

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2317 of 2017

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Pawan Kumar Singh, S/o Late Kameshwar Prasad Singh, R/o village -
Daudpur Kothi, P.S. Brahmpur, P.O. Muzaffarpur, District - Muzaffarpur,
Prop., Balaji Food Product Rice Mill office at Singhaila @ Chapra Adam,

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary Food and Consumer Department,
Bihar, Patna.
2. The Managing Director, Food and Civil Supply Corporation, Sone Bhawan,
Patna
3. The District Collector, Muzaffarpur
4. The Sub Divisional officer, Sadar - Certificate officer, East Muzaffarpur
5. The District Manager, State Food Corporation, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Krishna Mohan Mishra
For the Respondent/s : Mr.S. Raza Ahmad- AAG5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 11-04-2019

Petitioner, in the present case, has questioned the very initiation of the certificate proceeding giving rise to Certificate Case No.561/2014-15. He has challenged the recovery of certificate amount from the petitioner without following the procedure established by law. By filing I.A. No.5537 of 2018, the petitioner has challenged the order dated 10.05.2016 passed by the Certificate Officer-cum-Sub-Divisional Officer, Muzaffarpur in the said Certificate Case in exercise of his power under Section 10 of



the Bihar and Orrisa Public Demand Recovery Act, 1914 (hereinafter referred to as the 'Act of 1914')

In the aforesaid I.A., the petitioner has also brought on record an order passed by Hon'ble the Chief Justice in Request Case No.89 of 2017 under the provisions of the Arbitration and Conciliation Act, 1996 on 04.08.2017 (Annexure-9 to the I.A.) to submit that now Hon'ble Mr. Justice R.K. Datta, a retired Judge of this Court, has been appointed as Arbitrator to settle the dispute between the petitioner and the respondent. It is also stated that the petitioner has filed one petition under Section 23 of the Act of 1996 before the Hon'ble Arbitrator and the case is pending for disposal, but in the meantime certificate officer has again issued warrant of arrest against the petitioner which is wholly illegal and unjustified.

Learned counsel for the petitioner has relied upon a learned coordinate Bench judgment of this Court in the case of **Brij Mohan Prasad Vs. the State of Bihar** reported in **2009(2) PLJR 25=2008(1) BBCJ 525**, wherein the learned Writ Court was considering the challenge to initiation of a certificate proceeding for recovery of unascertained dues from the petitioner who had retired from government service as Head Clerk. After considering the provisions of sub-section(6) of Section 3 which refers to



Schedule 1 of the Act of 1914 and the provisions of the Public Accountants Default Act, 1850 which provides that any money recoverable from “public accountants” as defined therein for loss caused by them or on account of defalcation in their accounts is recoverable as arrears of land revenue, though the learned Writ Court rejected the contention of the petitioner in the said case that the amounts sought to be recovered are not ‘public demand’ as is contemplated under the provisions of the Act of 1914, at the same time after considering the Boards Instruction 10 in respect of implementation of the Act saying that “Certificate procedure not to be used where there is any doubt of debtors liability,-Requiring -officers should bear in mind that the certificate procedure is intended only for the recovery of sums regarding which there is no doubt of the liability of the debtor. Cases in which the debtor is likely with some show of reason to deny his liability should be reported with a view to institution of civil suits. No such certificate shall be made in respect of any demand the recovery of which is barred by any law of limitation for the time being in force. In the case of rent due to Wards and Government estate the period of limitation depends upon the Tenancy Act applicable and is determined by Schedule III part I. of the Bihar Tenancy Act or Section 234 of the Chota Nagpur Tenancy Act, as the case may be.



The period of limitation for certificate filed by the examiner of Local Account under the Local Fund Audit is three years from the date of the order of surcharge”, the Court held that where the liability of the petitioner has not been ascertained by any competent authority, it cannot be said that the petitioner is guilty of defalcation and that too to the amount as indicated above. The learned coordinate Bench clearly held that “Certificate proceedings are proceedings for recovery of ascertained dues. It is not a proceeding where the certificate officer is to act like a Civil Court and determine the liability. The liability is, prima facie, predetermined and the proceedings are only for recovery of those predetermined liability.”

Learned counsel has also referred the another judgment of the learned coordinate Bench of this Court in the case of **Arun Kumar Chourasia Vs. State of Bihar** reported in **2008(3) PLJR 22** and the Hon’ble Division Bench judgment of this Court in the case of **Budha Singh Vs. State of Bihar** reported in **AIR 1981 (Pat) 149; 1980 PLJR 567**. In the said case after referring to Section 73 of the Bihar Private Forests Act, 1947 read with Item No.9 of Schedule 1 of the Act of 1914 the Hon’ble Division Bench held that the Public Demand Recovery Act lays down summary procedures for realization of money and it requires strict



compliance with the provisions of the Act and Rules. It is submitted that the Hon'ble Division Bench of this Court held in **Budha Singh** (supra) that the certificate is in the nature of a decree. This is why Section 4 of the Act necessitates the satisfaction of the certificate officer that money sought to be realised is due.

Referring to another Hon'ble Division Bench judgment of this Court in **LPA No.1874 of 2016 (Mahendra Prasad Jaiswal Vs. The State of Bihar & Ors.)**, learned counsel submits that in the said case a certificate proceeding of similar nature as that of present case was initiated vide Certificate Case No.64 of 2014-15 and an order was passed in the certificate case which was challenged before the Writ Court. A similar contention was raised by the petitioner that the certificate proceeding may be initiated only for the amount which is undisputed and unless and until the quantification of the amount is not undertaken the certificate proceeding would not be maintainable. The Hon'ble Division Bench quashed the order dated 17.03.2016 passed in Certificate Case No.64 of 2014-15.

Learned counsel submits that in the present case the petitioner being the proprietor of one Balaji Food Product Rice Mill entered into an agreement (Annexure-P/1) with the District



Manager, Bihar State Food and Civil Supplies Corporation Ltd. regarding milling of paddy and delivery of rice against paddy lying in the godowns/procurement centres under District office of Bihar State Food and Civil Supplies Corporation Ltd. in custom milling of paddy. The petitioner claims that he had received 8425.05 quintals of paddy, therefore he had to supply 5644.79 quintals of rice to the State Food Corporation which he had done as per the record available with the Corporation. It is the case of the petitioner that he had to supply 244.79 quintals of rice which was not supplied because the Corporation had not made available truck for lifting the rice on the ground that the rice in question was below 270 quintals. The Corporation normally made available the truck for lifting of 270 quintals of rice not for less quantity. It is submitted that as per the allegation the petitioner is liable to pay the price of rice at the rate of Rs.2165.56 per quintal which comes to Rs.5,30,107.43. The petitioner has ,however, denied his liability to pay the said amount. In the facts and circumstances of the case, learned counsel submits that where the petitioner has denied the liability and the amount is not ascertained in accordance with law, the initiation of the certificate proceeding for recovery of the aforesaid amount taking recourse to the provisions of the Act of 1914 would not be just and proper.



Learned counsel for the respondent Corporation has opposed the writ application by submitting that the Certificate Officer-cum-Sub-Divisional Officer, East Muzaffarpur has passed the impugned order dated 10.05.2016 after hearing both the parties and the said order is an appealable order. It is submitted that the requisition under Section 5 of the Act of 1914 has been made for recovery of a sum of Rs.44,71,444.61 in the light of Section 7A of the Essential Commodities Act at the rate of 15% interest from 19.08.2014 till the date of realization.

Having heard learned counsel for the parties and on perusal of the records as also the judgments on the subject, this Court finds that the respondent Corporation has not placed on record any order of a court of competent jurisdiction or any other competent authority wherein the liability of the petitioner may be said to have been determined. It is evident from the records that the certificate proceeding has been initiated for recovery of a pre-determined liability. In the case of **Brij Mohan Prasad** (supra), a learned coordinate Bench of this Court recorded in paragraph 9 of its judgment as follows:-

“Certificate proceedings are proceedings for recovery of ascertained dues. It is not a proceeding where the certificate officer is to act like a Civil Court and determine the liability. The liability is, prima facie, pre determined and the proceedings are only for recovery of those pre determined liability.



Here in the present case, there have been no proceeding determining the liability of the petitioner. There being no ascertained legal liability as against the petitioner there could not be a proceeding for its recovery.”

The Hon’ble Division Bench of this Court in the case of **Budha Singh** (supra) has having considered the relevant provisions, in paragraph 8 of its judgment recorded as under:-

“According to Item No.9, any money payable to a servant of the Government or to any local authority in respect of which person liable to pay the same has agreed by a written instrument that it shall be recoverable as a public demand, will come within the definition of public demand as occurring in Sec.3(6) of the said Act. The money in question is not payable to a servant of the Government or any local authority but to the Governor of Bihar. This apart the Public Demands Recovery Act lays down summary procedure for realisation of money and it requires strict compliance with the provisions of the Act and the Rules. A certificate is in the nature of decree. This is why Sec.4 of the Act necessitates the satisfaction of the Certificate Officer that money sought to be realised is due. It is in this context that the terms any money in respect of which the person liable to pay the same has agreed have to be considered. The loss mentioned in Para 5 of the agreement in questions in the nature of damages and not an ascertained sum of money nor can it be said that amount is ascertainable on the face of the terms of the agreement. This being the position, the respondents cannot take advantage of the provisions of Item No.9 of Sch.1 of of the Act. I may, however, observe that the respondents shall be within their rights to proceed against the petitioner for recovery of the loss after it is duly ascertained in accordance with law.”

This Court has taken note of the another Hon’ble Division Bench judgment of this Court in the case of **Mahendra**



Prasad Jaiswal (supra) and after considering the facts of the present case, this Court finds that there cannot be any deviation on the propositions of law when the Hon'ble Division Bench of this Court and the learned coordinate Bench of this Court have laid down the law on the subject. Since the Corporation in this case has also proceeded to institute a certificate proceeding with pre-determined liability, the same is liable to be quashed. The impugned order as well as the certificate proceeding are accordingly quashed.

An arbitration proceeding is said to have commenced by virtue of appointment of a Hon'ble retired judge of this Court as an Arbitrator. Thus, upon determination of the liability by the learned Arbitrator, the respondent Corporation will have recourse available in law to recover the amount, if any determined, in course of arbitral proceeding.

This writ application is allowed in terms indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	09.04.2019
Uploading Date	12.04.2019
Transmission Date	

