchase of paddy, the State Food Corporation (for short, ‘SFC’), the appellant, has been appointed as nodal agency and that the Primary Agricultural Credit Societies is to primarily purchase the paddy from the farmers. The Circular also deals with the milling process. One of the conditions was that the officers of the appellant would remain available to supervise the proper milling process at each Rice Mill and they will ensure that maximum milling capacity is being used and the excess paddy more than the storage capacity is not being sent. It would be the responsibility of the officers that rice should be sent to godown of the Food Corporation of India (for short, ‘FCI’) after custom milling.

5. On the basis of the said Circular, it is argued by the

appellant that the appellant is only an agency of the State Government to facilitate the purchase of paddy, its milling by the Millers and then delivery of rice to the FCI. As per the appellant, the Miller failed to deliver 68% par boiled rice and 67% raw rice to the FCI after milling of the paddy, therefore, the appellant initiated recovery proceedings under Bihar and Orissa Public Demands Recovery Act, 1914 (for short, hereinafter referred to as 'the Act'). A demand notice of Rs.4,66,68,330/- was served upon the Miller.

6. The Miller has pleaded that initially, there was a policy of the Government that it would purchase 60% of the rice prepared by the Rice Miller on the fixed rate by the Government which was known as 'levy collection', but the Government changed the policy and now it has decided to purchase the paddy itself and will engage the Rice Mill for milling of the paddy on fixed rate. The relevant averments made in paragraphs 6 and 8 of the writ application read as under:

> 6. That while all the formalities was processed, the Government have changed its policy and decided to purchase the paddy itself and also formulated a policy that it will engage the rice mill for milling of the paddy on fixed rate. For that purpose the Government had formulated a scheme and to implement the same had also entered into agreement with the petitioner. However, even that agreement was subsequently changed with the consent of the parties.
>
> 8. That it is also significant to mention here that to purchase the paddy, the State Government had opened many centers for purchase of paddy and also engaged to the PACS for such purpose. The State Government after purchase of the paddy started supply of paddy to the petitioner mill from 20.01.2012 to 03.05.2012 and the total quantity

supplied to the petitioner mill was 37,401 quintal paddy."

7. The assertion of the Miller is that it milled the rice as per the agreement, but the same was not lifted by the respondent authorities and remained in the godown of the Miller, therefore, the default is not of the millers.

8. The stand of the appellant in counter affidavit is that in pursuance of the directions of the learned Single Judge of this Court in CWJC No.3674 of 2013 and other analogous cases, the writ petitioners approached the concerned District Collector for resolving the issue in respect of liability incurred in respect of deficiency/non supply of Custom Milled Rice (for short, 'CMR'). It is thereafter, the Collector has passed an order on 13th September, 2013. The learned Collector has found that the Millers have tried to supply rice of lesser quality than the specification prescribed by the FCI which was returned by the FCI. Therefore, the government has ordered to recover the value of paddy including transportation cost. It was ordered that the sole attempt of the Miller is not to pay the Government dues by raising technical plea and that the Miller should not be allowed to misappropriate the public money of this poor State. Consequently, the Collector gave direction to the Millers to pay 40% of the amount within fifteen days and remaining 60% in two equal installments with the gap of one month. The recovery proceedings against those millers was ordered to remain suspended who

deposit 40% of the amount within the stipulated period.

9. The appellant filed an application for review of the order dated 13.09.2013 passed by the District Collector on the ground that the certain letters issued by the Government of India and the Government of Bihar could not be produced before the Court of the District Collector. Thereafter, after hearing learned counsel for the parties and taking into consideration the review application and the documents in support thereof, the learned Collector, allowed the application reviewing the order dated 13.09.2013 and it was held that the Miller has embezzled 24249.08 quintals of Custom Milled Rice which according to rate fixed by the FCI at the rate of Rs.1903.13 per quintal comes to Rs.4,61,49,151 and that certificate case filed for recovery of the said amount under clause 8(A) of the Schedule I appended to the Act is valid and maintainable.

10. In the counter affidavit filed by the appellant it was asserted that according to the letter of Food and Consumer Protection Department, Government of Bihar dated 07.12.2011 and the Food and Public Distribution Department, Government of India dated 11.11.2011, the paddy and rice is the property of the Government of Bihar, so the certificates proceedings are maintainable under Clause 8A of the Schedule-I of the Act. The appellant is said to be the nodal agency appointed by the State of Bihar vide letter dated 07.12.2011. It was also

pointed out that on 24th January, 2012, instructions were issued that paddy will be issued to the miller first in the interest of farmers so that procurement process does not get affected. The Millers became ready to accept the paddy from the procurement centre without any protest or representation. It was pointed out that Miller has accepted 37401 quintals of paddy and that 67% of CMR comes to 25059.08 quintals to be delivered to the FCI, but the Miller has deposited only 810 quintals of Custom Milled Rice (CMR) in due time, therefore, the Miller has failed to deposit 24249.08 quintals of CMR, thus, violated the agreement.

11. The learned Single Judge after having considered the respective contentions of the parties set aside the certificate proceedings primarily on the ground that there is no stipulation in the agreement that the amount payable by the Rice Miller in the event of not returning the CMR could be realized by taking recourse to the certificate proceedings. The Bench noticed that in the agreement executed for the subsequent year 2012-13, there is specific provision for recovery of such amount from the concerned Millers by taking recourse to certificate proceedings, but there is no provision for recovery of the amount by taking recourse to certificate proceedings under the Act in respect of agreement pertaining to financial year 2011-12. The Court relied upon a learned Single Judge judgment of this Court reported as M/s Murlidhar Sohanlal Versus State of Bihar and others, 1998(3) PLJR 526.

12. Learned counsel for the appellant vehemently argued that the amount, subject matter of recovery proceedings, is a demand for failure to mill paddy to return requisite quantity of rice, therefore, the Millers have failed to deliver the rice which is for Public Distribution System. It is contended that the paddy was procured by different organizations on behalf of the State. The appellant was to ensure milling of paddy and to ensure that the rice is delivered to the FCI. The nature of transaction which led to agreement between the appellant and the Rice Miller shows that the money for purchase of paddy has flown from the Government of Bihar. Therefore, non milling of paddy is a public demand. It is further argued that merely because in the agreement there is no specific reference of initiation of proceedings under the Act, it will not mean that the demand raised by the appellant is not demand of a public dues. Whether it is a public demand or not is required to be examined after reading the entire agreement and the admitted background for execution of such an agreement. The nature of transaction entered into between the parties is keeping in view the well known fact that the paddy is purchased by the State to ensure equitable distribution of the resultant rice through the Pubic Distribution System. Therefore, mere fact that there was no reference to the Act in the agreement will not make a demand raised by the appellant as not public dues.

13. Learned counsel for the appellant relies upon Full Bench judgment of this Court reported as Ram Chandra Singh *Versus* The State of Bihar, 1987 PLJR 47, wherein it has been held that the phrase 'public demands' is intrinsically one of the widest amplitude. Not only in its ordinary common parlance and dictionary meaning, a 'public demand' is a wide ranging concept. This has been further and deliberately expanded by the legislature to include within its sweep any arrear or any money which may come to be mentioned or be even referred to in Schedule I and include also any interest which may be chargeable thereon. The relevant extract read as under:

> "9. Now, the articles in Schedule I have to be viewed in the context of the fact that the phrase public demands is intrinsically one of the widest amplitude. It is against this background that one has to construe the aforequoted definition given in Section 3 (6) of the Act. This definition is by direct reference to Schedule I. The said schedule then has its heading as "Public Demands" and at the same time makes express reference to Section 3 (6). It is thus manifest that Section 3 (6)) and Schedule I are one integral whole which has to be construed as part and parcel of each other. But what perhaps calls for particular notice in this context is that under the Act the definition and concept of public demand becomes one of the widest amplitude. Even in its ordinary common parlance and dictionary meaning, a public demand is a wide ranging concept. However, this has been further and deliberately expended by the legislature to include within its sweep any arrear or any money which may come to be mentioned or be even referred to in Schedule I and include also any interest which may be chargeable thereon. Yet again it deserves highlighting that Section 3 (6) of the Act is not merely an inclusive definition but expressly says that the public demand means whatever may be specified in Schedule

I. In the result even the broad weep of public demand is further extended by the statute herein and, in my view, designedly so. In logical essence, this leads to the result that for the purposes of this Act, a public demand includes all arrears of revenue or any money due or demand payable which finds place in Schedule I even by reference. It seems patent that the legislature has deliberately not attempted to define public demand or limiting the same. All the arrears of revenue, money or payable demands which the legislature choose to incorporate in Schedule I become by virtue of the definition under Section 3 (6) a public demand of which recovery can be made under the Act. The scheme of the definition under Section 3 (6) of the Act and the frame of the articles of the schedule complementary thereto thus become a key to the interpretation of these provisions."

14. A Division Bench of this Court in a judgment reported as Sawar Mal Choudhary & Ors. Vs. The State Bank of India & Ors, 1986 PLJR 660 has held that the money dues to the State Bank of India and the National Banks are public demand when widely construed. The Court held as follows:-

"25. The somewhat involved contention of Mr. G. C. Bharuka appears to me as suffering from the fallacy of begging the very question that is at issue. It assumes or proceeds on the premise that recoveries of moneys due to the State Bank of India or the nationalized banks are *stricto sensu* banking exclusively and cannot be a public demand. Now, admittedly, the State Bank of India and the nationalized banks are virtually limbs and instrumentality of the State itself. One fails to see how monies due to such like wholly State-owned bodies are in a way not owed to the State itself or in any case cannot assume the character at least of a public demand when widely construed. This aspect has been dealt with in some detail in the opening part of this judgment in paragraphs 9 to 11 and it would be wasteful to tread the same ground again. It must, therefore, be held that recoveries of monies due to the

> State Bank of India or the State-owned banks would come well within the ambit of public demand and are not exclusively and entirely banking *stricto sensu*."

15. Learned counsel for the appellants also refers to a Single Bench judgment reported as Binod Kumar Yadav *Versus* State of Bihar & Ors., 2003(1) PLJR 215, wherein, a person taking advance from the State Government was found to be covered by the definition 'public demand' and liable for recovery under the Act.

16. On the other hand, learned counsel for the Miller refers to a Single Bench judgment of this Court in M/s Murlidhar Sohanlal case (supra) wherein, it has been held that in the absence of any agreement as required under law, the dues of the Corporation could not be treated as 'public demand' within the meaning of the Act.

17. The learned counsel for the Miller further argued that Clause 15 (iii) of Schedule I is applicable wherein money is payable to Government Company, whereas what is sought to be recovered is the price of the paddy which cannot be treated to be a money recoverable. Reference is made to dictionary meaning of word, 'money'. Still further, it is argued that money can be recovered only if there is written agreement that the money be recovered as public demand. Reference is made to the judgments of this Court reported as Chandrika Prasad Versus State of Bihar (1969) BLJR 906 (DB); Prabhunath Singh Versus State of Bihar (1980) BBCJ 344 (DB); and Certificate Officer of Siwan,

Central Co-operative Bank Versus State of Bihar, (2006) 2 PLJR 176 (DB) approving the Single Bench judgment in Murlidhar Sohan Lal's case (supra).

18. It is also contended that the certificate proceedings are summary proceedings. In the present case, there is serious dispute about the rights and liabilities of the parties. The demand has been raised against the Miller not only to pay the price of the paddy but also along with profit, therefore, it is recovery of damages and not for recovery of any money. Reliance is placed upon judgments reported as Budha Singh Versus State of Bihar, AIR 1981 Pat 149 (DB); Sri Rabindra Nath Singh Vs. The State of Bihar & Ors., 2007 (1) PLJR 192; and Arun Kr. Chourasia Versus The State of Bihar & Ors., 2008 (3) PLJR 22.

19. It is also argued that the appellant has not paid the Court fee as per Section 5(2) of the Act; therefore, the recovery proceedings are vitiated. Reliance is placed upon the judgment of the Division Bench of this Court reported as Sheela Sinha *Versus* State of Bihar, 1994 (2) PLJR 617.

20. To examine the respective contentions of the parties, certain statutory provisions need to be extracted. The relevant provisions read thus:

> "3(6) "Public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II.

5. Requisition for certificate in other cases-- (1) when any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form :

Provided that in the case of an order framed by a liquidator under the Co-operative Societies Act, 1912, (2 of 1912) the written requisition shall be sent by the Registrar of Co-operative Societies, Bihar and Orissa.

(2) Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with a fee of the amount which would be payable under the Court- fees Act, 1870, (VII of 1870) in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

Note 1- xx xx xxx xx

Note 2- Requisitions made in respect of public demands payable to Government shall not be chargeable with any court-fee (Board's Notification no.4-4169, dated the 15th July, 1970."

Schedule I

8-A. Any outstanding loans and advances payable to State Government or to a Department or Official of the State Government by any body whatsoever.

15. Any money payable to -

(i) State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955); or

(ii) a Bank specified in column (2) of the first schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Act V of 1970); or

(iii) a company or a statutory body, including a registered society carrying on financial transactions, owned by or in which, Government has a majority of shares or which is managed by an authority appointed under any law for the time being in force; or

(iv) the Bihar State Electricity Board

in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as public demand."

21. It may be stated that after filing of requisition for certificate under Section 6, the notice is served upon the certificate debtor in the prescribed manner. Liberty is given to the debtor to deny his liability under Section 9 of the Act. It is thereafter under Section 10; certificate is issued making the certificate debtor as liable for the whole or any part of the amount for which the certificate was signed. Such a certificate is subject to appeal under Section 60 of the Act and revision under Section 62 of the Act. There is also a remedy to the Civil Court under Section 43 of the Act on the grounds as mentioned in Section 44 of the Act.

22. The first question which requires to be examined is a nature of transaction between the appellant and the Miller. The agreement executed is not a detailed agreement, but undisputed facts which are evident from the averments made by the Miller in the writ petition as well are that the State does not purchase paddy itself. It purchases paddy through the appellant or the Primary Agriculture Cooperative Societies and the paddy so procured is given to the millers for milling. The failure to mill the paddy is nothing but failure to

discharge the obligation of the State Government to deposit rice with the FCI for distribution under the Public Distribution System. The appellant is only a facilitator on behalf of the State Government for procuring the paddy, distributing to the millers and ensuring its supply to the FCI. Therefore, one can easily make out that the paddy is of Government of Bihar which is evident from the averments made in the writ petition and also the Circular dated 07.12.2011. Therefore, failure to mill the paddy is non-performance of an obligation by the State.

23. Section 3(6) of the Act defines, 'public demand'. The definition is not exhaustive as it defines to mean what is public demand and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed. Clause 8A of Schedule I of the Act contemplates that any outstanding loans and advances payable to State Government or to a Department or Official of the State Government by anybody whatsoever is a public demand. On the other hand, Clause 15 of Schedule I take into its ambit any money payable to a company or a statutory body in which the government has a majority of shares.

24. The agreement between the parties relates to milling of paddy, the paddy which is supplied to the millers after purchase by the funds provided by the State Government. It is an advance to the miller for giving CMR. May be, the appellant is not the State and department

or official of the State Government, but the nature of transaction is such when the State is acting through the appellant having entrusted the job of procurement of paddy to the appellant. Therefore, the advance delivery of paddy to the miller is on behalf of the State through the agency of the appellant. Thus, it will cover Clause 8A of the Schedule I.

25. The Millers would also be liable alternatively under Clause 15 (iii) of Schedule I. Though paddy is not money, but what is recovered is price of paddy which is money. Since the cost of paddy is determinable, therefore, it is money alone which is sought to be recovered from the Miller and not the paddy. Therefore, keeping in view the intent and purport of the Statute, we have no doubt that such demand is the public demand recoverable under the provisions of the Act.

26. The argument that the agreement should specify that it is a public demand, is not tenable. Whether it is a public demand is an inference on the basis of facts on record. Conversely, if the amount is not a public demand, can anybody confer jurisdiction to say that it will be recovered as public demand? Parties by consent cannot treat it a money payable as a public demand. So, as a necessary consequence, by not stating so, it cannot be said that the amount claimed is not a public demand. Whether the demand is a public demand or not depends upon the facts leading to the agreement and the agreement itself rather than the use of expressions in the agreement. The agreement in the

subsequent years if uses the words, 'public demand' are more of clarificatory nature. Therefore, on the strength of the subsequent agreement, it cannot be said that the demand raised during the financial year 2011-12 is not a demand of public dues.

27. Therefore, we are unable to agree with the view taken by the learned Single Bench in M/s Murlidhar Sohanlal's case (supra). Though the Division Bench in a judgment reported as Certificate Officer of Siwan, Central Co-operative Bank Versus State of Bihar, (2006) 2 PLJR 176 upheld the said judgment, but the issue raised in the said appeal was altogether different. In the said case, an employee of a Co-operative Bank committed defalcation of an amount during the course of the period of his service. The said amount was sought to be recovered under the provisions of Act. It was in these circumstances, it was held that Bank can avail the remedy of certificate proceedings treating it to be a public demand provided the person liable to pay the same has agreed by a written instrument that it shall be recoverable as a public demand. In view of the nature of transaction between the Bank and the employee, it was found that it will not be a public demand, but it will depends upon the facts of each case which will determine as to whether the demand raised is a public dues.

28. In Chandrika Prasad's case (supra) it was found that there was no written agreement as the petitioner agreed to work as

Stockiest of food -grains on payment of commission on the request of the Sub divisional Officer. It was in these circumstances, the Court held that the demand raised is not a public demand.

29. The judgment in Prabhunath Singh's case (supra) referred to by the learned counsel for the Miller, stands overruled by the Full Bench judgment in Ram Chandra Singh's case (supra).

30. In Buddha Singh's case (supra), the recovery was of the loss said to have been suffered by the State. It was to be in the nature of damages and not an ascertained sum of money said to be recoverable in terms of the agreement. The said judgment has no applicability to the facts of the present case.

31. In Rabindra Nath Singh's case (supra), what was sought to be recovered is the amount of the scholarship which the petitioner as a Block Development Officer was required to supervise. The stand of petitioner was that he had transferred the entire amount to the Block Welfare Officer. The allegation was that the petitioner had defalcated the amount and it should be recovered as public demand. The Court found that such amount was not a loan and advance by the Government to the person which the person was required by law to refund or return or repay. Therefore, it was not covered under Entry 8A of Schedule I of the Act.

32. In Arun Kr. Chourasia's case (supra), the learned Single

Judge set aside the recovery proceedings against the petitioner, issued for the reason that he has been wrongly overpaid while executing the work of Gaya Zila Parishad. The issue of overpayment has rightly not been made part of the recovery proceedings. The judgment is clearly distinguishable and has no applicability to the facts of the present case.

33. Coming to Sheela Sinha's case (supra) where for non-payment of Court fee, recovery proceeding was sought to be initiated. As we have mentioned above, it is Government money which is sought to be recovered by invoking the provision of the Act. Note 2, which is Board's Notifications dated 15th July, 1970 is to the effect that requisitions made in respect of public demand payable to Government shall not be chargeable to any court fee. As discussed above, the appellant is an agent of the Government who is entrusted with the task of procurement, milling and delivery to FCI. Therefore, the amount claimed is public demand payable to the Government though through the agency of the present appellant. Thus, it is exempt from the payment of court fee. The judgment as referred to above is not applicable to the present case.

34. In view of the above, we find that the amount claimed by the appellant is a public demand as the paddy was entrusted to the Millers for the custom milling which the Millers have failed to deliver to the FCI as part of the Public Distribution System. The appellant is an

agent of the State who was entrusted with the task of procurement of paddy, its milling and subsequent distribution. Therefore, it is not a demand by a Government Company for its benefit, but the appellant is acting on behalf of the State.

35. Thus, we find that the order passed by the learned Single Judge only for the reason that the agreement does not mention that the amount due can be recovered as public demand is not sufficient to deny the right of recovery of the dues through the process under the Act.

36. Consequently, the present Letters Patent Appeal is allowed. The order passed by the learned Single Judge on 22nd July, 2014 is set aside and the writ application is dismissed. There shall be no order as to costs.

(Hemant Gupta, J.)

Ahsanuddin Amanullah, J. I agree.

(Ahsanuddin Amanullah, J.)

Sunil

AFR/NAFR	
CAV DATE	09.05.2016
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