

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5489 of 2019

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Jay Ram Singh Son of Late Chandrika Singh R/o Village-Mehus, P.S.-
Mehus, District-Sheikhpura

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Rural Development Department, Bihar, Patna
2. The Secretary Rural Development Department, Bihar, Patna
3. The Deputy Development Commissioner Sheikhpura
4. The Block Development Officer Block-Sheikhpura, District-Sheikhpura
5. The Certificate Officer Sheikhpura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sushmita Mishra, Advocate
For the Respondent/s : Mr. Binay Kumar Pandey AC to GA 2

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 08-11-2019 Heard learned counsel for the petitioner and learned
counsel representing the State and its authorities.

Petitioner in the present case is aggrieved by and dissatisfied with the notice dated 12.01.2019 issued under the signature of the Block Development Officer, Sheikhpura (respondent no. 4) by which the petitioner has been called upon to deposit Rs. 17,08,992.80/- for the undelivered rice weighing 1247.44 quintals which he had received from the Government under Sampoorna Gramin Rojgar Yojna (hereinafter referred to as the 'SGRY'). Notice has been issued to pay the amount for the aforesaid quantity at the rate of Rs. 13.70/- per kg.

Learned counsel for the petitioner has drawn the



attention of this Court towards the impugned notice as contained in Annexure '1' to the writ application. It is submitted that from a bare perusal of the impugned notice it would appear that the certificate case bearing no. 25 of 2011-12 has already been lodged for realization of the amount, still the petitioner has been threatened with action towards lodgment of a first information report against him if the amount is not deposited. It is the contention of learned counsel for the petitioner that once the certificate proceeding has been lodged, it is the certificate officer who is to proceed with the matter in accordance with law. According to the petitioner, he has not received any show cause notice as yet from the certificate officer and therefore, the threat given by the Block Development Officer, Sheikhpura to lodge a first information report is illegal and arbitrary exercise of power by the said authority.

In course of argument learned counsel for the petitioner has also submitted that like other similarly situated Public Distribution System Shop Dealers, initially when the demand was raised, under the order of this Court the petitioner had deposited 20% of the demanded amount and has availed the interim protection so far. The initial demand was, however, calculated at the rate of Rs. 877.20/- per quintal. It is submitted



that the petitioner had earlier moved this Court in C.W.J.C. No. 12122 of 2011 and the learned Co-ordinate Bench of this Court had while considering the writ application of this petitioner along with other analogous matters vide its order dated 29.07.2011 granted interim protection to the petitioner on the condition that the petitioner would deposit either 20% of the value of undisputed rice at the rate of Rs. 10/- per quintal for the present or the rice itself, if already not deposited within two months.

Learned counsel submits that the petitioner had submitted a representation with the Block Development Officer vide Annexure '6' to the writ application which has remained pending so far and no decision has been taken on the same.

On the other hand, learned counsel for the State submits that the petitioner does not challenge the fact that he had not delivered 1247.44 quintals of rice which were made available to him under 'SGRY'. It is submitted that in similar circumstance as several dealers, having received the rice under the said scheme, did not deliver the rice and the Government was suffering huge loss on account of the same, on a direction issued by this Court a judicial inquiry commission was constituted. Initially it was three Members Committee but



ultimately because the two Members left the Committee, ultimately, the sole Member Hon'ble Mr. Justice Uday Sinha considered the matter and upon considering the entire facts and circumstances after hearing the stakeholders Hon'ble Mr. Justice Uday Sinha Committee took a view that the Dealers would be liable to pay the loss caused to the State at the rate of Rs. 1370/- per quintal of rice which they failed to deliver.

Upon considering the said report, in identical cases being C.W.J.C. No. 4449 of 2019 followed by C.W.J.C. No. 4821 of 2019, this Court refused to interfere with the demand notice raised by the Block Development officer, Ariyari and the Block Development Officer, Sheikhopur respectively.

Learned counsel submits that there is no illegality or infirmity with the order as contained in Annexure '1' to the present writ application as the petitioner has failed to deposit the amount, the Block Development Officer would be within its right to lodge the first information report. Legality of such action cannot be examined in the present writ application.

Having heard learned counsel for the petitioner and the State, this Court finds force in the submission of learned counsel for the State. The quantum of undelivered rice is not in dispute. As back as in the year 2011 when the first demand



notice was issued to the petitioner, the petitioner moved this Court and sought an interim protection which was granted to him provided he deposits a sum equivalent to 20% of the demanded amount. The petitioner complied with the said order and availed the interim protection. In the meantime, the Hon'ble Mr. Justice Uday Sinha Committee having gone through various aspects of the matter submitted its report under which the Government has been found entitled to recover the loss at the rate of Rs. 1370/- per quintal. The aforesaid aspect of the matter has been taken into consideration by this Court while passing order on 17.10.2019 in C.W.J.C. No. 4449 of 2019. The relevant part of the said order is extracted hereunder for a ready reference:

“It appears that pursuant to a direction issued by the learned Writ Court, Hon'ble Mr. Justice Uday Sinha Committee was constituted to go into the various aspects of the matter including quantum of actual loss sustained by the government, the terms and conditions of the allotment of rice to PDS dealers under SGRY for its distribution to the beneficiaries, the manner of allotment of rice to the PDS dealers, the payment of transportation/handling/storage charges to the PDS dealers and price of rice on which recovery had to be made.

For the purpose of present case it is the price of the rice which has been found to be recoverable by Hon'ble Mr. Justice Uday Sinha Committee is only relevant and it is not in dispute that



the petitioner has been made liable only at the rate of Rs. 1370/- per quintal as has been fixed by Hon'ble Mr. Justice Uday Sinha Committee.

Learned counsel for the petitioner submits that before fixing the rate this petitioner was not heard. In the opinion of this Court such argument is not open to be raised by the petitioner in the present writ application inasmuch as firstly the petitioner had unsuccessfully challenged the demand notice raised against him and had accepted the interim order of the Court by paying a part of the amount then ordered by Hon'ble Division Bench. The Hon'ble Uday Sinha Committee was constituted in the light of the order passed by this Court and it is not in dispute that vide Annexure '4' to the writ application the petitioner was called upon to submit his affidavit and reply, if any, together with all documents and the petitioner has made a categorical statement in the writ application that he had submitted his affidavit along with prescribed form. In the opinion of this Court it was a step towards compliance with the principles of natural justice and that has been fully complied with in the case of the petitioner. A perusal of the report of Hon'ble Mr. Justice Uday Sinha Committee would show that it has discussed the various aspects of the matter and then only the amount of Rs. 1370/- per quintal was found to be recoverable. In fact the quantam is not under challenge in the writ application and the report further shows that a large number of PDS dealers have made payment according to the rate fixed by the Committee.

In the aforesaid view of the matter, this Court finds no reason to interfere with the impugned communication as contained in Annexure '5' to the writ application.



The writ application has, thus, no merit. It is dismissed accordingly.”

In the aforementioned background when the submission of learned counsel for the petitioner is considered, this Court finds no fault on the part of the Block Development Officer, Sheikhpura in issuing a demand notice as contained in Memo No. 78 dated 12.01.2019. In the said notice he has rightly mentioned the certificate case number which was earlier lodged against the petitioner.

So far as recovery of the amount is concerned, if the petitioner failed to deposit the amount in terms of Annexure ‘1’, it is for the Block Development Officer to proceed with the certificate case, may be for that purpose he would be required to amend the certificate in view of the decision of the Hon’ble Mr. Justice Uday Sinha Committee but this Court has no occasion, at this stage, to go into the contention of learned counsel for the petitioner that the certificate officer has not issued any show cause notice to him. In the opinion of this Court, if the certificate officer has not issued any show cause in terms of the Bihar and Orissa Public Demand Recovery Act, 1914, it is for the certificate officer to take a view. Presently, no act of certificate officer is under challenge in the present writ application, therefore, this Court would not make any comment



with respect to the certificate proceeding.

This Court agrees with the submission of learned counsel for the State that the legality or any other contention of the petitioner with regard to the FIR which the Block Development Officer, Sheikhpura may lodge in terms of his notice cannot be gone into in the present writ application.

In result, this Court finds no merit in this writ application. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

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