IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23122 of 2018

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Jai Maa Saraswati Contractors Pvt. Ltd. Shop No.- 119/A 1st Floor, Maharaja Kameshwar Complex, Frazer Road, Patna- 800001 through its Proprietor Gautam Kumar, Son of Sri Dukhan Yadav, resident of Primohani, Chhathi Gali, P.S.- Gandhi Maidan, District- Patna. ... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. Bihar State Food and Civil Supplies Corporation Ltd Sone Bhawan, 5th Floor, Birchand Patel Path, Patna through its Managing Director.
3. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
4. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, 5th Floor, Birchand Patel Path, Patna.
5. The Chief Accounts Officer, Bihar State Food and Civil Supplies Corporation Ltd. Patna.
6. The District Manager, State Food Corporation, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mrs.Nivedita Nirvikar, Advocate
For the BSFC	:	Mr. Anjani Kumar, Sr. Advocate Mr. Nirmal Kumar, Advocate Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s	:	Mr.Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

8 20-08-2019 Heard learned counsel for the petitioner and learned counsel representing the Bihar State Food and Civil Supplies Corporation Ltd. (hereinafter referred to as the ‘Corporation’)

Learned counsel for the petitioner has informed this Court that now the petitioner has received the admitted amount of Bills. Learned counsel has, however, drawn the attention of this Court towards the Interlocutory Application being I.A. No. 01 of 2019 filed by the petitioner by which he has prayed for quashing of the letter no. 520 dated 10.03.2016 as contained in

Annexure '8' to the writ application whereby the District Manager of the Corporation has directed to recover a sum of Rs. 21,14,908/- from the petitioner on account of the alleged loss caused to Corporation.

The petitioner has further prayed for quashing of the office order issued vide letter no. 709 dated 18.01.2016 whereby the Managing Director of the Corporation had issued direction to deduct the amount at the rate of Rs. 538 per quintal for rice and Rs 484 per quintal for wheat from the security amount of the petitioner.

Learned counsel submits that in fact the writ application involved three issues. The first issue was with respect to the payment of the admitted Bills of the petitioner, the second relates to the illegal deductions sought to be made from the total Bills of the petitioner and the third one is in respect of the challenge to the order of the Managing Director deleting the name of the petitioner from the blacklist. It is submitted that so far as the issue with respect to the admitted claim is concerned, the same has come to an end. The matter relating to blacklisting is said to be pending before the Appellate Authority, therefore, this Court may direct the Appellate Authority to pass an appropriate order thereon within a reasonable period however, considering the facts and circumstances of the case where according to learned counsel there are prima-facie materials to show that the deduction of a sum of over Rs. 21,14,908/ is highly arbitrary and not based on the materials available on the record, this Court should quash the impugned order in terms of the prayer made in the interlocutory application and direct the respondents to pay the amount under the deduction.

On the other hand, learned counsel representing the Corporation submits that the writ application no doubt raised three issues but while considering the same, this Court has taken note of the submissions of the petitioner in the order dated 08.08.2019 where it is recorded that learned counsel for the petitioner is at this stage looking only for the admitted amount. It is submitted that the appeal preferred by the Corporation/BSFC against the release of the petitioner from the blacklist may be directed to be disposed of within a reasonable time but so far as the deductions are concerned, this Court sitting in its writ jurisdiction under Article 226 of the Constitution of India need not go for any adjudication on that issue because that would involve a determination of fact which may perhaps be not done by this Court in its writ jurisdiction. Attention of this Court has also been drawn to Clause 17 of the agreement to show that there is an arbitration clause under the agreement whereunder parties may go for redressal of their grievances. It is submitted that no doubt now CMD/Managing Director of the Corporation cannot act as sole Arbitrator but there being an arbitration clause the dispute may be referred to a sole Arbitrator who may either be appointed with the consent of the parties or by the High Court in exercise of its power under Section 11(6) of the Arbitration and Conciliation Act, 1996 (as amended upto date).

Having heard learned counsel for the petitioner and learned counsel representing the Corporation, this Court is of the considered opinion that the grievance of the petitioner with respect to the deductions being made pursuant to the order of the Managing Director cannot be gone into by this Court sitting in its writ jurisdiction. Learned counsel for the petitioner has drawn attention of this Court towards the various correspondences, facts and the issues which according to her make it crystal clear that the deductions are being made without applying mind to the materials available on the record but the Court is of the opinion that these are the issues of the facts which may be properly gone into in the arbitration proceeding and once this Court finds that there is an arbitration clause in the agreement which provides for a dispute redressal mechanism, it seems all the more important to note that on the face of an equally efficacious remedy of arbitration, this Court need not exercise its extraordinary writ jurisdiction. The adjudication of the issues certainly require determination of facts. This Court would, therefore, not make any comment on the submissions of the petitioner with respect to the issue of deductions and leave it open for the petitioner to pursue its remedy in accordance with law in terms of the mechanism provided under the agreement itself.

Learned counsel for the petitioner has also submitted that the petitioner should be allowed some interest on the admitted amount which have been kept pending for a long time without there being any basis for the same. This Court leaves it open to the petitioner to agitate this issue in the arbitration proceeding.

So far as the order releasing the petitioner from blacklist is concerned, the same is said to be under appeal before the Establishment Committee. This Court would direct the Appellate Authority to dispose of the appeal within a period of 90 days from the date of receipt/production of a copy of this order. If the petitioner will be aggrieved by any order passed by the Appellate Authority, he will have a remedy in accordance with law where all questions will be open for consideration.

At this stage, learned counsel for the Corporation has submitted that although the Corporation has paid the admitted dues of the petitioner but in case in future any material is found indicating any fraudulent act on the part of the petitioner, the Corporation should be given liberty to take an appropriate action. This Court would not make any comment on this issue save and except to say that any such allegations of fraud if raised against the petitioner, the petitioner will be given an opportunity of hearing before taking any view against him. It is also made clear that the Corporation will be at liberty to take a bonafide view of the matter in future if comes to its notice but as a word of caution this Court would put that in no case it should be used as a tool in the hand of the Corporation to harass the petitioner and in case liberty of this Court is utilised to harass the petitioner the Corporation may have to bear the responsibility thereof.

The writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

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