

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6943 of 2020

1. Raushan Chaudhary, son of late Ramjee Choudhary, Resident of Majithi urf Basitpur, P.O & P.S.-Gayaghat, District-Muzaffarpur.
2. Rina Devi, widow of Late Ramjee Choudhary, , Resident of Majithi urf Basitpur, P.O & P.S.-Gayaghat, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Food and Consumer Protection Department, State of Bihar, Patna.
2. The District Collector/ Magistrate, Muzaffarpur.
3. The Bihar State Foods and Civil Supplies Corporation Limited, through its Managing Director, Khaday Bhawan, Near - R Block Patna.
4. The Sub/Divisional Officer Cum Certificate Officer, Muzaffarpur.
5. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Krishna Mohan Mishra, Advocate
For the State	:	Mr. U.P.Singh, Ac to SC 4
For the BSFC	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-11-2021

Re.: I.A. No. 02 of 2020

Considering the facts and circumstances of the case, application for substitution of the name of original writ petitioner, namely, Ramjee Choudhary with his legal heirs and representatives, as mentioned in the cause title of the application, is allowed.

Accordingly, Interlocutory application is disposed of.

Re.: CWJC No. 6943 of 2020



Mr. Krishna Mohan Mishra, learned counsel appearing on behalf of the newly impleaded writ petitioners, states that there is typographical error in the prayer Clause-i of the writ petition, the date of the impugned order be read as '29.08.2019' in place of 29.08.2016.

Petitioners have prayed for the following relief(s):-

- i. To quash the order passed by District Collector, Muzaffarpur, in Misc(Bivd) case no-21 /2017-18 dated 29.08.2016 wherein the appeal of the petitioner has been dismissed on admission on the ground that the petitioner has not deposited 40 percent of the amount of demand of rs.3,23,56,846.41.
- ii. To hold and declare that the recovery proceeding initiated by respondent under Bihar and Orissa Public demand and Recovery Act (here in after refer to 'PDR Act') is wholly illegal and without jurisdiction in view of the fact that same district collector had passed award under Arbitration and Conciliation Act,1996(here in after referred to 'arbitration Act') against which the petitioner has filed objection u/s 34 of the Arbitration Act in the court of Id district Judge ,Muzaffarpur which has been admitted and now the said objection petition is pending before the 13th additional Judge, Muzaffarpur in Misc (arb) case No-02/2017 as such proceeding initiated for recovery under PDR Act is without jurisdiction.
- iii. To issue appropriate writ to quash the warrant of arrest and stay the demand issued by certificate officer, Muzaffarpur in certificate case no-560/2016 is illegal and arbitrary and violative of Article -21 and section 15 r/w Rules 53 of the PDR Act.



- iv. To hold and declare that petitioner is has already undergone the prison for the same offence hence sending of the petitioner again in jail is amount to double jeopardy.
- v. To issue any other writ/ writs, order/ orders, direction/ directions as your honour deemed fit and proper.

The Collector dismissed the petitioners' appeal only on the ground that the petitioners had not met the condition of pre-deposit of 40% of the amount which was short by Rs. 50 lacs. Impugned order dated 29.08.2019 passed in Appeal Case No. 21/2017-18, titled as M/s Jai Mata Vaishno Rice Mill Vs. State of Bihar & Ors., is evident to this effect.

Shri Mishra states that during the time of current pandemic Covid-19, the original petitioner had expired and as such the present petitioners, despite financial hardship, are ready and willing to pursue the matter by meeting the shortfall of deposit of Rs. 50 lacs, enabling the appellate authority to pass order in the appeal, on merits.

Shri Mishra further states that the said amount of Rs. 50 lacs shall be deposited within a period of two weeks from today.



As such, we set aside the impugned order dated 29.08.2019 in the following terms:-

(a) The appeal shall be restored to its original number and position;

(b) The petitioners shall appear before the appropriate authority on 07.12.2021, before which date the petitioners shall deposit the shortfall of Rs. 50 lacs;

(c) The petitioners shall fully co-operate and not take any unnecessary adjournment in the proceedings;

(d) Liberty reserved to the parties to place additional materials in support of their respective contentions before the appellate authority;

(e) The appellate authority shall pass a speaking order assigning reasons in accordance with law. This he shall positively do within a period of three months thereafter;

(f) With the deposit of Rs. 50 lacs, pre-condition of deposit of 40% of the amount, would have been met in view of the observations made by the Collector in the impugned order itself; and

(g) If the petitioners fail to deposit the said



amount, the appeal would be dismissed for non-prosecution.

In view of the aforesaid observations, the present petition stands disposed of.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	26.11.2021
Transmission Date	

