

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18516 of 2016

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M/s Nava PACS Rice Mill through it's Proprietor - Mahendra Prasad, Son of Sri Dwarika Yadav, Resident of village - Verma, P.S. Cherki (Bodh Gaya), 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 : Mr. Binay Kumar, Adv.
Mr. A.N. Singh, Adv.

For the State : Mr. Alok Ranjan, A.C. to G.A.-6

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

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-01-2017

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

2. In this case, the petitioner is challenging the order dated 22.08.2016 passed by the S.D.M.-cum-Certificate Officer, Gaya, in Certificate Case No.10 of 2014-15 on two grounds; firstly that he was not served the certificate, which is mandatory requirement



under Section 7 of the Bihar and Orissa Demand Recovery Act and secondly, the Certificate Officer has not considered his objection, merely he has mentioned about filing of the objection under Section 9 of the Act, passed the order against him.

3. The petitioner is the miller was supplied paddy and he was required to return the same with proportionate quantity of rice, but the petitioner failed, which led to initiation of proceeding under the Public Demand Recovery Act. The outstanding amount has been calculated to the tune of Rs.2,26,58,470.58/-.

4. So far as the point of service of the certificate is concerned, learned counsel for the Corporation as well as the State have pointed out that during the P.D.R. proceeding the petitioner has raised objection about non service of the certificate and taking cognizance to his objection, the certificate was served upon him, which is apparent from the order dated 12.02.2015 in the order-sheet, by which the Office was directed to serve the copy of the certificate to the petitioner. In pursuance thereof, the same was given to the petitioner and there is receiving and entry has been made that “form I एवं II प्राप्त किया” which is clear from Annexure-B to the counter affidavit. So, the plea of the petitioner that he was not



served the copy of the certificate during the proceeding has no substance and the same is accordingly, rejected and as such, the judgment relied on in the case of *Morari Singh vs. The State of Bihar and Ors.*, reported in *AIR 1978 PAT, 289*, has no bearing in the present case.

5. Another point has been raised by the petitioner that on receipt of the notice he has filed the objection under Section 9 of the Public Demand Recovery Act, elaborately dealt with his defence, but the Certificate Officer has not considered his objection, merely he has mentioned about filing of the objection and passed the order against him.

6. On this point, learned counsel for the Corporation has tried to justify the order of the Certificate Officer, but this Court is not convinced with his argument as the order of the Certificate Officer does not deal any of the pleas that have been taken by the petitioner. While dealing with the objection under Section 9 of the act, the Certificate Officer ought to have discharged his duty as quasi judicial authority and he should have dealt with the objection which has been filed by the petitioner, but the same has not been done by the Certificate Officer and there is no discussion at all about the objection filed by the petitioner.



7. In such view of the matter, the order dated 22.08.2016 passed by the S.D.M.-cum- Certificate Officer, Gaya in Certificate Case No. 10 of 2014-15 is not sustainable in law and the same is accordingly set aside. The matter is remanded back to the Certificate Officer to pass a fresh order after giving fair hearing and considering the objections taken by the petitioner in his objection filed under Section 9 of the Public Demand Recovery Act. The Certificate Officer shall complete the entire exercise and pass fresh order within a period of three months from the date of receipt/production of a copy of this order. The petitioner is at liberty to file supplementary objection within 15 days from today. If the petitioner files the Supplementary Objection within the stipulated time, the same shall also be considered by the authority concerned.

8. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	21.01.2017
Transmission Date	

