

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11363 of 2017

=====

Dilip Kumar, son of Bhuneshwar Prasad proprietor of M/s Kanika Rice Mill,
resident of Village- Parsawa Kala, P.S.- Gurua, District- Gaya.

.... Petitioner

Versus

1. The Food and Consumer Protection Department through the Principal Secretary, Bihar at Patna.
2. The State of Bihar through District Magistrate, District- Gaya.
3. The Bihar State Food and Civil Supplies Corporation Limited through its M.D. Bihar at Patna.
4. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Gaya, District- Gaya.
5. The District Certificate Officer, Gaya, District- Gaya.

.... Respondents

=====

Appearance:

For the Petitioner/s : Mr. Sumeet Kumar Singh

For the Respondent/s : Mr. S. RAZA AHMAD- A.A.G.-5

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-08-2017

Heard the learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Bihar State Food
and Civil Supplies Corporation Limited.

2. In this case, the petitioner is challenging the requisition
notice and the certificate notice, issued under the P.D.R. Act, which
led to initiation of Certificate proceeding against the petitioner.

3. The petitioner is a miller has entered into an agreement



to supply the C.M.R. in terms of the agreement. The petitioner was supplied the paddy, but he did not return proportionate quantity of the C.M.R, hence, a claim of Rs.37,23,045/- along with 18% interest was raised against the petitioner. The notices were issued to the petitioner, but he did not appear and ultimately, the authority issued the warrant of arrest, which compelled the petitioner to approach this Court.

4. Learned counsel for the petitioner submits that he has not received the notice and only when he could know about issuance of warrant of arrest, he obtained the certified copy of the order and approached this Court. He further submits that on the face of the requisition notice, it appears that it has not been prepared proper Form-II deals with requisition, but in the requisition it has been typed as Certificate of Public Demand and in the bottom the signature and designation of the Officer of the B.S.F.C. has been shown.

5. Learned counsel for the petitioner further submits that in the requisition notice the date of requisition is missing and there is equally defect with respect to the demand notice (certificate) issued by the District Certificate Officer, but the column of the requisition has not been properly filled up as the date of verification is missing



though he has put his signature along with the date.

6. On the basis of the aforesaid facts, learned counsel for the petitioner submits that if there is inherent defect in the requisition, then the entire proceedings suffer from illegality and the same cannot be rectified and proceeded with, liable to be quashed.

7. In support of his submission, he has placed reliance on the decision of this Court in the case of ***Nageshwar Prasad Singh vs. Rai Bahadur Kashinath Singh (1958 BLJR, page 820)***.

Relevant portions of the said decision are as follows:-

“The Certificate-Officer must meticulously apply his mind to filing the certificate and filling in the columns and blanks correctly and in appending his certificate in the form prescribed, and that the filling in of the forms is a matter of substance and is imperative, to give the certificate the force of a decree of court of law, and if it is found that the Certificate-Officer had not applied his mind at all and that some of the blank spaces were not filled up, or were incorrectly filled up, the document so prepared and filed is not a certificate under the Public Demands Recovery Act. The certificate proceedings are wholly invalid and the officer concerned acts without jurisdiction”.

8. From the aforesaid judgment, it appears that the requisition and the certificate must be drawn meticulously and if there is defect, the entire proceeding would vitiate.



9. Learned counsel for the Bihar State Food and Civil Supplies Corporation Limited tried to justify the action and submitted that there is no illegality in sending the requisition; merely a technical irregularity cannot vitiate the entire proceeding.

10. Having considered the rival contentions of the parties, the order does not disclose the service of notice upon the petitioner, merely the dates were given and without recording the finding of fact of service of notice the body warrant has been issued. Further, there is a deviation in the procedure provided in the Act, which cannot be approved. It is well known principle of law that when particular thing has to be done in a particular manner, in such circumstance, that thing should be done in the said manner alone, not otherwise. Reference can be made to the judgment of ***Pune Municipal Corporation vs. Harakchand Misirimal Solanki, (2014) 3 SCC 183***, wherein it has been held that where power is given to do certain thing in certain way, it should be done in that way alone. In the present case also the requisition suffers from inherent defects, in such circumstance, the entire proceeding vitiate.

11. In such view of the matter, the requisition certificate and the subsequent proceeding of Certificate Case No.04 of 2015-16 is hereby declared to be bad in law and is accordingly set aside.



However, the respondent-Corporation will have the liberty take steps in terms of the P.D.R. Act for realization of the amount. If the notice is served upon the petitioner, in such circumstance, the petitioner would not avoid either to accept the notice rather co-operate in disposal of the proceeding.

12. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	06.09.2017
Transmission Date	N/A.

