

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1004 of 2017

In
Civil Writ Jurisdiction Case No. 6476 of 2016

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Rajesh Kumar Tulsian

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Bhushan Kumar
Mrs. Arti Kumari, Adv

For the Respondent/s : Mr. S.Raza Ahmad-Aag5

For BFC : Mr. Shailendra Kumar Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 18-07-2017 The delay of 386 days in filing the appeal is
condoned. I.A. No. 4946/2017 is allowed.

Seeking exception to an order dated 10.05.2016
passed by the learned Writ Court in C.W.J.C. No. 6476 of 2016,
this court appeal has been filed under Clause 10 of the Letters
Patent.

A contract was entered into between the appellant
and the Bihar State Food and Civil Supplies Corporation and in
the execution of the contract in question, certain disputes seem to
have occurred which ultimately resulted in proceedings being
initiated and from the supplementary affidavit filed by the
appellant, it seems that in accordance to the terms and conditions



of the agreement arbitration proceedings are pending before the competent authority.

Be it as it may be, the respondent Bihar State Food and Civil Supplied Corporation in the meanwhile initiated certification proceedings under the Bihar and Orissa Public Demand Recovery Act, 1914 and in Certificate Case No. 15/2014-15 by an order passed on 9.3.2016, the certificate case of the respondent Corporation was allowed and challenging the order passed in the certificate case, the writ petition in question was filed.

The grievance of the appellant in the writ petition challenging the certification proceedings was that the amount in question is disputed Until and unless the quantification of the amount is not undertaken by resolving the dispute or adjudicating the dispute in accordance to law by an appropriate forum, may be a civil suit or a common law remedy available, the certification proceedings was not maintainable and the learned Writ Court in the present case have not adverted to consider this question of law, learned counsel argues that in relegating the appellant to take recourse to the statutory remedy available under the Act was unsustainable. He invites our attention to a judgment of the Patna High Court in the case of Budha Singh Vs. The State of Bihar and



Ors. AIR 1981 Pat 149 to say that until and unless the amount in dispute is not adjudicated, the certification proceedings are not maintainable.

Even though learned counsel for the respondents refuted the aforesaid contention, we are of the considered view that while relegating the appellant to take recourse to the statutory alternate remedy available, the learned Writ Court has not considered the question as to whether the amount in question is a disputed amount or a non-disputed amount, whether the certification proceedings was maintainable without adjudication of the dispute and whether the Corporation was liable to recover the amount without resorting to any adjudicatory proceedings treating the amount to be an admitted amount beyond the realm of a disputed amount. This aspect of the matter having not been adverted to by the learned Writ Court, it is a fit case where this appeal should be allowed and the writ petition remanded back for reconsideration in accordance with law.

Accordingly, this Letters Patent Appeal is allowed, order dated 09.03.2016 passed in Certificate Case No. 15 of 2014-15 stands quashed and the writ petition is restored to its original file to be considered by the appropriate Bench in accordance with law.



Till hearing on the interim prayer by the Writ Court,
coercive steps shall remain stayed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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