

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1532 of 2020

1. Zila Sahakari Kendriya Bank Karmachari Sangh Durg, Registration No. 74, Through Its President Dharendra Kumar Dewangan, S/o Thokelal Dewangan, Aged About 53 Years, Working As Branch Manager of Jila Sahkari Kendriya Bank Maryadit, Durg, District Durg Chhattisgarh, R/o Jayanti Nagar Sikola Basti, Ward No. 16, Durg, District : Durg, Chhattisgarh
2. Heeralal Chandrakar @ H.L. Chandrakar, S/o Sugriv Singh Chandrakar, Aged About 52 Years, Working on The Post of Samiti Prabandhak, Sewa Sahakari Samiti Maryadit Khandsara, District Bemetara Chhattisgarh, R/o Village Kanhera, District : Bemetara, Chhattisgarh
3. Jeevrakhan Sahu, S/o Shivpal Singh Sahu, Aged About 51 Years, Working on the post of Samiti Prabandhak At Sewa Sahakari Samiti Maryadit Jhal (Bemetara), District Bemetara Chhattisgarh, R/o Village Ghanadih, District : Bemetara, Chhattisgarh
4. Narendra Singh Thakur, S/o Shatruhan Singh Thakur, Aged About 50 Years Working on the post of Samiti Prabandhak At Sewa Sahakari Samiti Maryadit Nawagarh, District Bemetara Chhattisgarh. R/o Ward No. 5, District : Bemetara, Chhattisgarh
5. Jagguram Yadu, S/o Bahararam Yadu, Aged About 53 Years, Working on the post of Samiti Prabandhak At Sewa Sahakari Samiti Maryadit, Bemetara, District Bemetara, Chhattisgarh R/o Village Bortara, District : Bemetara, Chhattisgarh
6. Ramprakash Sahu, S/o Arjun Sahu Aged About 34 Years Working on the post of Samiti Prabandhak, At Sewa Sahakari Samiti Maryadit, Jhal (Nawagarh) District Bemetara Chhattisgarh, R/o Village Jhal, Tahsil Nawagarh, District : Bemetara, Chhattisgarh

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Versus

1. State Of Chhattisgarh Through Secretary, Food And Civil Supplies Department, Mantralaya Mahanadi Bhavan, Atal Nagar, District : Raipur, Chhattisgarh
2. Secretary State Of Chhattisgarh, Department Of Cooperative Affairs, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District : Raipur, Chhattisgarh
3. Collector Bemetara, District : Bemetara, Chhattisgarh
4. Chhattisgarh Rajya Sahakari Vipnan Sangh Through Its Managing Director, 6th Floor, Tower - C, Commercial Complex CBD, Sector -21, Atal Nagar, Raipur, District : Raipur, Chhattisgarh
5. District Mark Fed Officer, Chhattisgarh Rajya Sahakari Vipnan Sangh, District Bemetara Chhattisgarh., District : Bemetara, Chhattisgarh
6. Deputy Registrar, Cooperative Society, Bemetara, District : Bemetara, Chhattisgarh

----- Respondents

For Petitioners	:	Mr. Manish Upadhyay, Advocate
For State	:	Mr. V. R. Tiwari, Addl. A. G.
For MARKFED	:	Mr. Ashish Surana, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20.07.2020

1. The challenge in the present writ petition is to the show-cause notice issued by the Collector, District: Bemetara dated 03.07.2020 Annexure P-1; whereby on the allegation of shortage of paddy purchased at the procurement center, disciplinary proceedings as well as criminal proceedings have been proposed to be taken against the petitioners and for which their explanations have been called.

2. The contention of the counsel for the petitioners is that the petitioners have purchased paddy on certain guidelines and rules framed by the respondents in this regard. However, there was non lifting of the paddy by the Marketing Federation on account of which the paddy which was purchased by the petitioners was exposed to extreme climatic conditions, which resulted in the shortage of paddy purchased and for which, the petitioners are not responsible in any manner. There was no deliberate attempt made by the petitioners or an act, alleged by the petitioners which has caused the shortage. Now, the respondents for their in-action are making the petitioners scapegoat by issuing the present show-cause notice calling for explanation in respect of both departmental as well as criminal prosecution. This according to the counsel for the petitioners is arbitrary and illegal.
3. It is the further contention of the counsel for the petitioners that a plain reading of the contents of the show cause notice would show that they are pre-determined in their approach by reaching to a predrawn conclusion of the petitioners being guilty of alleged act, which resulted in the shortage of paddy. According to the counsel for the petitioners, the respondents should have primarily conducted a preliminary enquiry/investigation and should have reached to a specific conclusion. Firstly, whether there has been a shortage or not, whether the petitioners are deliberately responsible for it or it was on account of natural reasons. The contention of the counsel of the petitioners is that they are not in any manner responsible for the

shortage and that they have not committed any default or for that matter any fraud in the process of purchase of the paddy. The learned counsel highlighted the fact that, if at all, if there is any shortage, the same is on account of the non-lifting of the paddy within a stipulated period and during this period, the paddy was exposed to extreme weather condition and during this period the climate was frequently changing. According to the counsel for the petitioners, the petitioners cannot be held responsible for any such shortage that has occurred unless it is proved in an enquiry that the petitioners, were solely responsible by way of some specific act on their part. According to the petitioners, there is all likelihood of the respondents initiating both the recovery proceedings as also registering an FIR alleging shortage of paddy. He submits that as of now, no FIR has been lodged. The counsel for the petitioners submits that the petitioners are ready to face any physical verification of the stock and also ready to face any preliminary enquiry or investigation in respect of the purchase of paddy and the alleged shortage and if at all, if the respondents find the petitioners guilty of any deliberate act, which resulted in the shortage only then, should they initiate appropriate action as has been mentioned in the show cause notice.

4. The counsel for the respondents, however, submit that the challenge in the present writ petition is only a show cause notice. The petitioners have all the rights to put their appearance before the authority and make a detailed reply to the show cause notice. It

would be only after considering the reply that they give to the show cause notice, would appropriate action be initiated. Moreover, it was contended that the action proposed is all in terms of the agreement entered into between the parties and if at all, if the petitioners have any dispute, the remedy for resolving the dispute, as agreed upon between the parties, is by way of an arbitration.

5. As regards non-lifting of paddy within the stipulated period, the respondents submit that under the tri-partite agreement entered upon, it was specifically envisaged that in the event, if the Federation fails to lift the paddy within the stipulated period, the society can transport the paddy to the respective storage centre and claim Transportation Charges for the same.
6. Given the said submissions by the counsel for the respective parties, this Court is of the opinion that the grievance of the petitioners primarily is in respect of the alleged pre-determined show cause notice, which has been issued on 03.07.2020 (Annexure P/1). Since the action under challenge is a show cause notice, this Court is of the opinion that it would not be proper for this court at this juncture to entertain the writ petition on merits. This Court is inclined to dispose off the writ petition directing the petitioners to submit their detailed reply to the show cause notice and the respondents, in turn, shall duly consider the reply given to the show cause notice. It is expected that on the petitioners' submitting detailed reply, the reply and its contents shall be subjected to verification, a preliminary enquiry be also conducted if required, to reach to a conclusion firstly whether in-

fact there has been any shortage of paddy or not and secondly whether the shortage of paddy is because of any deliberate and intentional act on the part of the petitioners or the shortage or damage to the paddy was because of natural reasons like climatic factors. Only after verification of fact and physical verification of the records, should the respondents proceed against the petitioners that too, if they are found personally guilty of having committed this act, which resulted in the shortage or damage to the paddy.

7. Accordingly, the present writ petition stands disposed off directing the respondents first to undertake physical verification or preliminary inquiry/investigation in respect of any alleged shortage of paddy or loss caused to the respondents in the process of purchase of paddy. That in the course of inquiry, it should be enquired out as to whether there has been a shortage of paddy or not, there has been any damage or loss caused to the respondents or not and whether the said shortage or damage was in fact caused because of a deliberate and willful act on the part of the petitioners or any office bearers of the petitioners and only thereafter, the respondents would take appropriate steps in terms of the agreement/contract entered into between the parties.
8. The writ petition, accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
Judge