IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16797 of 2023

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M/s Harinagar Sugar Mills Ltd., a company registered under the provision of the Indian Companies Act, 1956 having its registered office at 207, Kalbadevi Road, Mumbai and its sugar factory at Harinagar P.O.- Harinagar, P.S. Ramnagar, District West Champaran through its Resident manager, Rai Giriraj Krishna (Male) aged about 59 years, son of Late Rai Vinay Krishna, Resident of 202, Shree Niwas Apartment, Budh Marg, P.S Kotwali and District Patna- 800001.

... ... Petitioner/s

Versus

1. The State of Bihar through its Secretary the Urban Development and housing Department, Govt. of Bihar.
2. Nagar Parishad, Ramnagar, District- West Champaran through its Chairman.
3. The Executive Officer, Nagar Parishad, Ramnagar, District- West Champaran.
4. The State Bank of India, through its Chief Manager Harinagar Branch, District- West Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ramesh Kumar Agrawal, Advocate
		Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Ms. Rashmi Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 08-01-2024

Heard Mr. Ramesh Kumar Agrawal along with Mr. Sanjeev Kumar, learned counsels appearing on behalf of the petitioner and Ms Rashmi Ranjan, learned counsel for the State.

2. Petitioner has filed the writ petition *inter alia* for following relief(s):-

> (I) For quashing the holding tax demand receipt dated 28.03.2023 (Annexure 1 series) issued by the respondent Nagar Parishad, Ramnagar against four holdings of the petitioner and demanding

Rs.9,55,779/- as penalty on holding tax arrears for the periods 2020-2021 and 2021-2022 and also for the current period 2022-2023.

(ii) For quashing of demand letter bearing Memo No.295 dated 01.04.2023 (Annexure 3), letter No.804 dated 10.07.2023 (Annexure 6) and memo No.1134 dated 09.09.2023 (Annexure 7) issued by the respondent Executive Officer directing the petitioner to pay the aforesaid penalty amount Rs.9,55,779/-.

(iii) For quashing of demand notice bearing Memo No.1190 dated 19.09.2023 by which respondent Executive Officer has written letter to the respondent Bank in exercise of power under Section 158 of the Bihar Municipal Act, 2007 for transfer of aforesaid amount from the petitioner 's bank account to the bank account of the respondent Nagar Parishad.

(iv) To restrain the respondent bank from transfer of impunged amount from the petitioner's account. For any other relief or reliefs for which the petitioner is entitled."

3. The sole ground of challenge in the writ petition is to the demand notice as contained in Annexure 1 series on the ground that before taking penal action, determining the penalty imposed against the petitioner, neither notice was served to the petitioner nor any opportunity of hearing was provided to him, about which the petitioner has made a specific statement in paragraph no.20 of the writ petition. Learned counsel further submits that consequential action taken by the Executive Officer, Nagar Parishad in furtherance of the demand notice

contained in Annexure 1 series is required to be held to be without jurisdiction.

4. Per contra, Ms. Rashmi Ranjan, learned counsel appearing on behalf of the State, submits that the authority lies with the Nagar Parishad, Ramnagar, District West Champaran and State has no role in the present case to interfere with the manner in which the Executive Officer has acted in issuing several notices and raising demand notice against the petitioner.

5. The Nagar parishad, Ramnagar, West Champaran is unreprsented.

6. Having heard the rival submissions made by the parties, as well as, the pleadings made in the writ petition particularly in paragraph no.20 in which it has been stated that before raising demand notice, as contained in Annexure 1, neither prior notice was issued to the petitioner, nor he was provided opportunity to be heard in accordance with law.

7. The notice contained in Annexure 1 has a penal consequence. The respondent having jurisdiction was required to give the gist of acquisition and opportunity of hearing in accordance to the principle of natural justice.

8. A bare perusal of the impugned show-case notice creates a clear impression that it is a notice issued in a format

without even striking out any irrelevant portions and without stating the contraventions committed by the petitioner i.e. whether its actuated by reason of fraud or any willful misstatement or suppression of facts in order to evade tax. Needless to say that this would entail violation of principles of natural justice which is a well- recognized exception for invocation of writ jurisdiction despite availability of alternative remedy. In this regard, it is profitable to quote the opinion of the Apex Court in the case of Oryx Fisheries P.

9. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

10. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19) "(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges

levelled against him are and the allegations on which such charges are based;"

11. Any civil action leading to penal consequences must be done in conformity with the principles of natural justice. compliance with principles of natural justice would be implicit. In case of denial of principles of natural justice is to be held to be violative of Article 14 of the Constitution.

12. The action of the Executive Officer, Nagar Parishad, Ramnagar in not giving any opportunity of hearing appears to be *prima facie* without jurisdiction is set aside and quashed.

13. The Executive Officer is required to first record his satisfaction before exercising jurisdiction, as to in what manner, the petitioner has defalcated and is required to pay an amount of penalty before raising demand notice as contained in Annexure 1 series.

14. The Executive Officer, Nagar Parishad, Ramnagar is directed to issue notice to the petitioner, discussing the jurisdictional facts before taking any final action against the petitioner to raise demand and must provide petitioner due opportunity of hearing before passing order, imposing any penalty.

15. The above exercise is directed to be concluded within a period of six weeks from the date of communication of this order.

16. With aforesaid observation and direction, the present write petition is disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2024
Transmission Date	NA