

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1757 of 2017

In

Civil Writ Jurisdiction Case No.851 of 2016

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Rajiv Kumar, son of Shri Moti Lal, resident of Purani Bazar, Ward No.9,
Narkatiaganj, District- West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Food & Consumer Protection, Government of Bihar, Patna.
2. The Bihar State Food & Civil Supplies Corporation Limited, Sone Bhawan, 5th Floor, Birchand Patel Marg, Patna through its Managing Director.
3. The District Manager, Bihar State Food & Civil Supplies Corporation Limited, West Champaran, Bettiah.
4. The Senior Deputy Collector-cum-District Certificate Officer, West Champaran, Bettiah.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Bhushan Kumar, Advocate

For the Respondent/s : Mr. S. Raza Ahmad -AAG 5

Mr. Alok Ranjan, AC to AAG 5

For the BSFC : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-03-2018

Seeking exception to an order dated 03.03.2016 passed by the
Writ Court in CWJC No.851 of 2016, this appeal has been filed
under Clause 10 of the Letters Patent.

Having heard learned counsel for the parties in detail, before
adverting to consider various issues involved, we may indicate
certain facts with regard to the issues, which are coming similar in
nature before this Court.



With regard to the contracts entered into between the Rice Millers and the Bihar State Food & Civil Supplies Corporation Limited in the matter of procurement and payment, various disputes arose and finally certification proceedings under the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as 'the Act') were initiated. Various writ petitions were filed before this Court either challenging the certification proceedings or the order passed by the Certification Officer and in most of the cases, a ground was canvassed to say that without adjudication of the dispute with regard to the amount to be recovered, initiation of certification proceedings is not tenable and by placing on a judgment rendered by this Court in the case of **Budha Singh Versus The State of Bihar**, AIR 1981 Pat 149, arguments were canvassed by the Rice Millers that the certification proceedings initiated and the consequential orders of recovery are illegal. This Court in most of the cases accepted the contention and held that until and unless the disputed amount is not adjudicated, the certification proceedings cannot be held. However, in certain cases, the writ petitions were disposed of granting liberty to the aggrieved persons to take recourse to the remedy available under Section 60 of the Act and file an statutory appeal.



Various orders have been brought to our notice and learned counsel for the appellant argues that in this case also, the dispute is covered by the earlier judgment inasmuch as the disputed amount has not been adjudicated or determined in accordance with law and, therefore, the consequential certification proceedings are illegal. Learned counsel invites our attention to certain orders passed by the Hon'ble Supreme Court staying certain recovery proceedings and it is argued that when this Court refused to interfere and relegated the parties to take recourse to the remedy of appeal available, the Hon'ble Supreme Court has intervened into the matter and granted interim relief with regard to coercive recovery. Placing all these facts, learned counsel submits that this is a fit case where the entire certification proceedings should be quashed as disputed amount has not been determined in accordance with law and the recovery of the disputed amount by initiating recovery proceedings is unsustainable.

Learned counsel for the respondents refutes the aforesaid and argues that the facts with regard to the matter pending before the Hon'ble Supreme Court are entirely different, they pertain to different years, the orders are different and, therefore, the pendency of the matter before the Hon'ble Supreme Court is of no consequence.



We have considered the rival contentions and we find certain facts which are entirely different in the present case which, in our considered view, are sufficient enough to refuse indulgence into the matter.

The first ground is that the order in the writ petition was passed on 03.03.2016, about two years back, the appellant slept over the matter for two years, kept waiting in the fence, did not take recourse to the statutory remedy of appeal available and when found that various other litigants have approached this Court and have been granted relief, jumped into the wagon and without properly explaining the delay of about two years, have filed this appeal.

In Interlocutory Application No.71 of 2018, the delay of one year and 256 days is tried to be explained by contending that the appellant has approached this Court in view of various orders subsequently passed in various cases. This cannot be a ground for condonation of delay. If the appellant is aggrieved by the order which was passed in March, 2016 and if he felt that the order of relegating him to take recourse to the statutory remedy of appeal available is unsustainable, he should have exercised right of appeal within a reasonable period and the explanation given in I.A. No.71 of 2018 is not acceptable to us and we reject the same.



That apart, if we go through the order passed by the learned Writ Court, we find that it seems to be a case where opportunity for adjudication and determination of the amount was granted to the appellant and the appellant did or, in fact, seems to have availed the opportunity by filing a written argument in this regard. Following observations made by the learned Writ Court may be taken note of which reads as under:-

“Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to appreciate the contentions of learned counsel for the petitioner that he was not heard before the impugned order was passed, moreso when, as submitted on behalf of the respondents, the order dated 27.11.2015 clearly notes that written argument was submitted on behalf of the petitioner, which fact has not been denied. Further, there being an alternate statutory remedy, the Court finds no occasion to interfere in the matter.

Accordingly, the writ petition stands disposed off with liberty to the petitioner to move before the Appellate forum in accordance with law.”

Taking note of all these factors, if the learned Writ Court has relegated the appellant to take recourse to the statutory remedy of appeal available, we see no reason to make any indulgence into the matter. This is a case where the matter cannot be said to be



covered by other judgments where this Court relying upon the law laid down in the case of **Budha Singh** (supra), had interfered. In this case, the very fact, as to whether disputed amount has been adjudicated or not, seems to be a dispute according to the observations made by the Writ Court. It seems that the appellant was granted an opportunity at the time of adjudication of dispute and he did file a written argument.

Taking note of all the facts and circumstances, we see no reason to make any indulgence into the matter. The appeal is dismissed.

In case, the appellant prefers an appeal before the competent statutory authority within a period of thirty days from today, the appellate authority shall proceed to decide the appeal in accordance with law. For a period of thirty days, coercive steps against the appellant shall be kept in abeyance.

With the aforesaid, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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