

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1643 of 2019

In
Civil Writ Jurisdiction Case No.20334 of 2019

=====

Pintu Biswas, son of Sri Tushar Kanti Biswas, Resident of Kanki, Basatpur,
Kanki, P.S.Chakalia, District- Uttar Dinajpur (West Bengal), Proprietor of
Biswas Rice Mill.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary Department of Food and Consumer Protection, Govt. of Bihar, Patna.
2. The Managing Director, Bihar State Food and Civil Supply Corporation Patna.
3. The District Magistrate, Kishanganj.
4. The Superintendent of Police, Kishanganj.
5. The District Manager, Bihar State Food and Civil Supplies Corporation, District- Kishanganj.
6. The Additional Collector Cum Certificate Officer, Kishanganj.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Shashi Bhushan Kumar, Advocate

For the Respondent/s : Mr. Prabhat Ranjan Singh, AC to AAG-5

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-10-2023

The appellant herein is aggrieved with the initiation of a certificate proceeding. The appellant was a Rice Miller who had a contract with the Bihar State Food and Civil Supplies Corporation Limited (for brevity, 'the Corporation').



2. On a dispute arising, an arbitration proceeding was initiated which has now concluded as is seen from Annexure-2, produced along with the appeal. The award specifically finds that the claimant, who is the appellant herein, is entitled to the payments as allowed by the Arbitral Tribunal under different heads and the respondent, who is the Corporation, would not be entitled to any payment, on the counter claim raised. At the time of disposal of the writ petition, the arbitration award had not been issued.

3. Against the writ petitioner, earlier a certificate proceeding was initiated for the procurement year 2012-13, which stood dropped on intimation by the District Manager of the Corporation that the entire amounts were paid up by the appellant. Yet, another certificate proceeding was initiated for further amounts, which was challenged as having been signed by the District Manager and not the Certificate Officer; which clearly indicates that there was no satisfaction entered into by the Certificate Officer.

4. The learned counsel relied on ***Badri Prasad Gupta v. State of Bihar & Ors., 2018 (3) PLJR 218***, to argue that the very fact that the District Manager of the Corporation had put the signature on the left-hand side of the certificate



indicates that the certificate proceeding is vitiated.

5. The learned Single Judge noticed that there was an arbitration proceeding initiated. The submission of the Corporation that the District Manager had wrongly recorded satisfaction against the earlier certificate proceeding, which stood dropped was also noticed; for which action against the District Manager had been initiated departmentally. The learned Single Judge found that since the appellant had already appeared in the certificate proceedings and objections were filed and the matter is pending before the Arbitral Tribunal, no coercive action could be taken by the Certificate Officer for realization of the certificate amount. The non-bailable warrant issued against the appellant was also found to be illegal since the objection filed by the appellant before the Certificate Officer had not been considered. The submission of the Corporation that the execution of the warrant of arrest was recalled was also noticed. The petitioner was granted liberty to move the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996 for an interim relief and the Certificate Officer was directed not to take any coercive action against the appellant till the hearing of the petition for interim relief before the learned Arbitrator is



disposed off. The merits of the matter were not adjudicated upon by the learned Single Judge.

6. The appeal is filed on two counts. One that the very certificate proceeding initiated was void for reason of no satisfaction of the Certificate Officer having been arrived at. It is also contended that as of now, the arbitration proceedings have been concluded and there is no reason to further proceed with the certificate proceedings.

7. The learned Government Advocate, on the other hand, submits that if the appellant has an objection with respect to the certificate proceeding, he could definitely approach the Certificate Officer, produce the arbitration award and seek for withdrawal of the certificate proceedings. It is also pointed out that the Bihar & Orissa Public Demands Recovery Act, 1914; under which enactment the instant certificate proceeding is initiated, provides for an alternate remedy by way of a Civil Suit at every stage of the certificate proceeding; by Section 43, to cancel or modify the certificate issued.

8. The certificate proceedings have been issued under the Bihar & Orissa Public Demands Recovery Act, 1914. Section 4 of the said Act requires the Certificate Officer



to be satisfied that any public demand payable to the Collector is due, on which satisfaction a certificate in the prescribed form is to be signed stating the due demand and the certificate filed in his office. A 'Certificate Officer' as defined under Section 3(3) of the Act is a Collector, a Sub-Divisional Officer and any officer appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate Officer.

9. In the present case, the Corporation has issued the requisition based on which the certificate proceeding is said to have been initiated. Annexure-7 encloses the form as available in the Appendix of the Act, which is the certificate of public demand issued under the Act. The petitioner is one Pintu Biswas and the certificate proceeding is initiated against Viswas Rice Mill, the proprietor of which is Anand Singh, as shown in the form produced at Pages-34 and 35. The dues are those till 15.07.2014 and though there is a signature at the place for the sign of the Certificate Officer, it is neither dated nor authenticated with an office seal of the Certificate Officer. The District Manager, BSFC Kishanganj, has signed it with the date 20.06.2017; and he has affixed his office seal on the document. There is also nothing stated in the column



specified for recording the nature of the public demand for which the certificate is issued. Annexure-6 is the notice issued which is dated 01.07.2017 which shows the identical amount as seen from the Certificate issued, but the noticee is shown as Viswas Rice Mill represented by Pintu Biswas. It is very clear that the procedure has not been followed scrupulously and the form is not complete which persuades us to accept the contention of the appellant that the satisfaction of the Certificate Officer is not evident from the notice.

10. *Gujraj Sahai v. Secretary of India in Council, (1890) ILR 17 Cal 414*, was a case in which the Public Demands Recovery Act was considered by the Judicial Committee of the Privy Council. It was found that the Act is an extremely stringent one for executive convenience, the enforcement of which; though an exceptional privilege accorded to the authorities, is subject to whatever safeguards provided in the Act by the procedure laid down in it. The Act hence was found to rigidly requiring due compliance of the formalities prescribed by the legislature.

11. The above cited decision of the Privy Council was relied on by a Bench of this Court in *Nageshwar Prasad Singh v. Rai Bahadur Kashinath Singh, 1958 BLJR 820*



which again dealt with the Public Demands Recovery Act. *Nirod Baran Banerjee v. State of Bihar, 1981 PLJR 186* was also a case in which the satisfaction required to be arrived at was emphasized. Therein, the amount payable was not stated and the relevant space was left blank. A certificate signed by the District Mining Officer served on the noticee was also found to be not proper since the executant was not vested with the powers of the Certificate Officer.

12. In the present case, as we observed, the nature of public demand has not been specified in the form issued. The date has been left blank and the Certificate Officer has not signed with a seal. Further, we notice that the arbitration proceedings taken note of by the learned Single Judge, which was pending as on the date of the disposal of the writ petition, has also concluded. There are no dues payable by the appellant to the Corporation as per the Arbitral Award.

13. In the totality of the circumstances, we are of the opinion that the certificate proceeding has to be set aside and we do so. We find the certificate proceedings itself to be vitiated and set aside the same. We make it clear that we have not made any observation with respect to the award made by the Arbitral Tribunal which if challenged in appropriate



proceedings, would be considered in accordance with law, untrammelled by the setting aside of the certificate proceedings, which is only on the non-compliance of the form and procedure and not on the quantification of the liability.

14. In the result, the Letters Patent Appeal is allowed with the aforesaid observations.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.10.2023
Transmission Date	

