

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16279 of 2016

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M/s Anant Shree Rice Mill, through it's proprietor- Nagendra Saw, Son of Yugal Kishore Saw, Resident of Village- Ahiapur, P.S.- Konch, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Managing Director, Bihar State Food and Civil Supplies, Corporation Ltd., Bihar at Khadya Bhawan, Darga Roy Path, Patna- 1.
3. The District Magistrate, Gaya.
4. The District Manager, Bihar State Food & Civil Supplies Corporation Ltd., District Office Gaya at Gaya.
5. The A.D.M. cum District Certificate Officer, Gaya, District- Gaya.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Binay Kumar, Adv.
Mr. A.N. Singh, Adv.

For the Respondent/s : Mr. Arvind Ujjwal, S.C.-4

For the B.S.F.C. : Mr. Aditya Prakash Sahay, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 20-02-2017

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

2. In this case, the petitioner is challenging the order dated 23.07.2016 passed by the S.D.M.-cum-Certificate Officer, Gaya, in Certificate Case No. 2 of 2014-15, whereby and whereunder the Certificate Officer has rejected the objection filed by the petitioner and directed the petitioner to produce No Objection Certificate (NOC) with respect to the certificated amount



issued from the Office of the District Manager, S.F.C. within a period of fifteen days from the date of passing of the order, otherwise, Certificate will be executed as per the provision of the Act.

3. The brief facts of this case are that the petitioner is the Proprietor of M/s Anant Shree Rice Mill, engaged in milling the paddy. There was an agreement in between the Bihar State Food and Civil Supply Corporation (for short “the Corporation”) and petitioner for milling of paddy and accordingly, the miller received 18932.00 quintal of the paddy and proportionately the present miller was to supply 4865.35 quintal of customized milled rice (CMR). When the petitioner failed to supply the customized milled rice, a proceeding under the Orissa Public Demands Recovery Act (for short “the P.D.R. Act”) has been initiated by sending a requisition for an amount of Rs. 1,05,36,207.35/- as agreed between the parties. The Certificate Officer being satisfied with the requisition sent by the District Manager issued a certificate for the aforesaid amount.

4. The petitioner has raised various objections in the application filed under Section 9 of the P.D.R. Act. The same was looked into by the Certificate Officer, thereby it has been recorded



that the Corporation has supplied the paddy to the amount of 18932.44 quintal and the petitioner was supplied 4865.35 quintal of CMR, but has refused to accept the plea of the petitioner that he has already supplied 7830 quintal of CMR and found that the demand made by the Certificate Officer is correct and directed him to obtain No Objection Certificate, otherwise the Certificate Officer will take action in terms of the Act.

5. The petitioner instead of approaching the appellate authority has directly filed the writ application, taken plea that the requisition which has been issued to the petitioner itself suffers inherent defect as the same does not bear the date and as such the subsequent action under the P.D.R. Act is a nullity.

6. In support of the submission, learned counsel for the petitioner has placed reliance on two judgment of this Court in the case of *Hari Prasad Agarwalla v. State of Bihar and Others*, reported in *1976 PLJR, 265* and in the case of *Satya Narain Jhunjhunwala v. State of Bihar and others*, reported in *1996 (2) PLJR, 698*, where it has been held that the proceeding under the P.D.R. Act should be strictly followed in terms of the Act as the provision is very stringent it will be read strictly claimed that the proceeding is bad in law.



7. Learned counsel for the Corporation has tried hard to persuade this Court that the signature is there in the requisition inasmuch as the petitioner has not raised this point while filing the application under Section 9 of the Act and as such, there is no justification for this Court to interfere in the matter. He further submits that if this proceeding is declared to be null and void in view of the period consumed, it will be very difficult for the Corporation to realize the amount as has been mentioned in the certificate.

8. Having considered the rival contentions of the parties, it is well settled principle of law that the provision of the PDR Act is very stringent which provides for realization of the amount without undergoing to the common law i.e. the Civil Court and amount is to be recoverable only on the basis of the requisition as well as on the satisfaction of the Certificate Officer. In such circumstances, any deviation in the procedure leaves no doubt will lead to illegality as have been held by the Hon'ble Supreme Court in the case of *Pune Municipal Corpn. v. Harakchand Misirimal Solanki*, reported in (2014) 3 SCC 183, when a particular procedure has been for doing a particular act then that action should be taken in that manner alone. In view of Hon'ble Supreme Court's judgment and two judgments as indicated above, has held that the



deviation in the procedural for realization of the amount will turn to whole proceeding to be illegal.

9. Admittedly, the requisition does not bear the date and if the requisition is not proper then the consequential effect the certificate issued by the Certificate Officer would suffer from illegality. In such view of the matter, this Court declares the proceeding to be bad in law and accordingly, the entire proceeding is set aside. However, the Requisitionist Officer is at liberty to issue a fresh requisition in accordance with law within a period of 15 days from today. If such a requisition is received by the Certificate Officer, he will be at liberty to issue notice under Section 7 of the PDR Act and act in accordance with law. The petitioner is also liberty to raise his objection before the Certificate Officer; the Certificate Officer will deal the objection of the petitioner as per the law.

10. With the aforesaid observations and directions, this writ application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	01.03.2017
Transmission Date	N/A.

