

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.869 of 2023

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Ajay Chaudhary, Son of Jarman Chaudhary, resident of Rahimpur Tola
Sonbarsha, Ward no 15, P.S.- Khagaria (M), District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through Dist. Magistrate Khagaria.
2. The Dist. Magistrate, Khagaria.
3. The Dist. Certificate Officer, Khagaria.
4. The Bihar State Food and Civil Supplies Corporation, Khadya Bhawan,
Daroga Rai Path, Patna- 1 through its Managing Director.
5. The District Manager, Bihar State Food and Civil Supplies Corporation,
Motihari, Dist- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amrendra Narayan Rai, Advocate
For the Respondent/s	:	Mr. Arvind Ujjwal, SC-4
		Mr. Upendra Pratap Singh, AC to SC-4
For B.S.F.C.	:	Mr. Shailendra Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL JUDGMENT

Date : 15-03-2023

The petitioner assails the order dated 12.11.2022
(Annexure-8), passed by respondent no.3, the District
Certificate Officer, Khagaria in Certificate Case No. 01 of 2021-
22, whereby demand of an amount of ₹1,10,84,517 (One Crore
Ten Lakhs Eighty Four Thousand Five Hundred Seventeen) has
been raised with a stipulation to deposit the same within a
period of two month, failing which the warrant of arrest and
impoundment confiscation proceeding will be initiated against
the petitioner.



As per Section 60 of the **Bihar & Orisa Public Demand Recovery Act, 1914** (hereinafter referred to as 'the Act'), an appeal lies against the said order to the Collector. However, learned counsel for the petitioner contends that as per Section 60(1) of the Act, there is a pre-condition to deposit 40% of total raised demand for entertainment of an appeal, which is too cumbersome.

Section 60 of the Act reads as under:

“60. Appeal. - (1) An appeal from any original order made under this Act shall lie -

(a) if the order was made by an Assistant Collector or a Deputy Collector; or by a Certificate Officer not being the Collector - to the Collector; or

(b) if the order was made by the Collector - to the Commissioner:

Provided that no appeal shall lie from any order setting aside a sale on an application made under Section 28:

[Provided further that no appeal against an order passed under Section 10 shall be entertained unless the appellate authority is satisfied that the appellant has paid forty percent of the amount determined under that Section or such amount as the appellant admits to be due from him, whichever is greater.]

(2) Every such appeal must be presented, in case (a), within fifteen days, or in case (b) within thirty days, from the date of the order.

(3) The Collector may, by order, with the previous sanction of the Commissioner, authorise -

(i) any Sub-divisional Officer; or

(ii) any officer appointed under clause (3) of Section 3 to perform the functions of a Certificate Officer;

to exercise the appellate powers of the Collector



under sub-section (1).

(4) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause (a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.”

In terms of Section 60(1) of the Act, 40% of the amount determined under that Section or such amount as the appellant admits to be due from him, whichever is greater, is required to be deposited.

In the circumstances, this Court is of the view that such a condition to file an appeal may be cumbersome and cannot be said to be efficacious remedy for denying to entertain the writ. However, considering the facts of the case, this Court deems it appropriate to allow the petitioner to file an appeal exempting to deposit 40% of the total raised demand, which is a pre-condition to file an appeal. If such an appeal is filed by the petitioner within a period of one month from today, the same shall be heard and decided in accordance with law by the appellate authority within a period of four months from the date of filing of appeal.

The appellate authority, in terms of Section 60(5) of



the Act has the power to stay the execution proceeding and if the petitioner files an appropriate application to that regard, if he so chooses, the same shall be decided on merits by the concerned appellate authority.

Accordingly, writ petition stands disposed of in the aforesaid terms.

(Sanjeev Prakash Sharma, J)

Amrendra/-
Item No. 16

AFR/NAFR	
CAV DATE	
Uploading Date	20.03.2023
Transmission Date	

