IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10246 of 2014

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M/s Maa Chinta @ Chintoo Agro Industries, through it's proprietor - Nirmod Kumar son of Shri Amirak Singh Resident of Village - Fatehpur, Tola Ramraichak, P.S. - Fatehpur, District - Gaya.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The District Magistrate, Gaya.
3. Bihar State Food & Civil Supplies Corporation Limited, through its Chairman, Sone Bhawan, Patna.
4. The District Manager, Bihar State Food & Civil Supplies Corporation Ltd., District Office Gaya at Gaya.
5. The District Supply Officer, Gaya.
6. The Enforcement Officer, Feputed on M/s Maa Chintu Agro Industries, Fatehpur, District - Gaya.
7. The Block Development Officer, Fatehpur, District - Gaya.
8. The Block Supply Officer, Fatehpur, Dist. - Gaya.

.... Respondents

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Appearance :

For the Petitioner : Mr. Amarnath Singh,
Mr. Binay Kumar, Advocates

For the State : Mr. Ranjan Kumar, AC to SC14

For the Corporation: Mr. Shailendra Kumar Singh,
Mrs. Nita Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-02-2016

The present writ petition has been filed for quashing the order cum notice dated 06.05.2014 contained in memo No. 731 issued by the District Manager, Bihar State Food & Civil Supplies Corporation, Gaya (for short, “the Corporation”) whereby the petitioner has been ordered to pay the price of custom milled rice @ Rs. 2165.56 per quintal amounting to Rs. 2,00,88,574.80.

2. Learned counsel for the petitioner submits that the

action of the respondents is not sustainable in law inasmuch as the paddy supplied to the petitioner was almost impossible to mill in the ratio of standard fixed by the Food Corporation of India, apart from the fact that the stock of paddy was far in excess of the storing and milling capacity of the rice mill. He also places reliance on the order dated 10.10.2014 passed by a Division Bench of this Court in LPA No. 1391 of 2014 and analogous cases, permitting the rice millers to sell the rice and use the sale proceeds to repay the Corporation subject to arbitral proceedings. It is stated that no doubt the petitioner has since sold the stock of rice for a sum of Rs. 88,00,000/-, but the demand has been made for Rs. 2,00,88,579/- and later by notice dated 24.03.2015, the respondents have directed the petitioner to deposit a sum of Rs. 1,82,70,137/- in default by the petitioner.

3. Learned counsel for the respondent-Corporation, on the other hand, submits that the writ petition itself is not maintainable as the petitioner has straightaway rushed to this Court against the impugned demand notice dated 06.05.2014. The agreement between the parties for the year 2012-13 provides for adequate dispute resolution system in terms of Clause 16 by way of mutual discussion and in case of failure thereof by way of arbitration. The petitioner has not at any point of time even whispered that the demand in question is disputed rather in paragraph 9 of the writ petition it has been

admitted that Stock Issue Orders (S.I.O.) for 30,000 quintals of paddy had been issued by the District Manager, Bihar State Food & Civil Supplies Corporation, Gaya which was supplied to the petitioner. It is submitted that the decision in LPA No. 1391 of 2014 and other analogous cases relied upon by the petitioner had permitted the rice millers to sell the rice for repayment to the Corporation which, in the instant case, had already been done by the petitioner. It is further pointed out that the said LPA has not yet finally been decided and is still pending before this Court. On the other hand, he invites attention to the judgment dated 17.10.2014 in which the Hon'ble Division Bench has approved the view of the learned Single Judge in refusing to entertain the writ petition in view of the existence of the arbitration Clause in the agreement. It is further submitted that if the petitioner is disputing the demand in question though no objection in that regard has been raised before the Corporation, it is open to the petitioner to seek remedy by way of arbitration in terms of Clause 16 of the agreement. It is further submitted that there is no illegality in the action of the respondents also in view of Clause 15 of the agreement by which the petitioner has agreed for recovery of the dues by resort to certificate proceedings.

4. Having regard to the stand of the parties and on careful consideration of the materials available on record, this Court is not

inclined to interfere in the matter in view of the existence of Clause 16 of the agreement between the parties providing for settlement of disputes through mutual discussion and thereafter arbitration. If the petitioner disputes the demand raised, whether whole or in part, it would be at liberty to take steps in accordance with Clause 16 of the agreement. In case the petitioner opts to invoke its right to arbitration, it may also approach the respondent-Corporation for refraining from recovery of the dues. In such an event, the respondent-Corporation shall dispose of the petitioner's request on its own merit and in the light of the observations made in LPA No. 1391 of 2014.

5. The writ petition accordingly stands disposed of.

(Vikash Jain, J)

B.T/-

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