

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17548 of 2017

=====

Kumar Shantanu, Son of Yogendra Prasad Sinha, Resident of Flat No.303,
Rekha Mansion Lohiya Nagar, Kankarbagh, P.S.- Kankarbagh, Patna-20.

... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. District Magistrate, Jehanabad.
3. District Certificate Officer, Jehanabad.
4. Bihar State Food and Civil Supply Corporation Ltd through its Managing Director, Bihar State Food and Civil Supply Corporation Ltd., Patna.
5. District Manager, State Food Corporation, Jehanabad.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Jitendra Prasad Singh, Advocate
For the State : Mr. Arvind Ujjwal SC4
For the BSFC : Mr. Shailendra Kr. Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 28-06-2018

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

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

“Quashing the entire proceeding including order dated 28.03.2017 passed by the District Certificate officer, Jehanabad in Certificate Case No. 02 of 2014 for realization of Rs. 1,00,10,003/- by which he has rejected the objection filed by the petitioner under Section 9 of the Bihar Public Demand Recovery Act (hereinafter referred to as the ‘Recovery Act’)



without adjudicating the same and further he directed the petitioner to furnish the bank guarantee of the dues amount as per the direction of the Hon'ble Apex Court."

3. Learned counsel for the petitioner questions the validity of the notice under Section 7 of the Bihar & Orissa Public Demand Recovery Act, 1914 (for short, "the Act") issued to both the partners, namely, Anish Kumar as well as the petitioner vide memo no. 23 dated 17.02.2017 (Annexure-3). The petitioner raised objection on the ground that one of the partners was contesting the criminal case as well as the certificate case, hence notice to this petitioner amounted to double jeopardy and the proceedings are liable to be dropped. The Certificate Officer by his impugned order dated 28.03.2017 has, however, dismissed the said objection petition without considering the petitioner's contention with regard to non-maintainability of the notice under Section 7 of the Act as against the petitioner.

4. Learned counsel for the State as well as learned counsel for the respondent-Corporation appear and have been heard.

5. The thrust of the petitioner's submission is that the notice under Section 7 of the Act issued against the petitioner is not



maintainable on the ground that Sri Anish Kumar was already contesting the certificate proceeding has not been addressed by the Certificate Officer. A perusal of the impugned order dated 28.03.2017 discloses that the submission of the petitioner does not appear to be correct. The Certificate Officer has dealt with this aspect of the matter and has recorded his finding that the petitioner, being the Managing Director, had joint liability for submitting the bank guarantee. The objection petition of the petitioner has therefore been rejected treating him in the category of debtor and he has been proceeded against as such.

6. From the prayer made in the writ petition itself it is clear that the petitioner has treated his objection petition as having been filed under Section 9 of the Act. The impugned order dated 28.03.2017 rejecting the objection petition has clearly been passed under Section 10 of the Act which is amenable to appeal under Section 60 of the Act.

7. In the circumstances, this Court is not inclined to interfere in the matter. It is not necessary to decide the merits of the objection with regard to the non-maintainability of the impugned notice as raised by the petitioner before the Certificate Officer.

8. It is made clear that in case the petitioner prefers



an appeal in terms of Section 60 of the Act, the same shall be considered and disposed of on its own merits after grant of opportunity of hearing to the petitioner in accordance with law and without being influenced by any observations made hereinabove.

9. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09 .07.2018
Transmission Date	N.A.

