

SCB
16/9/015

IN THE HIGH COURT OF JUDICATURE AT PATNA
(Civil Writ Jurisdiction)

C.W.JC. No. _____ / of 2015

Brahmdeo Prasad Gupta

..... Petitioner.

Versus

The State of Bihar & Others

..... Respondents.

Sub: Trade & Commerce

I N D E X

Sl.No	Annexure	Particulars	Pages
1.		An application under Article 226 of the Constitution of India.	1-14
2.	Annexure-1	True copy of the notice contained in the Memo No. 362-2 dated 10.06.2011	15
3	Annexure-2	True copy of the relevant order dated 23.09.2011	16-17
4.	Annexure-3	True copy of the relevant order dated 23.02.2012	18-19
5.	Annexure-4	True copy of the relevant letter contained in Memo No. 209-2 dated 10.02.2012	20
6.	Annexure-5	True copy of the relevant notice contained in Memo No. 354-2 dated 01.04.2015	21
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IN THE HIGH COURT OF JUDICATURE AT PATNA
(Civil Writ Jurisdiction)

C.W.JC. No. _____ / of 2015

Brahmdeo Prasad Gupta Petitioner.

Versus

The State of Bihar & Others Respondents.

SYNOPSIS

- This writ petition is being filed with a prayer:-
- For issuance of an appropriate writ in the nature of certiorari for quashing of notice contained in Memo No. 354-2 dated 01.04.2015 issued under the signature of the respondent Block Development Officer by which the petitioner has been directed to file show cause and deposit the remaining amount of Sampurna Gramin Rojgar Yojna, within three

days failing which disciplinary cum legal action shall be taken against the petitioner.

- Any other order as your lordship may deem fit and proper in the facts and circumstances of the case.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.JC. No. _____ / of 2015

In the matter of an
application under Article
226 of the Constitution of
India.

A N D

In the matter of;

Brahmdeo Prasad Gupta, Son of Sri Hargovind Sah,
resident of Village + P.S. Chousa, District- Madhepura.

..... Petitioner.

Versus

1. The State of Bihar.

2. The Principal Secretary, Rural Development Department, Government of Bihar, New Secretariat, Patna.
3. The District Magistrate, Madhepura.
4. The District Development Commissioner, Madhepura.
5. The Block Development Officer, Chousa, District-Madhepura.
6. The Superintendent of Police, Madhepura.

..... Respondents.

To,

The Hon'ble Mr. Justice L. Narasimha Reddy,
the Chief Justice of the High Court of
Judicature at Patna and his companion
Justices of the said Hon'ble Court.

The humble petition on
behalf of the petitioner
above named;

Most Respectfully Sheweth:

1. That this petition is being filed for :-
 - i. For issuance of an appropriate writ in the nature of certiorari for quashing of notice contained in Memo No. 354-2 dated 01.04.2015 issued under the signature of the respondent Block Development Officer by which the petitioner has been directed to file show cause and deposit the remaining amount of Sampoorna Gramin Rojgar Yojna, within three days failing which disciplinary cum legal action shall be taken against the petitioner.
 - ii. Any other order as your lordship may deem fit and proper in the facts and circumstances of the case.
2. That the petitioner is a citizen of India and records are lying within the territorial jurisdiction of the said Hon'ble Court.

3. That the mood points for consideration in this writ application are inter alia as follows;

- (i) Whether the action of the respondent is contrary to the provision of Article 14 and 19(G) of the Constitution of India?
- (ii) Whether the impugned notice is an unilateral decision taken by the Government that the petitioner has not distributed the food grains under "SGRY" even without affording reasonable opportunity to the petitioner to justify his action?
- (iii) Whether the impugned letter is arbitrary and the same is issued in for ulterior motive just to harass the petitioner even without verifying the facts that the food grains have been distributed or not?
- (iv) Whether the approached of the respondent authorities is giving punitive

effect in absence of any conditions regarding penalty either in the scheme or in the allotment order as sustainable in the eye of law?

- (v) Whether which was incumbent upon the respondent authorities to issue any show cause to the petitioner?
- (vi) Whether the arbitrary and malafide conduct of the respondent authorities does have to effect all imprisonment of infringement of the petitioner's fundamental rights enshrined in Article 19(I-G) and 1 of the Constitutional right?
- (vii) Whether the direction of pay of lift over food grains without providing any opportunity of hearing is contrary to the provision of Article-14 of the Constitution of India?

4. That the petitioner is a license holder of Public Distribution System having license No.39/07 and since the date of obtaining license under Public Distribution System the petitioner is discharging his duty to the full satisfaction and no any complaint has ever been lodged against the petitioner.

5. That under "SGRY" the petitioner has been allotted 1934.20 Quintal rice which has to be distributed amongst the Contractor after taking order from the Block Development Officer.

6. That it is relevant to point out that the distribution order is to be given by the concerned Block Office.

7. That after obtaining different distribution order from the concerned Block Office, Chousa the petitioner has distributed the whole rise allotted to him amongst the Contractor.

8. That vide notice contained in Memo no 362-2 dated 10.06.2011 whereby and where under the

petitioner has been directed to deposit 30% of the food grains lifted by the petitioner under Samppooran Gramin Rojgar Yojna failing which FIR shall be instituted.

True copy of the notice contained in the Memo No. 362-2 dated 10.06.2011 is annexed herewith and marked as Annexure- 1 to this writ petition.

9. That vide CWJC No 16892 of 2011 the petitioner challenged the validity of the notice dated 10.06.2011 and the writ petition was disposed of vide order dated 23.09.2011 and the impugned notice dated 10.06.2011 was quashed and the matter was remitted back to BDO, Chausa.

True copy of the relevant order dated 23.09.2011 is annexed herewith and marked as

Annexure- 2 to this writ petition.

10. That in between the period a certificate proceeding was initiated against the petitioner and again the petitioner approached this hon'ble court vide CWJC No 20242 of 2011 which was disposed of vide order dated 23.02.2012.

True copy of the relevant order dated 23.02.2012 is annexed herewith and marked as Annexure- 3 to this writ petition.

11. That pursuant to the aforesaid order passed by this hon'ble court the petitioner foled representation before the BDO and after perusing the containts of the record the BDO chausa vide letter contained in Memo No 2069-2 dated 10.02.2012 came to the conclusion that there is no dues against the petitioner and accordingly the earlier notice dated 10.06.2011 was recalled.

True copy of the relevant letter contained in Memo No. 209-2 dated 10.02.2012 is annexed herewith and marked as Annexure- 4 to this writ petition.

12. That all of a sudden by notice contained in Memo No. 354-2 dated 01.04.2015 issued under the signature of the respondent Block Development Officer by which the petitioner has been directed to file show cause and deposit the remaining amount of Sampoorna Gramin Rojgar Yojna, within three days failing which disciplinary cum legal action shall be taken against the petitioner.

True copy of the relevant notice contained in Memo No. 354-2 dated 01.04.2015 is annexed herewith and marked as Annexure- 5 to this writ petition.

13. That the demand by the respondent authority is highly arbitrary and tortuous.

14. That under "SGRY" the petitioner has been allotted the food grains since 2003 and the distribution of the food grains have been made and till date there is no complaint about the distribution of food grains under "SGRY".

15. That without perusing the contents of the records as well as without providing an opportunity of hearing the respondent Block Development Officer issued the impugned notice which is not sustainable in the eye of law.

16. That the petitioner has not been given an opportunity of hearing nor any show cause has been issued against the petitioner.

17. That the petitioner states and submits that the impugned letter has been issued to save the skin of the respondent authority to justify action and latches in their part.

18. That the petitioner states that after filing representation dated 20.6.2011 the petitioner was under the impression that his show cause has been accepted but now the petitioner came to know that coercive steps are also been taken against the petitioner for recovery of the payment.

19. That the petitioner is running from pillar to post but with no result, hence this writ application before extraordinary jurisdiction of this Hon'ble Court.

20. That this petition is bonafide and in the interest of justice.

21. That the petitioner shall irreparable loss if this petition is not allowed in favour of the petitioner.

22. That the petitioner has no other alternative efficacious remedy save and except to revoke the extraordinary jurisdiction before this Hon'ble Court.

23. That the petitioner has not moved earlier regarding this matter before this Hon'ble Court except in CWJC No 16892 of 2011 and 20242 of 2011.

It is, therefore, prayed that your lordships may graciously be pleased to issue Rule NISI calling upon the respondents to file show cause as to why the prayer made in the Paragraph No.1 of the writ application is not allowed in favour of the petitioners and on return of the rule hearing the parties the same be made absolute.

A N D

It is further prayed that during the pendency of the writ petition stay the operation of the notice dated 01.04.2015 as contained in Annexure-5 to this writ application.

And/or

Pass such other order or orders as
your lordships may deem fit and
proper and in the facts and
circumstances of the case.

And for this the petitioners shall ever pray.

A F F I D A V I T

I, Brahmdeo Prasad Gupta, aged about 54 years, Son of Sri Hargovind Sah, resident of Village + P.S. Chousa, District- Madhepura, do hereby solemnly affirm and state as follows;

1. That I am petitioner No.1 in this case and as such am well acquainted with the facts and circumstances of the case.

2. That the contents of the writ application have been read by me and understood the same and they are true to my knowledge and belief.

3. That the statements made in paragraph No.2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 are true to my knowledge, those statements made in paragraph No. 1, 13 to 23 are true to my information derived from the records of the case and rest are by way of submissions before this Hon'ble Court.

4. That the annexures are true/photo/typed copies of their respective originals.

प्रखण्ड कार्यालय, चौसा

पत्रांक 362-2 दिनांक 10.6.11

पेषित.

श्री ब्रह्मदेव प्र० गुप्ता
जन वितरण प्रणाली-विकेता चौसा पूर्वी
कैलाश पासवान
जन वितरण प्रणाली चौसा पश्चिमी
सदानंद राम
जन वितरण विकेता चौसा पश्चिमी

विषय - 30 प्रतिशत सम्पूर्ण ग्रामीण रोजगार योजना अन्तर्गत खाददान उठाव के संबंध में।

उपर्युक्त विषय के संबंध में सूचित किया जाता है कि जिला पदाधिकारी मधेपुरा के आदेशानुसार 30 प्रतिशत सम्पूर्ण ग्रामीण रोजगार योजना अन्तर्गत खाददान आपके द्वारा उठाव की गई है। उठाव किए गए खाददान के विरुद्ध निम्नरूपेण आपके पास खाददान अवशेष है।

क्र०सं०	नाम	उठाव	वितरण	अवशेष
01	02	03	04	05
1	ब्रह्मदेव प्र० गुप्ता	1934.21	1796	138.21
2	कैलाश पासवान	107.00	100.00	07.00
3	सदानंद राम	438.74	330.00	108.74

अतः आपको निदेश दिया जाता है कि आप तीन दिनों के अन्दर (तीन) दिनों के अन्दर अपने अलावा आपके विरुद्ध प्राथमिकी दर्ज कर दी जाएगी।

प्रखण्ड विकास पदाधिकारी
चौसा(मधेपुरा)।

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IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.16892 of 2011

Brahmdeo Gupta, Son of Sri Hargovind Sah, Resident of Village + P.S. Chousa, District Madhepura. ----- Petitioner.

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Development Department, Government of Bihar, New Secretariat, Patna.
3. The District Magistrate, Madhepura.
4. The District Development Commissioner, Madhepura.
5. The Block Development Officer, Chousa, District Madhepura.
6. The Superintendent of Police, Madhepura. ----- Respondents.

For the petitioner : Mr. Sanjeev Kumar Mishra, Advocate
For the State : Mr. Kamlesh Kumar Sharma, A.C. to S.C. 22.

2 23.9.2011

The petitioner is aggrieved by Annexure-1A which is annexed to the supplementary affidavit filed on behalf of the petitioner. By the said annexure, the petitioner has been asked to deposit 30% amount of the food grains which he had lifted under the various schemes. This order has been passed at the behest of the District Magistrate, Madhepura.

Learned counsel for the petitioner submits that he had received 1934.21 quintals of rice. According to the State authorities, the petitioner had distributed 1,796 quintals of rice and the remaining was lying with him. Learned counsel for the petitioner on the other hand, submits that infact he had distributed the entire amount under the 'SAMPURNA GRAMIN ROZGAR YOJANA' scheme and has been directed by the Block Development Officer, Chousa, Madhepura, from time to time. It is submitted that all the records are available with him and as such, without verification of the records, the order contained in Annexure-1A is unjustified.

The aforesaid order indicates that if the petitioner does not

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deposit the said amount within three days, the First Information Report would be lodged against him. Such action of the Block Development Officer, Chousa, Madhepura/District Magistrate, Madhepura is completely unwarranted without an enquiry, show-cause or inspection of the records.

Accordingly, I quash the order dated 10.6.2011, issued vide letter no. 362-2. The Block Development Officer, Chousa, Madhepura should inspect the records including the orders issued by him, the distribution of the food grains, before passing any such order. The petitioner should bring a copy of this order to the notice of the Block Development Officer, Chousa, Madhepura as well as the District Magistrate, Madhepura, within a period of one month from the date of receipt of a copy of this order.

This writ application is disposed of with the aforesaid observations and directions.

Sanjay

(Sheema Ali Khan, J.)

Ann-3

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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20242 of 2011

Brahmdeo Prasad Gupta, son of Sri Hargovind Sah, resident of village+ P.S.
Chousa, District- Madhepura

.... .. Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Rural Development, Government of Bihar,
New Secretary, Patna.
3. The District Magistrate, Madhepura
4. The District Development Commissioner, Madhepura
5. The Block Development Officer, Chousa, District- Madhepura.
6. The Superintendent of Police, Madhepura.

.... .. Respondents

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Mishra
For the Respondent/s : Mr. G.K. Agrwal G.A.10

**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA
ORAL ORDER**

2 23-02-2012

Heard learned counsel for the petitioner and learned counsel for

the State.

Learned counsel for the petitioner submits that by an order dated 23.9.2011 passed by this Court in C.W.J.C. No.16892 of 2011, the order dated 10.6.2011 issued by the Block Development Officer, Chousa, Madhepura directing the petitioner to deposit certain amounts of the food grains under the Sampurna Gramin Rojgar Yojana was quashed on the ground that the same has been issued in violation of the principles of natural justice and direction was made to the Block Development Officer, Chousa to inspect the records including the orders issued by him and the distribution of food grains before passing any such order.

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Learned counsel for the petitioner submits that despite the aforesaid order, Certificate Case No.2 of 2011-12 was initiated against the petitioner on 20.9.2011, i.e., three days prior to the order for an amount of Rs. 1,89,347.70 for the same reason and in the said certificate case, a notice dated 20.9.2011 has been issued against the petitioner to appear on 11.10.2011 before the Certificate Officer.

It is further submitted by learned counsel for the petitioner that the continuation of the said proceedings is a violation of the order dated 23.9.2011 of this Court.

In my view the petitioner, instead of approaching this Court by filing a fresh writ petition, should have produced the order of this Court before the Certificate Officer by filing his objection in the matter and it is presumed that the Certificate Officer would consider the same, keeping in view the well established legal principles in the matter of proceedings under certificate case.

In the aforesaid view of the matter, the writ application is disposed of with a direction to the petitioner to approach the Certificate Officer himself by filing an objection enclosing the order of this Court, by which the order dated 10.6.2011 issued by the Block Development Officer, Chausa has been quashed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

08-02-12- अभिलेख उपस्थापित

Ann-4

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श्री ब्रह्मदेव प्रसाद शुभा सार्वजनिक प्रजाली विक्रेता चौखा उपस्थित.
सभी अभिलेख / साक्ष्य उपस्थापित.

श्री शुभा द्वारा समर्पित साक्ष्य (अभिलेख) का निरीक्षण किया गया. अन्तर्पत्री एवं चावल आपूर्ति निर्माण हेतु एवं अनेहं प्रतिवेदन का मिलान किया गया. निरीक्षण एवं मिलानोपरान्त यह पाया गया कि श्री ब्रह्मदेव प्रसाद शुभा के यहाँ अन्तर्पत्री की गई चावल की अवशेष अन्तर्पत्री नहीं करता है।


श्री शुभा को वर्ष 2003 से 2006 तक कुल 1937.20 क्वीटल चावल को अन्तर्पत्री किया गया एवं श्री शुभा द्वारा वर्ष - 2003 से 2007 तक विभिन्न योजनाओं में योजना अभिकर्ता को 1937.20 क्वीटल चावल की आपूर्ति कर दी गई जिसका विक्रय विन्न प्रकार है -


क्र.सं.	वर्ष	अन्तर्पत्री चावल की मात्रा	आपूर्ति की गई चावल की मात्रा
1	2003-04	927.00 क्वी.	54.25 क्वी.
2.	2004-05	457.10 क्वी.	727.80 क्वी.
3.	2005-06	553.10 क्वी.	995.15 क्वी.
4.	2006-07	कुछ	160.00 क्वी.

शेरा	1937.20 क्वी.	1937.20 क्वी.
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पूर्व प्रखण्ड विकास पदाधिकारी चौखा द्वारा विना अभिलेखों का निरीक्षण एवं अवलोकन किए उप कर्मालय के फ़ाइल 362-2 दिनांक 10.6.2011 द्वारा श्री शुभा के विरुद्ध दायित्व निष्पत्ति कर दिया जो न्योनित नहीं था तथा उप विकास आम्बुन्त मधेपुरा के फ़ाइल 1791 दिनांक 8.9.2011 द्वारा मास निदेश के आलोक में अयोध्यावरी द्वारा प्राथमिकी दर्ज करनी पठी तथा श्री शुभा को माननीय उच्च प्रखण्ड प्रहला में श्री उल्हासेन्द्र - 20242 / 2011 दफ्तर करनी पठी. अतः उप कर्मालय के फ़ाइल - 362-2 दिनांक 10.06.2011 को निरस्त किया जाता है।

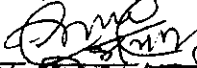
लेखापित


प्रखण्ड विकास पदाधिकारी
चौखा


प्रखण्ड विकास पदाधिकारी
चौखा


आपत्त 209-2 / चौखा : दिनांक 10.2.2012

प्रतिलिपि - ① श्री ब्रह्मदेव प्रसाद शुभा : सार्वजनिक प्रजाली विक्रेता चौखा
② मानादयत चौखा : को प्रणामार्थ एवं आभ्युक्त करके देते प्रेषित


प्रखण्ड विकास पदाधिकारी
चौखा

आपत्त 209-2 / चौखा : दिनांक 10.2.2012

प्रतिलिपि - ① अनुमण्डल पदाधिकारी उदाकिष्कुनगं
② उप विकास आम्बुन्त मधेपुरा को प्रणामार्थ प्रेषित


प्रखण्ड विकास पदाधिकारी
चौखा

कायालय प्रखण्ड विकास पदाधिकारी, चौसा

ज्ञापांक..... 354-2 / चौसा, दिनांक 01/4/15 / Ann-5

प्रेषित,

श्री ब्रह्मदेव गुप्ता ज० वि० प्र० विक्रेता (चौसा पूर्वी)
श्री सदानन्द राम, ज० वि० प्र० विक्रेता (चौसा पश्चिमी)

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विषय :- सी० डब्लू० जे० सी० संख्या - 19529 /11 श्री सदानन्द ^{राम} बनाम् राज्य सरकार एवं अन्य में दिनांक 01.12.2014 को माननीय उच्च न्यायालय द्वारा पारित आदेश के अनुपालन हेतु बकायेदार डीलरों पर कार्रवाई करने के संबंध में।

उपर्युक्त विषयक अनुमंडल पदाधिकारी, उदाकिशुनगंज के ज्ञापांक 876-2 दिनांक 21.03.15 के आलोक में सम्पूर्ण ग्रामीण रोजगार योजनान्तर्गत वर्ष- 2000-2001 से 2006-2007 तक आपके द्वारा बकाया का उठाव किया गया था, परन्तु खाद्यान्न अवशेष की राशि अबतक कार्यालय में जमा नहीं किया गया है। पत्र प्राप्ति के तीन दिनों के अन्दर अपना स्पष्टीकरण समर्पित करते हुए अवशेष राशि प्रखंड नजारत में जमा करना सुनिश्चित करें अन्यथा आपकी अनुप्राप्ति रद्द करने एवं अन्य आनुशासनिक -सह-विधिक कार्रवाई करने की अनुशंसा भेजी जा सकेगी।

M. B. K. S.
प्रखंड विकास पदाधिकारी
01/4/15 चौसा।

अनुलग्नक :-

(1) बकाये राशि का पत्र संलग्न। ज्ञापांक 354-2 / दिनांक 01/4/15

प्रतिलिपि :- अनुमंडल पदाधिकारी, उदाकिशुनगंज को उनके ज्ञापांक 876-2 दिनांक 21.03.15 के आलोक में सूचनार्थ प्रेषित।

प्रतिलिपि :- उप विकास आयुक्त मधेपुरा को सूचनार्थ समर्पित।

M. B. K. S.
प्रखंड विकास पदाधिकारी
01/4/15 चौसा।