

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5834 of 2014

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M/S Tiwary Modern Rice Mill, Koransaray, proprietor Sanjay Kumar Tiwary S/o Late Shiv Shankar Tiwary, P.O. And P.S. Koransaray, District - Buxar through Sudhanshu Tiwary, S/o Late Rabindra Nath Tiwary, resident of P.S. Koransaray, District - Buxar special power of Attorney holder executed by Sanjay Kumar Tiwary on 1st January 2013

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Food and Consumer Protection Department, Government of Bihar
2. The District Magistrate, Buxar
3. The Sub - Divisional Officer, Dumraon
4. The Bihar State Food & Civil Supplies Corporation Ltd., through its Managing Director, 5th Floor, Sone Bhawan, Patna - 800001
5. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., 5th Floor, Sone Bhawan, Patna - 800001
6. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd., Buxar
7. The Additional Collector - cum - District Certificate Officer, Buxar
8. The District Supply Officer, Buxar
9. The Food Corporation of India through Its Chairman -cum- Managing Director, New Delhi

.... Respondents

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Appearance :

For the Petitioner : Mr. Gautam Kejriwal
Mr. Ranjeet Choubey, Advocates
For the State : Dr. Punam Kumari Singh, AC to GP 4
For the FCI : Mr. Arun Kumar, Advocate
For the BSFC : None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 29-02-2016

The present writ petition has been filed for quashing the notice dated 06.11.2013 including certificate proceeding issued under Section 7 of the Bihar & Orissa Public Demands Recovery Act, 1914 issued by respondent no. 7 in Certificate Case No. 49 of 2013-14 for recovery of an amount of Rs. 4,22,55,069.30 on account of non-supply of CMR in lieu of paddy supplied for milling.

2. Learned counsel for the petitioner makes a short



submission to the effect that its earlier writ petition in CWJC No. 21257 of 2013 was disposed of by order dated 19.11.2013 observing, inter alia, that no coercive could be taken against the petitioner in view of the extended deadline upto 31.12.2013 for deposit of the Custom Milled Rice (CMR). It is further submitted that a notice under Section 7 of the Bihar & Orissa Public Demands Recovery Act, 1914 (for short, the “Act”) dated 06.11.2013 had already been issued prior to disposal of the aforesaid writ petition of which the petitioner was not aware at the relevant time as the same had not been served upon it. This fact was, however, not brought to the notice of the Court by the respondent-Corporation. It is submitted that in any view of the matter, the aforesaid notice under Section 7 of the Act is clearly without jurisdiction in view of the order of this Court in CWJC No. 21257 of 2013.

3. Despite opportunities being granted by orders dated 19.01.2016 and 10.02.2016, no counter affidavit has been filed on behalf of the respondent-Corporation, nor is it even represented today when the matter is called.

4. Learned counsel for the State as well as learned counsel for the FCI are present.

5. The order dated 19.11.2013 passed by this Court in CWJC No. 21257 of 2013 clearly spells out that the deadline for deposit of CMR had been extended upto 31.12.2013. The impugned notice under Section 7 of the Act dated 06.11.2013 is, therefore, clearly

premature and the same could not have been issued before the deadline, still to expire on 31.12.2013. The respondent-State has also not filed its counter affidavit and hence it is not its case that any fresh notice under Section 7 of the Act has been issued after expiry of the deadline.

6. The impugned notice under Section 7 of the Act is, therefore, not only premature but also falls foul of the order of this Court dated 19.11.2013 and cannot be sustained. The same is accordingly hereby quashed. If the certificate proceedings are based on the said notice under Section 7 of the Act dated 06.11.2013, the same consequently cannot also continue and are similarly quashed.

7. The writ petition stands disposed. It is made clear that the respondents are always at liberty to initiate action for recovery of the amount said to be due against the petitioner, if not already done, and if so advised, in accordance with law. It is further made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner.

(Vikash Jain, J)

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