

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.1644 of 2013**

***Subas Chandra Behera (since dead) .... Petitioners***  
***represented by his LRs i.e., Bijay Laxmi***  
***Behera and others***

Mr. Jaydeep Pal, Advocate

*-versus-*

***Orissa State Warehousing Corporation .... Opposite Parties***  
***Ltd. and others***

Mr. B.K. Dash, Advocate for O.P. Nos.1 and 2-OSWC

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE M.S. RAMAN**

**ORDER**  
**29.11.2022**

**Order No.**

08. 1. The challenge in the present petition is to a recovery notice dated 6<sup>th</sup> November 2012 issued by the Orissa State Warehousing Corporation (OSWC) to the original Petitioner [who has died during the pendency of the present petition and has been substituted by his legal representatives (LRs) ] requiring him to deposit a sum of Rs.7, 88,147/- claiming it to be the value of stock of grains belonging to the Food Corporation of India (FCI) which purportedly were lost on account of alleged laxity and negligence of the late Petitioner who was at the relevant point in time the Deputy Superintendent and Ware House In-Charge, OSWC, Nayagarh.
2. While issuing notice in the present petition on 18<sup>th</sup> March 2013, an interim order was passed staying the operation of the

aforementioned letter dated 6<sup>th</sup> November 2012, and directing that no coercive action pursuant thereto shall be taken against the Petitioner. That interim order has continued till date.

3. By an order dated 15<sup>th</sup> November 2021, the LR's of the deceased Petitioner were brought on record. On 20<sup>th</sup> July 2022, an additional affidavit was filed by the LR's of the late Petitioner enclosing a copy of a letter dated 18<sup>th</sup> July 2018, whereby a sum of Rs.11,51,987/- was recovered from the contributory provident fund dues of the late Petitioner. At that stage, Mr. B.K. Dash, learned counsel appearing for the OSWC had sought time for instructions.

4. Thereafter, in an affidavit filed on 19<sup>th</sup> October 2022 by the OSWC, it has been stated in para 7 as under:

“7. That with regard to the averments made in Para-8 of the Writ Application it is respectfully submitted that the Petitioner has admitted of committing irregularities at Annexure-5 that the weight check memos could not be verified due to non availability of the same. Although the storage loss for the relevant period shown by him did not exceed 0.5% which is within the permissible limit i.e. 0.2 to 0.3%, but Food Corporation of India recovered from the bills of the OSWC for the reasons of irregularities as mentioned in their investigation report dt.30.12.2009 as at Annexure-2.”

5. A separate affidavit was earlier filed by the FCI admitting that a demand notice was issued to OSWC through its official representative “and not to the Petitioner in its individual capacity”. However, thereafter, no affidavit has been filed by the FCI.

6. A further affidavit has been filed on 19<sup>th</sup> October 2022 by the OSWC confirming the withholding of various sums from the late Petitioner, but without disputing that no prior notice was issued to the late Petitioner before effecting such recoveries.

7. It is reiterated by Mr. Dash appearing for OSWC that the aforementioned withholding of amounts was made only on account of the letter dated 22<sup>nd</sup> August 2011 (Annexure-7) of the FCI which was preceded by another letter dated 28<sup>th</sup> July 2000 regarding permissible storage losses.

8. Having heard learned counsel for the Petitioners as well as the OSWC and with none appearing for the FCI today and having perused the aforementioned pleadings, the Court is of the view that the recoveries effected by the OSWC from the late Petitioner without any prior show cause notice or seeking an explanation from the late Petitioner individually is unsustainable in law as it is clearly violative of the principle of natural justice.

9. With the original Petitioner having expired and with his LRs coming on record, this defect in failure to comply with the principles of natural justice prior to effecting recoveries cannot be rectified. The inevitable result is therefore that the impugned recoveries effected by the OSWC from the late Petitioner have to be declared to be illegal and it is so ordered. The effect of this is that FCI's instruction at Annexure-7 will not be given effect to.

10. The sums recovered from the later Petitioner will now be restored to his LR's together with 6% simple interest from the date of recovery up to the date of such restoration of such moneys which in any event should take place not later than eight weeks from today. The sum be paid to the wife of the late Petitioner-Bijay Laxmi Behera on behalf of all the LR's of the late Petitioner.9. The writ petition is disposed of in the above terms.

11. Issue urgent certified copy of this order as per rules.

*S.K. Guin*



***(Dr. S. Muralidhar)***  
***Chief Justice***

***(M.S. Raman)***  
***Judge***