

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14283 of 2015

=====

1. M/s Pyare Babu Rice Mill through its Proprietor namely, Md. Munna, S/o Late Ali Mohammad, R/o Village- Jananjai, P.S. + Dist.- Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Kishanganj
2. The Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna
3. The Managing Director, Bihar State Food & Civil Supply Corporation, Bihar, Patna
4. The District Certificate Officer, Kishanganj
5. The District Manager, Bihar State Food & Civil Supply Corporation, Kishanganj

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Satish Bhushan Kumar
For the BSFC	:	Mr. Shailendra Kumar Singh
For the State	:	Mr. Kinkar Kumar, Sc-9
		Mr. Rakesh Kumar Sharma

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-08-2017

Heard the parties.

In the present writ petition, petitioner is challenging the initiation of a proceeding initiated under PDR Act vide Certificate Case No.7 of 2014-15 pending in the Court of Certificate Officer, Kishanganj. He has further prayed for quashing the notice dated 4.8.2014 issued under Section 7 of the Bihar Public Demand Recovery Act.

A notice was issued to deposit an amount of Rs. 73,19,243.50 which is under challenge before this Court.



Petitioner approached this Court by individual name, namely, Md. Munna, in C.W.J.C. No. 9398 of 2014 which was disposed vide order dated 23.7.2014 in the same terms of the order passed in C.W.J.C. No.9133 of 2014 (M/s Shivam Mini Modern Rice Mill vs. The State of Bihar & Ors.) where in this Court has passed the order in following terms:

“11.Having held so, this must clarify that the powers of the Corporation for resolution of the dispute as raised by the petitioners by way of conciliation proceedings in terms of Clause 16 of the agreement or for that purpose the forum of the Collector by way of arbitration proceeding shall not be closed. Thus, if the petitioners would file their separate representation before the Managing Director of the Corporation disputing the correctness of the impugned demand notice on any ground whatsoever, the competent authority of the Corporation will thereafter do the needful in terms of Clause 16 of the Agreement and in case the petitioners do not get any relief in such conciliation proceeding from the authorities of the Corporation, they would be still entitled to seek reference for arbitration before the Collector of the District

12. Mr. Pradhan has, in fact, assured that if the petitioner would file his representation against the demand notice the same shall also be disposed



of expeditiously so that if the petitioner becomes aggrieved on account of refusal of settlement of dispute by the Corporation, he can take recourse to arbitration proceedings. He has also assured that till disposal of the representation, no further coercive action will be taken against the petitioner beyond what has already been taken against him in terms of the agreement.

13. It is, however, made clear that if in the meantime any criminal case or certificate proceeding has already been initiated against the petitioners, the same shall not be in any way adversely affected, in keeping with Clause 12 and 15 of the agreement which empowers the Corporation to take legal action including recovery of the amount due from the petitioners by way of certificate proceedings under the Bihar Public Demand Recovery Act, 1914”.

On reading of the aforesaid paragraphs it is clear that petitioner was to approach to the Managing Director and who would examine the matter of the petitioner and give his opinion. If the petitioner would feel aggrieved, liberty was granted in terms of Clause 16 of the Agreement to pursue remedy of arbitration. In paragraph 13 it is made clear that any criminal proceeding or certificate proceeding will not be in any way adversely affected by the agreement. Notice under PDR Act has been issued on 4.8.2014



i.e. after disposal of the writ petition filed by the petitioner and attachment order has been issued.

Learned counsel for the petitioner submits that petitioner had approached this Court under the Arbitration and Conciliation Act, 1996, made a prayer for appointment of arbitrator in Request Case No. 92 of 2017 and this Court vide order dated 19.7.2017 has appointed Hon'ble Mr. Justice R. K. Datta (Retd.) as Arbitrator and submits that matter is pending before the Hon'ble Arbitrator. He has also drawn attention of this Court towards order passed in L.P.A. No. 37 of 2015 and review order passed in Civil Review No.150 of 2015 whereby the Court has modified the order to the extent "the Collector-cum-District Magistrate, Jamui will enquire into the matter and if it is found that review petitioner had filed an application for arbitration in terms of Clause 16 of the Agreement, he would dispose of the same within two months after hearing the parties and with the aforesaid observation review petition was disposed of."

Learned counsel for the petitioner submits that as arbitration proceeding is pending, then the order of attachment of Certificate Officer is without jurisdiction and not sustainable.

Learned counsel for the respondent submits that proceeding has been initiated prior to appointment of arbitrator in terms of the



order passed in M/s Shivam Minin Modern Rice Mill (Supra). Merely pendency of the proceeding before the arbitrator will not make the order of Certificate Officer bad in law.

Having considered the rival contentions of the parties, it is an admitted fact that an arbitrator has been appointed. It is also a fact that proceeding has been initiated prior to appointment of arbitrator and Clause 12, 15 and 16 of the Agreement provide three forum for realization of the amount has been mentioned. One matter is clear, when proceeding was initiated under PDR Act, on the receipt of notice the petitioner ought to have filed objection. He has not filed any objection.

In such view of the matter, petitioner is directed to file an objection there and the same will be considered in accordance law and he will pass the order accordingly will be subject to the result of the award passed by the arbitrator. The petitioner would not be allowed to take a plea as because proceeding is pending before the arbitrator he will not appear before the Certificate Officer.

The order of will remain operative till decision by the arbitrator or the order under PDR Act. This Court is not vacating the order of attachment but other coercive action will not be taken against the petitioner. It is also made clear that authority will not seal the mill or will not take him into custody with respect to



present certificate proceeding.

With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	1.9.2017
Transmission Date	NA

