

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1206 of 2017

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Nand Kishore Prasad, son of Vijay Kumar Gupta, Resident of Chanpatia
Ward No. 7, P.S. - Chanpatia, District - West Champaran, Proprietor of M/S
Ekta Rice Mill, Industrial Area, West Champaran, Bettiah,

... .. Petitioner-Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Food and Civil Supply, Patna.
2. The District Magistrate, West Champaran, Bettiah.
3. The Superintendent of Police, West Champaran, Bettiah.
4. The Certificate Officer, West Champaran, Bettiah.
5. The Deputy Superintendent of Police, West Champaran, Bettiah.
6. The District Manager, Bihar State Food and Civil Supply Corporation, West Champaran, Bettiah.

... .. Respondents-Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shashi Bhushan Kumar, Advocate Ms. Arti Kumari, Advocate
For the State	:	Mr. S.Raza Ahmad – AAG 5 Mr. Vishwambhar Pd. AC to AAG -5
For the Corporation	:	Mr. Shailendra Kr. Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-09-2017

Seeking exception to an order dated 02.08.2017 passed by the
learned Writ Court in C.W.J.C. No. 10558 of 2017, this appeal has
been filed under Clause 10 of the Letters Patent.

2. 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 it seems that in accordance to the terms and conditions of the agreement arbitration proceedings are pending before the competent authority.

3. Be it as it may be, the respondent Bihar State Food and Civil Supplies Corporation in the meanwhile initiated certification proceedings under the Bihar and Orissa Public Demand Recovery Act, 1914 and in Certificate Case No. 23 of 2014-15 by an order passed on 04.07.2017, 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.

4. 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 having 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.- A.I.R. 1981 Pat 149** to say that until and unless the amount in dispute is not adjudicated, the certification proceedings are not maintainable.

5. 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.

6. Accordingly, this Letters Patent Appeal is allowed, order dated 04.07.2017 passed in Certificate Case No. 23 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.



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

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2017
Transmission Date	

