

Se-29  
11.2.14

IN THE HIGH COURT OF JUDICATURE AT PATNA  
(CIVIL WRIT JURISDICTION)

CWJC.No.....of 2014

Rakesh Kumar , ----Petitioner.

The State of Bihar & Ors.-----Respondents.

Sub: E.C.Ael -

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because he is the employee of M/s Saha Rice Mill, Asarganj, Munger.

**01.03.2013:-** The petitioner was made an accused in Kotwali P.S. Case No. 63 of 2013 in the district of Munger.

**02.03.2013:-** The petitioner was made an accused in Madhepura P.S. Case No. 105 of 2013.

**02.04.2013:-** A notice u/s 7 of the PDR Act was issued to the petitioner for recovery of 2,95,93,151/-. The petitioner filed his objection denying the liability against him because he is not the proprietor of the rice mill rather one Mahesh Sah is proprietor of the rice mill and the petitioner was an employee as well as witness of the agreement entered between the proprietor Mahesh Sah and District Manager, BSFC, Madhepura and as the demand raised against the petitioner is bad and illegal.

**Hence this writ application.**

IN THE HIGH COURT OF JUDICATURE AT PATNA  
(CIVIL WRIT JURISDICTION)

CWJC. No.....of 2014.

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

And

In the matter of :

Rakesh Kumar, S/o, Late Ram Lakshan Sah, Resident of Kaura  
Maidan, P.S.-Kasim Bazar, District-Munger.

-----Petitioner

Vs.

1. The State of Bihar, through the Collector, Madhepura.
2. The Collector, Madhdpur.
2. The District Certificate Officer, Madhepura
3. The District Manager, Bihar State Food and Civil Supply  
Corporation, Madhepura

-----Respondents.

To,

The Hon'ble Ms. Justice Rekha M.Doshit, the Chief Justice of the High Court of Judicature at Patna and Her Companion Justices of the said Hon'ble Court.

The humble application on behalf of the petitioner above named.

**Most Respectfully Sheweth:**

1. That the present writ application is being filed on behalf of the petitioner for quashing the notice dated 02.04.2013 issued under Public Demand Recovery Act by the District Certificate Officer, Madhepura in Certificate Case NO. 08/13-14. The proceeding was initiated on the basis of requisition for certificate issued by the District manager, BSFC, Madhepura for recovery of a sum of Rs.2,95,93,151/- because under the Paddy Procurement Order 2011-12 Mahesh Sah proprietor of M/s Saha Rice Mill was given paddy for de-husking and to supply rice but the owner of the rice mill failed to supply rice proportionately against the paddy supplied to M/s Saha Rice Mill and the instant proceeding has

been initiated against the petitioner because he is the employee of M/s Saha Rice Mill, Asarganj, Munger.

A true copy of the notice dated 02.04.2013 of Certificate Case No. 08/13-14 is annexed herewith and marked as Annexure-1 to this application.

2. That petitioner is moving this Hon'ble Court for relief sought for first time the impugned notice because the petitioner has got no other equally efficacious and speedy remedy except to move this Hon'ble Court and the petitioner has not moved on any earlier occasion before this Hon'ble Court against the impugned notice dated 02.04.2013 passed in Certificate Case No. 08/13-14.
3. That the petitioner is a citizen of India and resides under the territorial jurisdiction of this Hon'ble Court.
4. That the petitioner is employee of Proprietor of M/s Saha Rice Mill, Asarganj, District-Munger and he is a paid staff and he is not the proprietor of the said rice mill it appears that it is alleged

that he is authorized representative of the proprietor of rice mill who is engaged in Custom Milled Rice a scheme sponsored by the Government.

5. That the owner of rice mill namely Mahesh Sah who is proprietor of M/s Saha Rice Mill, Asarganj, Munger entered into an agreement with District Manager, Bihar State Food and Civil Supply Corporation Ltd. Madhepura in the month of April, 2012 for de-husking of paddy by the rice miller in the account of BSFC and to deliver rice in lieu thereof @ 67 % and 68% on fixed milling charges.
6. That as per the terms and condition of the agreement the proprietor of the rice mill namely Mahesh Sah was required to deposit a sum of Rs. 50,000/- as security money and the same was deposited by Mahesh Sah proprietor of M/s Saha Rice Mill, Asarganj.

A copy of agreement is annexed herewith and marked as Annexure-2 to this writ petition.

7. That from perusal of the agreement it is clear that petitioner is one of the witness of the said agreement and the proprietor is Mahesh Sah.

8. That Clause 9 of the agreement reads as follows:-

In case of any deviation from above agreed terms and conditions or any default on the part of the miller. Security money deposited by the miller will be forfeited by the corporation and legal action against the miller shall be taken.

9. That it appears that the owner of the rice mill received more quantity of paddy but could not return rice proportionately after de-husking in his rice mill to the District Manager, BSFC.

10. That the reason for not supplying required quantity of rice by the petitioner was that the authorities of the BSFC gave much more quantity of paddy than that the petitioner's milling capacity.

11. That the authority of the BSFC without the consent of the miller under duress and pressure supplied more quantity of paddy though the petitioner's was having a limited space and capacity of storage of paddy in his godown safely.

Section 3 (6) of the Act if the demand in question is not in Schedule I but the person liable to pay the same has agreed by a written instrument that the amount payable shall be recoverable as a public demand then in such a situation also the demand can be treated as a public demand and may be recovered as a public demand under this Act.

16. That the petitioner states and submits that the demand against the petitioner made by the District Manager, BSFC, Madhepura is neither a public demand as defined under Section 3(6) because the same is hit under Section 9 read with Item of 15 of Schedule I of PDRA Act, 1914 . Since your petitioners has or had never agreed by any written instrument that the alleged due shall be recoverable as public demand from the petitioners under the PDRA Act hence in absence of any such agreement the alleged dues of said BSFC Madhepura cannot and could not be treated as a public demand within the meaning of PDRA Act .
17. That as per the agreement maximum liability of the owner was to the extent of Rs. 50,000/- which was deposited by the proprietor as a security in the same could not have been



forfeited . Clause 9 of the agreement by the District Manager, BSFC, Madhepura.

18. That this Court has occasion to deal this question in several cases including the case of Murli Manohar Division Bench reported in 1978 BLJR 161.
19. That a question was raised before this Court directly involved in this case to the effect whether the demand raised by the District Manager Bihar State Food and Civil Supply Corporation where there was no agreement in terms of Clause 15 that the demand shall be recoverable as a public demand . This court held that the demand raised by Bihar State Food and Civil Supply is not covered within the definition of public demand and quashed the certificate proceeding on both ground that it is neither a public demand nor in the agreement there is a Clause to treat a demand in question as a public demand and recoverable under the Public Demands Recovery Act similar to the case of the petitioners reported in 1998 (3) PLJR 526.
20. That the petitioner has been served a show cause notice issued by the District Certificate Officer, Madhepura in this case in the jail however the petitioner has filed his reply/objection before the

Certificate Officer denying the allegation leveled against him stating therein that he is simply employee of the proprietor and he denied any liability on part of the petitioner stating therein that if any liability is made out the same will be of the proprietor of the rice mill and not of the petitioner and accordingly he prayed that the show cause and/or objection filed on behalf of the petitioner may be accepted and the further proceeding in the matter may be dropped.

21. That the action of the District Certificate Officer is arbitrary, malafide, malicious and bad in the eye of law.
22. That here it shall not be out of place to mention that the District Manager, BSFC, Madhdepura filed a criminal case against the petitioner and others under section 406, 409, 420/120(B) of the I.P.C. and one case at Munger being Kotwali P.s. Case No. 63 of 2013 under section 406, 409, 419, 420, 467, 468, 469, 471, 120(B) and 7 of the E.C. Act and the petitioner has been allowed the bail in both the cases by the Hon'ble High Court after remaining custody considerably along time.
23. That the petitioners specifically asserts that the State Government and/or the FCI who is a agency of the Central

Government never made any effort to the lift the CMR in time the endeavor made by the petitioners to deposit the CMR in the FCI after arranging in own resources had been negative by the FCI by rejecting the CMR on pretext of the same being old and below quality which is the result of dilly dally approach of the aforesaid agencies.

24. That by adopting the coercive measure like certificate case which will be followed by issuance warrant of arrest the respondent are forcing the petitioner to deposit the amount for which the petitioner is not entitled in the eye of law.
25. That it is submitted that in this matter instituted the certificate case is totally unwarranted in view of law laid down by this Hon'ble Court.
26. That this Court in similar and identical matter has stayed the further proceeding of the certificate case in CWJC No. 2178/13 on 07.02.2013.

A copy of order dated  
07.02.2013 is annexed  
herewith and marked as

Annexure-3 to this application.

27. That in the facts and circumstances of the case the writ application is fit to be allowed by an order of this Hon'ble Court.

It is, therefore, prayed that your Lordships may graciously be pleased to issue Rule NISI calling upon the respondents to show cause as to why the prayer made in paragraph no.1 of the writ application be not allowed and on return of the rule and after hearing the parties make the same absolute.

And/or

Pass such any other order/orders as your Lordships may deem fit and proper.

And

During the pendency of the writ application the further proceeding of the Certificate Case No.08/13-14 pending before the District Certificate Officer, Madhepura may kindly be stayed.

**And for this, the petitioners shall ever pray.**

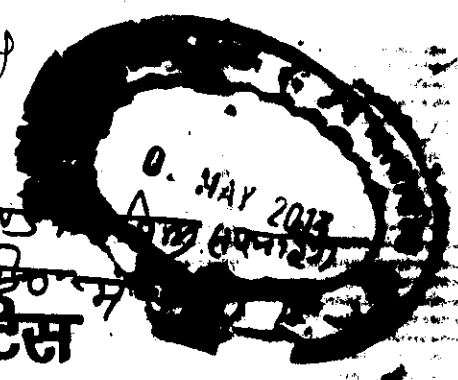
4

उ. नो. नं. - 575  
2/4/13

Amrit 14

Schedule xlv-Form NO-62 H.  
का फॉर्म सं० ६७ बी ।

बिहार स्टेट इन्सुरेंस  
कॉरपोरेशन लिमिटेड



# 8/12/14 सर्टिफिकेट देनदार की नोटिस

देखिये दफा ७, बिहार वो उड़ीसा ऐक्ट नं० ४ सन् १९१४ का ।

मेसर्स साहा रावस फिफ आसरेण

सर्टिफिकेट देनदार का नाम शैलेश कुमार देव स्वर्णशामाशुभाबाद (गोरेक्टर)  
के नाम आपको इसकी रू० से जमाया जाता है कि आप के ऊपर  
रूपये के लिए जो आपसे CMR (18% इंटरेस्ट) 2,95,93,151/- का कोडा मैदान -  
की बाबत पावना है बिहार और उड़ीसा के सरकारी मोतालवी के वसूल करने के एक्ट सं० १९१४  
की दफा 7 की रू० से एक सर्टिफिकेट आज से दिन मेरे ऑफिस में नबी किया गया  
है । जो आपके ऊपर बताये हुए 2,95,93,151/- रूपये देने की अपनी जिम्मेवारी को बखरते  
है तो आप इस नोटिस को तामिल होने के तीस दिन के भीतर अपनी सारी जिम्मेवारी या उसके किसी  
हिस्से को नकारती हुई एक दरखास्त दाखिल कर सकते है । तो आप ऊपर बताये हुए तीस दिन के भीतर  
दरखास्त दाखिल करें या इस बात के लिए सबबन दिखलाईएगा या पूरा सबब न दिखलाईए कि ऐसा  
सर्टिफिकेट क्यों न जारी किया जाया चाहिए तो वह आपके

2,95,93,151/- रूपये (अर्ध) के और

रूपया मोतालवे

रूपया वसूल करने के खर्च के लिए) मेरे ऑफिस में न बिवा जाय को  
कहे हुए एक्ट की शर्ती के मुताबिक जारी किया आपका अबतक बची हुई रकम इस तरह से न ही जाय  
आपको इसकी रूपया से मना किया जाता है कि आप अपनी गैर मनसूबा फायदाय या उसके किसी  
हिस्से को बिक्री दाम बन्धक या और किसी को डिपॉईट, हटाईएगा, तो वह सर्टिफिकेट फोर्टन जारी  
किया जायगा ।

ऊपर बताये हुए सर्टिफिकेट के एक परत उसके साथ नबी की जाती है । आप सर्टिफिकेट का नम्बर और  
सन् लिखकर मनिऑर्डर के जरिये रूपया भेज सकते हैं । आज ता० 2

माह 4 सन् 2013 ई०।

दिनांक 12/4/13 को उपरोक्त उपाधी को  
उपाधी को शैलेश कुमार देव  
रकम 2,95,93,151/-  
शैलेश कुमार - 14/4/2013

जिला सर्टिफिकेट ऑफिसर  
2/4/13

Ann 7 15

पचास  
रुपय

FIFTY  
RUPEES

₹ 50

Rs. 50

NON JUDICIAL

BIHAR

AGREEMENT

AGREEMENT

M/s Saha Rice Mill, Asarganj  
Distt: Munger

... of bonded under terms and conditions with  
District Office, Bihar State Food & Civil Supplies Corporation  
Madhepura regarding lifting of Paddy and  
... of Rice against Paddy lying in the godowns/procure-  
ment centres under District Office Bihar State Food & Civil  
Supplies Corporation Ltd. Madhepura custom milling of paddy,

The proprietor of M/s Saha Rice Mill, declares that I am  
bringing to mill, Bihar State Food & Civil Supplies Corporation  
Paddy lying at the \_\_\_\_\_ Centre under Bihar  
State Food & Civil Supplies Corporation Ltd. District office,  
Madhepura on delivery of Rice (RSC/RAC) as per Govt. of India  
specification and as per terms and conditions of Bihar State  
Food & Civil Supplies Corporation Ltd. in vogue.

1. M/s Saha Rice Mill, Registration no. 100271105413 Date  
27.11.09 valid upto \_\_\_\_\_ issued by Directors of  
Industry Govt. of Bihar (VAT) no. \_\_\_\_\_ will  
deliver raw rice/par boiled rice conforming to Govt. of  
India uniform specification of KMS 2011-12 in 50kg net  
packing.

WEST RICE

Contd...2

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... deliver of rice to the Corporation proportionate ...  
issued to the miller by Bihar State Food & Civil Supplies Corporation Ltd. Madhepura.

Rice will be accepted in the same Gunny bags in which the paddy is delivered by the Corporation. For the first consignment rice will be delivered by the miller in new SBT gunnies. The excess gunny bags will be returned by the miller and if retained by the miller, then cost of excess gunny bags (in which paddy supplied to miller) will be deducted by the Corporation @ 60% of new gunny bag prices from the bills submitted by the millers.

The miller has already deposited Rs. 50,000/- as security money through DD No. \_\_\_\_\_ dt. \_\_\_\_\_ of Rs. \_\_\_\_\_ in favour of District Manager, Bihar State Food & Civil Supplies Corporation Ltd. Madhepura.

... return ratio for par boiled rice is 68% and for raw rice is 67% ...  
... "as is where is" basis and by-product, broken etc, obtain from ...  
... small property of miller.

... per quintal as paddy milling charges will be paid for ...  
... rice and Rs.10/- per quintal milling charges will be paid ...  
... raw rice to the miller after getting the proper bill from ...  
... miller.

... shall be bagged in standard weight of 50 Kg, and all bags ...  
... double machine stitched in green thread and bags should be ...  
... stenciled with green color showing name of the miller and ...  
... crop year, net weight, commodity, variety and lot No.

... miller will supply rice/CMR to the Corporation. The CMR ...  
... from miller will be transported by the Corporation of the ...  
... depot of Food Corporation of India. On acceptance of CMR ...  
... Food Corporation of India, proportionate paddy will be actually ...  
... issued by Bihar State Food & Civil Supplies Corporation Ltd. ...  
... signature of the miller from different procurement centres.

... in case of any deviation from above agreed terms and conditions ...  
... or any default on the part of the miller, security money deposited ...  
... by the miller will be forfeited by the Corporation and legal action ...  
... against the miller shall be taken.

... miller also agreed to abide by the instructions issued by the ...  
... Corporation time to time relating to milling of procured paddy.

... District Manager

... प्रोप्रायटर

Proprietor

... Bihar State Food & Civil Supplies Corporation Ltd. Madhepura.

... Saha Rice Mill Asarganj.

... स्व. सुबोध झा

... अखिलेश (मुंगेर)

... श्री राम

Rakesh Kumar  
... Sun Bheela  
... Kankari, ...  
... ...

... श्री राम  
... श्री ...  
... श्री ...  
... श्री ...



TC 15

साहा राईस मिल असरगंज मुंगेर

AGREEMENT

Execitopm of bond framed under terms and conditions with District Manager, Bihar State Food & Civil Supplies Corporation Ltd. District Office Madhepura regarding lefting of Paddy and delivering of Rice against paddy lying in the godowns/Procurement Centres under District Office of Bihar State Food & civil Supplies Corporation Ltd. Madhepura cumstom milling of Paddy,

I, the proprietor of M/s Saha Rice Mill declared that I am withing to mill, Bihar State Food & Civil Supplies Corporation Ltd. paddy lying at the \_\_\_\_\_ Centre under Bihar State Food & Civil Supplies Corporation Ltd. District Office Madhepura on delivery of Rice (RBC/RRC) as per Govt. of India specification and as per terms and conditions of Bihar State Food & Civil Supplies Corporation Ltd. In vogus.

1. M/s Maa Durga Mini Rice Mill, No. 100271105413 Date 27.01.09 valid upto \_\_\_\_\_ issued by Directors of Industry Govt. of Bihar, (VAT No. \_\_\_\_\_) will delivere raw rice /per boiled confirming to Govt. of India uniform specification for KMs 2011-12 in 50 kg. net packing.

- 116
2. After deliver of advance rice proportionate paddy will be issued to the miller by Bihar State Food & Civil Supplies Corproation Ltd. Madhdpura.
  3. Rice will be accepted in the same Gunny bags in which the paddy is delivered by the Corporation. For the first consignment/lot, rice will be delivered by the miller in new SBT gunnies. The excess gunny will be paid by the miller or deducted from the bills submitted by the miller.
  4. The miller has already deposited Rs. 50000/- as security money through DD No. \_\_\_\_\_ dt. \_\_\_\_\_ of Rs. \_\_\_\_\_ in favour District Manager, Bihar State Food & Civil Supplies Corporation Ltd. Madhepura.
  5. Out turn ratio for par boiled rice is 68% and for raw rice in 67% on "As is where is" basis and by product, broken etc. obtain from milling shall be property or miller.
  6. Rs. 20/- per quintal of paddy milling charges will be paid for are boiled rice and Rs. 10/- per quintal milling charges will be paid for raw to the miller after getting the proper bill from the miller.
  7. Rice shall to bagged in standard weight of 50 kg. and all bags are to be double machine stiched in green thread and bags should be duly stenciled with green colour showing name of the miller and station, crop year, net weight, commodity, variety and lot no.
  8. The Miller will supply rice/CMR to the Corporation. The CMR received from miller will be transported by the Corporation of the tagged depot of Food Crorporation of India. On acceptance of CMR by Food Corporation of India, proportionate paddy will be actually released by Bihar State Food & Civil Supplies Corporation Ltd. Madhepura of the miller from different procurement centre.
  9. In case of any deviation from abvoe agreed terms and conditions or any default on the part of the miller, security money deposited by the miller will be forfeited by the Corporation and legal action against the miller shall be taken.
  10. The miller also agreed to abide by the Instruction issued by the Corporation time to time relating to milling of Procued paddy.

Sd/-

District Managar  
Bihar State Food & Civil Supplied  
Corporation Ltd., Madhepura  
Date 10.4.12

Rakesh Kumar  
S/o Shri Bhola Pd. Yadav  
Chukoti, Mani  
Khagaria

गवाह  
सुधीर कुमार  
श्री राजेन्द्र साह  
दुर्गा स्थान मुंगेर  
राकेश कुमार  
पे० स्व० रामलखन साह  
कौड़ा मैदान कॉलेज रोड, मुंगेर

महेरा साह  
Proprietor  
M/s Saha Rice Mill  
Asarganj  
स्व० सुखदेव साह  
असरगंज (मुंगेर)

Annex 3

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2178 of 2013**

M/S Man Manokamna Mini Rice Mill

Versus

.... .. Petitioner/s

The State Of Bihar & Ors

.... .. Respondent/s

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

WEB COPY  
NO. 2  
07-02-2013

Learned counsel for the petitioner submits that the proceedings in Case No. 24/2012-13 before the Certificate Officer, Buxar are without jurisdiction as there is no agreement or written statement in terms of Item 15 Schedule-I of the Bihar and Orrisa Public Demands Recovery Act, 1940 by the petitioner that any demand would be recoverable as a public demand.

As prayed for by learned counsel for the respondents, put up on 21<sup>st</sup> February, 2013.

In the meantime, further proceedings in Certificate Case No. 24/2012-13 before the Certificate Officer, Buxar shall remain stayed.

**(Ramesh Kumar Datta, J)**

S.Pandey/-

AFFIDAVIT

I, Rakesh Kumar, aged about 40 years, S/o Late Ram Lakshan Sah, Resident of Kaura Maidan, P.S.-Kasim Bazar, District-Munger, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in the case and, as such, am well fully conversant with the facts and circumstances of the case.
2. That the contents of this petition have been read over and understood by me.
3. That the statements made in paragraph nos. 3 & 26 are true to my knowledge and those statements made in paragraph nos. 27 are based on my information derived from the records of the case and rest are by way of submissions of this Hon'ble Court.
4. That the Annexure are photo/true copy of their respective originals.

12. That the paddy was kept in the open sky in the mill premises and because of rains a major portion of the paddy destroyed/fully damaged, resulting failure on the part of the petitioners to de-husking the paddy in question and to deliver rice proportionately to the District Manager, BSFC.
13. That this failure on the part of the rice miller resulted into action by the District Manager, BSFC by filing a requisition as provided under Section 5 of the Public Demands Recovery Act, 1914 in Form No.2 Schedule II.
14. That the District Manager failed to look into the provisions of Public Demands Recovery Act, 1914 before filing the requisition in question because under this Act only such demands which are public demand can be realized or recovered by the competent authority which are public demand and if the demand of the State Authorities are not public demand as prescribed and described/mentioned and referred in Schedule I of Public Demand Recovery Act, is not recoverable under this Act.
15. That other demands of the State Authorities are recoverable as a public demand as per the definition of public demand given in

**IN THE HIGH COURT OF JUDICATURE AT PATNA****(CIVIL WRIT JURISDICTION)**

CWJC.No.....of 2014

Rakesh Kumar

----**Petitioner.**The State of Bihar & Ors.-----**Respondents.****Synopsis**

**Relief Prayed:** the present writ application is being filed on behalf of the petitioner for quashing the notice dated 02.04.2013 issued under Public Demand Recovery Act by the District Certificate Officer, Madhepura in Certificate Case NO. 08/13-14. The proceeding was initiated on the basis of requisition for certificate issued by the District manager, BSFC, Madhepura for recovery of a sum of Rs.2,95,93,151/- because under the Paddy Procurement Order 2011-12 Mahesh Sah proprietor of M/s Saha Rice Mill was given paddy for de-husking and to supply rice but the owner of the rice mill failed to supply rice proportionately against the paddy supplied to M/s Saha Rice Mill and the instant proceeding has been initiated against the petitioner