

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21393 of 2019

Om Prakash Son of Raghunath Prasad, Resident of Sisaundha, Dhansoi, P.S.-
Buxar, District- Buxar, Proprietor of M/S Shree Ram Mill, Buxar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary Department of Food and Consumer Protection, Govt. of Bihar, Patna.
2. The Managing Director Bihar State Food and Civil Supply Corporation, Patna.
3. The District Magistrate, Buxar.
4. The Superintendent of Police, Buxar.
5. The District Manager, Bihar State Food and Civil Supplies Corporation, District- Buxar.
6. The Certificate Officer, Banka.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar, Advocate Ms.Arati Kumar, Advocate Mr.Chandra Kishore Kumar, Advocate
For the State	:	Mr.U.P. Singh, AC to SC-4
For the BSFC	:	Mr.Agreya Pratap, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 14-11-2019 Petitioner in the present case is challenging the entire certificate proceeding giving rise to Case No. 04 of 2014-15 presently pending before the Certificate Officer-cum-Deputy Collector, Land Reforms, Buxar. He is also aggrieved by the order dated 13.09.2019 passed by the Certificate Officer by which a body warrant has been issued against the petitioner.

Although the certificate proceeding has been challenged on the ground that the certificate amount is disputed and the same is not a determined liability of the petitioner as also that the petitioner had not been served with the certificate



in the given form and manner, learned counsel for the petitioner has admitted in course of hearing that the petitioner had filed one writ application being C.W.J.C. No. 1360 of 2016 before this Court for quashing of the certificate proceeding but the said writ application had been withdrawn unconditionally and without liberty to file a fresh application.

In course of argument as learned counsel could sense the trouble in pursuing his reliefs as regards challenge to the certificate proceeding, learned counsel submits that he would confine his relief to prayer no. (vi) whereunder he has prayed for quashing of the order dated 13.09.2019 passed by the Certificate Officer.

It is submitted that on 13.09.2019, learned counsel for the petitioner had filed the '*Hajiri*' but when the matter was called out he was absent, because of this the Certificate Officer proceeded with the matter and in absence of the learned Advocate of the petitioner the impugned order issuing warrant of arrest has been issued. Learned counsel submits that with the supplementary affidavit he has brought on record a copy of objection which has been filed by the petitioner under Section 9 of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the 'Act of 1914') before the



Certificate Officer. Learned counsel is, however, unable to say as to whether or not Section 9 of the Act of 1914 petition has been considered so far. Learned counsel submits that the petitioner may be given an opportunity to appear before the Certificate Officer and make his submission.

Learned counsel for the Bihar State Food and Civil Supplies Corporation submits that the petitioner is not complying with his own undertaking to deposit a sum of Rs. 2,00,000/- per month. It is submitted that if the petitioner has given this undertaking and has not been complying with the said undertaking, the Certificate Officer has rightly issued a warrant against him.

Having heard learned counsel for the petitioner and learned counsel for the Bihar State Food and Civil Supplies Corporation, this Court finds that the limited prayer of the petitioner as regards the order dated 13.09.2019 is fit to be allowed on the ground of non-observance of provisions of Rule 53 and 54 of the Recovery Rules framed under Bihar and Orissa Public Demands Recovery Act, 1914. Rule 53 and 54 are the mandatory provisions and unless those are complied with, a warrant of arrest could not have been issued against the petitioner. It is true that the petitioner seems to be lacking in



abiding by his own undertaking but then an opportunity by issuing a notice in terms of Rule 53 of the Rule was required to be given before issuance of a warrant of arrest and then the Certificate Officer should have assured himself with the compliance of Rule 54 whereunder the certificate holder is obliged to deposit the cost of subsistence of the certificate debtor from the date of his arrest to the date of his production before the Certificate Officer.

Since the order attached with the writ application are not showing compliance of those provisions, in the opinion of this Court the order dated 13.09.2019 can not sustain the test of law, it is accordingly set aside. The Certificate Officer shall now proceed afresh.

Learned counsel for the petitioner submits that the petitioner undertakes to appear before the Certificate Officer on 9th December, 2019 to make his submissions along with his learned counsel, if so advised.

The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

vats/ved

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