

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4838 of 2016

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M/s Maa Santoshi Husking (Rice) Mill, Proprietor Nimai Ghatak, son of Pabitra Ghatak, vill-P.O.Tungidighi, P.S. Karandighi, district Utter Dinajpur, West Bengal.

.... Petitioner/s

Versus

1. The State of Bihar through the principal Secretary Food and Consumer Protection Department, Bihar, Patna
2. The Bihar State Food and Civil Supply Corporation through its Managing Director, Soan Bhavan, Bihar, Patna
3. The District Collector, District Katihar
4. The District Manager Bihar State Food Corporation, District Katihar
5. The Additional Collector cum Certificate Officer.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Mohan Mishra, Adv.

For the Respondent/s : Mr. Pandey S.Sahay, S.C.31

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-06-2016

Heard Mr. Krishna Mohan Mishra, learned counsel for the petitioner, counsel for the State and Mr. Shailendra Kumar Singh learned counsel for the Corporation.

The petitioner has questioned the entire proceedings arising from Certificate Case No. 2 of 2014-15 pending before the District Certificate Officer, Katihar under the provisions of the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as 'the Act') and the rules framed thereunder. The said proceedings have been initiated on the requisition filed by the Corporation, a copy of which is impugned at Annexure-1 to the writ petition and is related to non payment of the price of custom milled rice (hereinafter referred to as C.M.R.) required to be supplied to the petitioner who happens to be a rice miller. Indisputably, the certificate proceedings are yet pending

before the District Certificate Officer. The issue raised by Mr. Mishra to question the validity of the proceedings is relying upon Clause-16 of the agreement which provides for a resolution of dispute by way of arbitration and in reference to an application present at Annexure-6 he submits that the petitioner has invoked the arbitration clause by approaching the District Magistrate, Katihar. It is thus prayed that pending conclusion of the arbitration, the proceedings in the certificate case be stayed.

I have heard learned counsel for the parties and I have perused the records.

The copy of the application invoking Clause 16 of the agreement is placed at Annexure-6 and is dated 1.8.2014 which is simply a letter addressed to the District Magistrate complaining against the Corporation. The dispute whatsoever, is apparently missing. In fact simply requesting for arbitration would not suffice the requirements unless the dispute is translated in specific terms which is completely a miss in the said application.

The second argument advanced by Mr. Mishra in support of the contention is that warrants have been issued by the District Certificate Officer even when the objection filed by the petitioner under Section 9 of 'the Act', a copy of which is present at Annexure-7, remains pending for adjudication. Mr. Mishra has referred to the order passed on 11.2.2016 in support of his submission the ordersheet in the certificate proceedings is on record at Annexure-1.

While there is no merit in the contention of the petitioner in relying upon Annexure-6 to invoke the arbitration clause and which is accordingly rejected. The other issue raised by Mr. Mishra regarding issuance of warrant even when the certificate proceedings remains pending merits consideration for until final orders is passed by the District Certificate Officer as mandated under Section 10 of 'the Act', no warrant of arrest can be issued.

In the circumstances discussed, I hereby direct the District Certificate Officer, Katihar to consider and dispose of the Certificate case in accordance with law after giving an opportunity of hearing to the parties and after considering the objection raised by the petitioner in his objection petition filed under Section 9 of 'the Act', a copy of which is placed at Annexure-7. The parties would appear before the Certificate Officer on 11.7.2016 when he shall proceed to dispose of the matter in the manner stipulated hereinabove.

In case the petitioner fails to register his appearance on 11.7.2016 then the Certificate Officer shall be at liberty to proceed ex parte in the matter and dispose of the same by a speaking order but on consideration of the objection taken by the petitioner in his objections filed under Section 9 of 'the Act'.

The writ petition is disposed of with directions/stipulations aforementioned.

(Jyoti Saran, J)

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