

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16888 of 2017

=====

Manoj Prasad, S/o Late Rajeshwar Prasad, Prop-Bajrang Traders Resident of
and Mill at Mohalla - Ram Garhwa Bazar, P.O. - Ramgarahwa Bazar, P.S. -
Ramgarhwa Bazar, District-East Champaran.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, State of Bihar, Patna.
2. The District Collector, District-East Champaran.
3. The Sub-Divisional Officer, District-East Champaran.
4. Bihar State Foods and Civil Supplies Corporation Limited, through its Managing Director, Patna, Bihar.
5. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., East Champaran.
6. The Certificate Officer, East Champaran, Motihari.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Krishna Mohan Mishra, Advocate
For the Respondents : Mr. S. Raza Ahmad – AAG 5
For the BSFC : Mr. Shailendra Kr. Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 28-11-2017

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. The present writ petition has been filed for the
following reliefs –

*“(i) To issue appropriate writ to quash the order dated
10.09.2016 as well as whole of the proceeding initiated
under Bihar and Orissa Public Demand Recovery Act by
Certificate Officer, Motihari, East Champaran in
Certificate Case No. 23/Khadyan/2014-15.*

*(ii) To hold and declare that proceeding initiated under
the Act is without jurisdiction and illegal as court fee
were not paid as required under section 5(2) of the PDR*



Act, nor the requisition has been prepared and verified as per law.

(iii) To hold and declare that disputed demand cannot be recovered under the Act unless quantified by way of arbitration and suit as the present proceeding is execution proceeding.

(iv) To issue any other writ/writs, order/orders, direction/direction as your honour deemed fit and proper”.

3. Learned counsel for the petitioner submits that the entire certificate proceeding is wholly illegal and without authority of law as a defective requisition has been issued without payment of court fee and with a number of blanks, such as the name of the district, date, verification and certification of the amount. So also in the certificate issued in Form No. 1, Certificate Officer has not recorded his satisfaction with respect to the amount outstanding from the petitioner. Reliance is placed on the decisions of this Court rendered in Hari Prasad Agrawal Vs State of Bihar reported in 1975 BBCJ 723 and also in M/s Vishnu Sugar Mills Ltd. Vs. The State of Bihar & others reported in 2015(1) PLJR 863 wherein the entire proceeding is held to be without jurisdiction for want of proper requisition and certificate.

4. Learned counsel for the respondent-Corporation appears and has been heard.

5. In view of the defects in the requisition and the certificate as pointed out by the petitioner and in respect of which



objection was also taken before the Certificate Officer, this Court is of the view that the entire certificate proceeding in Certificate Case No. 23/Khadyan/2014-15 has not been validly initiated and the same is accordingly set aside, with liberty to the respondent–Corporation to take fresh steps for recovery of the outstanding dues, if so advised, in accordance with law.

6. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.11.2017
Transmission Date	N.A.

