

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.953 of 2017

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Anjani Kumar Sinha, Son of Late Shiv Kumar Prasad, resident of Village-
Masaurhi, P.O.- Masaurhi, P.S. Masaurhi, District- Patna, Proprietor of M/s Sinha
Rice Mill, Masaurhi, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food & Consumer
Protection Department, Govt. of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Certificate Officer-cum-Sub-Divisional Officer, Masaurhi, District- Patna.
4. Bihar State Food & Civil Supplies Corporation Limited through its Managing
Director, Patna, Bihar.
5. The District Manager, Bihar State Food & Civil Supplies Corporation Ltd.,
Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Prashant Sinha, Adv.
For the State	: Mr. Anisul Haque, AC to AAG-5
For the BSFC	: Mr. Aditya Prakash Sahay, Adv. Mr. Mayank Shekhar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 03-07-2017

Heard learned counsel for the petitioner and counsel
for the State.

In this case, the petitioner is challenging the order
dated 17.09.2016 passed by the Certificate Officer cum Sub-
Divisional Officer, Masaurhi in Certificate Case No. 02/2013-14 as
has been claimed that the impugned order has been passed against
C.W.J.C. No. 7931 of 2016, whereby and whereunder, the Certificate
Officer has confiscated as well as attached the property.

The petitioner is a miller, has entered into the



agreement for milling the paddy. As has been claimed that the petitioner has lifted 2300 quintals of paddy on 19.9.2013, 16.4.2013, 17.4.2013, 13.4.2013, 14.4.2013 and 6.5.2013 from the paddy procurement centers of Fatuha, Bakhtiarapur, Masaurhi and Dhanarua. and, thereafter, rainy season started. Since the paddy, procured by the Corporation, was kept under the open sky, it became wet due to rain. The Additional District Magistrate (Supply), Patna, vide his Memo No. 1251 dated 13.6.2013 directed all the In-charge of the Procurement Center to ensure lifting of the paddy. The Sub-Divisional Officer, Masaurhi vide letter no. 207 dated 15.6.2013 directed the petitioner and other rice millers to lift the paddy kept in the open sky within 24 hours by their own transporting means and labour charges. A meeting was organized by the Collectorate, Patna in which the fact was noted that the paddy has become wet due to rainy season and the Millers are not ready to accept the paddy for the purpose of milling. The petitioner has also raised objection with respect to the lifting of the paddy as the paddy was not of the quality and there was likelihood of low quality rice after milling the same. The petitioner was coerced to lift the paddy, ultimately, the paddy was lifted and milled. The petitioner was ready to supply the customized milled rice but, the administration refused to take rice as the rice was rotten, whereafter, the petitioner, instead of moving before the Certificate Officer, he has



challenged for initiation of proceeding in C.W.J.C. No. 13600 of 2014 and the same was disposed of in terms of order passed in C.W.J.C. No. 7736 of 2014, whereafter, the petitioner has filed his objection.

Recovery proceeding has been initiated before the Certificate Officer whereupon the petitioner raised various objections. It has further been stated that under the objection, he was/is ready to pay the amount, inasmuch as, he has already deposited Rs. 53 lacs and has not received the milling, handling and transportation charges since 2007 and that amount should be adjusted against the due amount. As per claim of the petitioner, in the objection petition, he has given figure in what manner he has deposited the money, he has assigned the reason caused for delay in lifting the paddy.

While the matter was pending, another notice was served upon the petitioner for demand of Rs. 78,00,183/- which was challenged by the petitioner in CWJC No. 7931 of 2016. This Court did not go into the merit of the case recording that considering the certificate proceeding itself is pending for final disposal, hence even if the Sub Divisional Officer, Masaurhi happens to be the Certificate Officer, he cannot issue a demand in his official capacity as done vide Annexure-12. The exercise of jurisdiction by the Sub Divisional Officer as a District Certificate Officer under the provisions of the



Bihar and Orissa Public Demand Recovery Act, 1914 is a quasi judicial exercise and thus the demand raised by way of a certificate has to be dealt strictly in accordance with the Act.

The Certificate Officer cum Sub Divisional Officer, Masaurhi has passed the impugned order, has rejected the claim of the petitioner and recorded that he is liable to pay Rs. 2,01,37,362.88 without considering the fact that the petitioner has already deposited the substantial amount as well as he himself has stated that he is ready to pay the rest amount. The Certificate Officer exceeded the jurisdiction as that he has passed the order for confiscation as well as attachment of the same property. It is a peculiar order in the sense that if already there is order of confiscation of the property, how there may be an order for attachment of the same property. The confiscation is quite a different than that of attachment. This Court is of the view that while exercise the power under Section 10 of the P.D.R., he has to do two things i.e. adjudication of dispute and its execution of order, he has to examine the material and record reasons not by subjective satisfaction but, there should be objectivity in the order. The order must show that while exercising the power, he has taken into consideration the objection that has been raised. Merely, referring that he has considered the objection without giving reasons without showing objective consideration cannot be treated to be proper



exercise of power. Reference in this connection may be made to the judgment passed in the case of *Siemens Engineer & Manufacturing Co. of India Ltd. Versus Union of India and Anr.* reported in *AIR 1976 SC 1785*.

It is also settled that while passing the order, the authority must give its own reason and reason must be based on consideration of the records from which it must appear that he has considered the objection of the objector.

The counter affidavit which has been filed by the B.S.F.C. wherein the letter dated 22.5.2015 has been attached which itself reflects that the petitioner is entitled to adjustment of Rs. 82,80,228/- and admittedly this amount should be adjusted against the outstanding dues which is on demand. This aspect of the matter has also not been considered and, after adjudication, the authority should have raised demand for payment, failure to comply would attract coercive action but, in this case, he, while adjudicating the dispute, had attached as also confiscated the property simultaneously.

In that view of the matter, this order dated 17.09.2016 is set aside. The matter is remanded back to the Certificate Officer cum Sub Divisional Officer, Masaurhi, Patna who will consider all aspect of the matter in a manner already discussed above as well as since the B.S.F.C. itself has acceded the entitlement of payment under the heading of milling, handling and transportation



charges and, after adjustment of admitted amount, the Certificate Officer cum Sub Divisional Officer, Masaurhi, Patna will pass an order in accordance with law, while passing the order, he will direct the petitioner to deposit the adjudicated amount, if the petitioner fails to pay the same, in such circumstances, the Certificate Officer cum Sub Divisional Officer, Masaurhi, Patna, will be at liberty to take an appropriate step for recovery of the said amount from the petitioner.

With the aforementioned observation and direction, this application is allowed to the aforementioned extent.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2017
Transmission Date	NA

