

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11795 of 2017

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Shekh Ajmal son of Late Gulam Rasul, resident of Maitra, P.O. Bishanpur, P.S. Amaur, District- Purnea, proprietor of M/s Maa Sherawali Rice Mill, Bagawa Tola, Purnea.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Shashi Bhushan Kumar Mrs. Arti Kumari, Advocates.
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate.
For the State	:	Mr. Arvind Ujjwal, SC-4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 11-07-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent-Corporation.

2. This writ petition has been filed for quashing the entire certificate proceeding initiated against the petitioner in Certificate Case No. 01 of 2016-17 and for connected reliefs.

3. It is submitted on behalf of the petitioner that the



certificate issued in Form No. 1 of Schedule-II of the Bihar & Orissa Public Demands Recovery Act (for short, “the Act”) does not meet with the statutory requirements as the same has been signed by the District Manager, Bihar State Food & Civil Supplies Corporation, Kishanganj (for short, “the BSFC”) as evident from the copy of the certificate enclosed with the notice under Section 7 of the Act. The mere fact that the certificate has also been signed by the Certificate Officer will not clothe it with validity. It is further submitted that very foundational requisition under Section 5 of the Act is also not in accordance with law as it contains the name of the certificate creditor shown as District Manager, BSFC, Kishanganj and not the name of the petitioner as the certificate debtor. Besides, such requisition has also not been verified by the District Manager, BSFC which is another mandatory requirement of law.

4. Learned counsel for the respondents submits that the certificate is valid inasmuch as it has duly been signed by the Certificate Officer.

5. This Court finds considerable force in the submissions of learned counsel for the petitioner. The fact that the certificate has been issued under the signature of the District Manager, BSFC, Kishanganj, who is not the Certificate Officer, denudes it of its validity. Under Section 5 of the Act, the District Manager could only have



written and sent a requisition in Form No. 2 to the Certificate Officer and there could have been no occasion for him at all to have signed a certificate issued in Form No. 1. The certificate, no doubt, also contains the signature of the Certificate Officer below that of the District Manager, which rather shows lack of independent application of mind by the Certificate Officer. Section 6 of the Act requires the Certificate Officer to be satisfied that the demand is recoverable before he signs the certificate. In the present case, it is clear that he has merely signed the certificate mechanically below the signature of the District Manager. As regards the requisition, the same also does not conform to the requirement of the prescribed Form No. 2 as it contains the infirmities as pointed out by the petitioner and which is not denied by the respondents.

6. In the above circumstances, the certificate issued in Form No. 1 signed by the District Manager of the BSFC and the Certificate Officer in the manner aforesaid, as well as the requisition issued by the District Manager, BSFC, are held to be invalid and are both hereby quashed. The respondent BSFC shall be at liberty to issue a fresh requisition for recovery of its dues in accordance with law.

7. Considering that the requisition and certificate have been quashed as above, it goes without saying that no coercive action shall be taken against the petitioner in Certificate Case



No. 01 of 2016-17.

8. The writ petition stands disposed of. I.A. No. 937 of 2018 has been filed for interim relief also stands disposed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.07.2018
Transmission Date	N.A.

