

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19509 of 2011

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Gulshan Kumar Singh S/O Sri Mathura Singh R/O Mohalla- Miscott, P.S.-
Motihari Town, District- East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar Through District Magistrate, Motihari, East Champaran
2. District Development Commissioner, East Champaran, Motihari
3. Sub-Divisional Officer, Sadar Motihari, East Champaran
4. Block Development Officer, Motihari Sadar (Town), East Champaran, Motihari
5. District Certificate Officer, Motihari, East Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Mishra, Adv.

For the Respondent/s : Mr. Rajesh Kr.Verma, SC-27

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-03-2016

Heard learned counsel for the petitioner as well as
learned counsel for the State.

2. The petitioner is aggrieved by the notice dated
05.08.2011 issued by the District Certificate Officer, Motihari
(respondent no. 5) issued under Section 7 of the Bihar & Orissa
Public Demands Recovery Act (for short, "the Act") for
realization of Rs. 47,31,225.81/- on account of shortage of rice
kept in the godown of the Block. The petitioner was the then
Godown In-charge of Motihari Block and has since retired.

3. Learned counsel for the petitioner submits that
despite efforts being made by the petitioner through
correspondences for having the rice remaining in the godown of



the District Manager, Bihar State Food Corporation, Motihari to be shifted to the F.C.I. Godown to prevent damage, no steps in that behalf were taken. Long after the petitioner retired, steps were finally taken for preparing inventory of the rice. An F.I.R. was also filed bearing Motihari Town P.S. Case No. 134/2011 against the petitioner for the offences alleged under Sections 406, 409 I.P.C. in connection with shortage of the foodgrains valued at Rs. 31,56,453/-. Pursuant to a requisition filed by the B.D.O., the Certificate Officer also issued a notice under Section 7 of the Act for recovery of an amount of Rs. 47,31,225/-. It is submitted that resort to certificate proceedings under the Act for recovery of the amount in question in absence of an agreement in that behalf sought to be enforced against the petitioner who has retired, is illegal and unsustainable in law.

4. Learned counsel for the respondents opposes the writ petition, submitting that the petitioner has adequate remedy by way of filing an objection petition under Section 9 of the Act by raising all points for consideration by the Certificate Officer.

5. At the outset, this Court takes note of the judgment dated 21.09.2015 passed by a Co-ordinate Bench of this Court in C.W.J.C. No. 5638 of 2011 (*Raiful Azam & Ors. Vs. State of Bihar & others*) and analogous cases, which has considered various facets of the matter of the loss caused to the

state exchequer by reason of shortage of rice from the godown entrusted to PDS dealers under the Sampoorana Gramin Rojgar Yojana (S.G.R.Y.). It would be apposite to take note of some relevant extracts from the said judgment as follows:-

"50. On perusal of the aforesaid affidavit, it thus became clear to this Court that the Government was more or less holding only the PDS dealers responsible for the loss caused to the government exchequer without taking into account the duty and responsibility of the officials who had issued the food grains to the PDS dealers and whose recovery having been not made, the CAG had quantified the loss to the government exchequer to the tune of Rs. 334 crore approximately. It was in that background that this Court on 18.09.2014 had passed another detailed order, which reads as follows:-

"

Today when the issue has been discussed in presence of the Chief Secretary and the Departmental Secretary now it has been conveyed that the Government has decided to take action also against the concerned Deputy Development Commissioners, Block Development Officers and the Panchayat Secretaries who by their indiscriminate action had allowed the Arwa rice to be given to the P.D.S. dealers without making them accountable in any manner for upkeep/maintenance/return of those stock of Arba rice. It has been also

conveyed to this Court that the recovery price of Arba rice cannot be less than 13.70 per Kg. because that much amount has already been given by the Ministry of Rural Development to the F.C.I. and as such, recovery of the said price alone can fetch to the amount of Rs. 342 crores which is the amount of loss caused to the Government under the Food for Work Scheme and/or SGRY.

.....
(c) If the Government, therefore, is now going to take action also against the DDC/BDO and the Panchayat Secretaries and/or any other erring officials, it should not (sic) be a mere lip service but such erring officials should also be made liable to pay at least half of the amount of loss sustained by the government and the rest half only be recovered from the P.D.S. dealers”.

68. The Enquiry Commission thereafter will be required to examine the issue of recovery of such amount of loss not only from 5994 PDS dealers but also from the erring government officials and/or the concerned person of local authorities namely Zila Parishad, Panchayat Samiti and Panchayat including Panchayat Secretaries and Mukhia of Gram Panchayat who too were associated in the implementation of S.G.R.Y. scheme.

70. By now, the law is well settled that the public officers have to be also held accountable for their acts of omission and commission.

84. In such a situation, constitution of a high level independent Enquiry Commission headed by a retired Hon'ble High Court Judge as already suggested and agreed by both the parties is also found to be absolutely necessary by this Court which can go into all the related aspects arising in respect of recovery of loss of government money in S.G.R.Y. as found in the report of C.A.G.

89. The Enquiry Commission for this purpose shall also go into the following aspects:-

(i) The quantum of actual loss sustained to the government, in S.G.R.Y.

(ii) The terms and conditions of allotment of rice to P.D.S. dealers under S.G.R.Y. for its distribution to the beneficiaries.

(iii) The manner of allotment of rice to the PDS dealers.

(iv) The payment of transportation/handling/storage charges to PDS dealers.

(v) Price of rice on which recovery has to be made.

(vi) Whether 5994 PDS dealers alone will be responsible for recovery of the aforesaid loss or even the officials entrusted with the task of regulating and monitoring the SGRY scheme including 48 Divisional Commissioners, 204 Collectors, 202 Deputy Development Commissioner, 412 Sub Divisional Officer apart from 2640 Block Development Officers as well as concerned person of Zila Parishad/Panchayat Samiti/Gram Panchayat including Panchayat Secretary and Mukhia.

(vii) The Enquiry Commission in fact will also have

to fix the quantum of amount of recovery to be made from the PDS dealers and/or officials so that not only 5994 PDS dealers being subjected to at least 689 criminal cases and 4985 certificate proceedings alone are not made liable in isolation unless the Enquiry Commission comes to a conclusion that the Government officials had discharged their duty religiously in the matter of monitoring and supervising SGRY scheme all over the State.

(viii) The Enquiry Commission may also go into any other related aspect for ensuring recovery of the total loss of revenue caused to the state exchequer in the execution and implementation of the S.G.R.Y. scheme all over Bihar in the period 2002-2006.

(ix) The Enquiry Commission shall also be free to make any interim as also final recommendation for recovery of entire loss of government revenue under S.G.R.Y. scheme."

6. Considering that the entire matter has now been directed to be enquired into by a High Power Committee in which the role of the various Government Officials at different levels is not also ruled out, this Court would refrain from entering into the merits of the petitioner's case in exercise of its extraordinary writ jurisdiction at this stage.

7. The writ petition stands dismissed.

(Vikash Jain, J)

Md. Ibrarul/-

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