

S.C. 18
18/05/15

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

I.A. No. of 2015

IN

CWJC No. 5427 of 2014

Shailesh Kumar Singh Petitioner

V E R S U S

The General Manager, FCI & Others Respondents

SUBJECT:- INTERLOCUTORY APPLICATION

I N D E X

<u>SL. NO.</u>	<u>PARTICULAR</u>	<u>PAGE NOS.</u>
1.	Interlocutory Application ————	01 — 8
2.	Annexure I/1 A true copy of notice -----	9
3.	Annexure I/2 A true copy of objection petition dt. 12.02.15 ----	10-12
4.	Annexure I/3 A true copy of paper publication dt. 14.05.15 ----	-13-
5.	Annexure I/4 A true copy of letter issued by certificate officer --	14

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

I.A. No. of 2015

IN

CWJC No. of 2014

In the matter of an interlocutory application for impleading necessary State respondents and for stay of warrant of arrest & attachment order issued against the petitioner

And

In the matter of :

Shailesh Kumar Singh Petitioner

V E R S U S

The General Manager, F.C.I. & Others Respondents

To,

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

*Filed through,
Sanjeev Kumar Singh
Advocate
A-22-00537*

The humble application on behalf
of the petitioner above named.

Most Respectfully Sheweth:

1. That the present interlocutory application is being filed for the adding of the following prayers in the present writ petition by way of amendment :-
 - (i) For quashing the warrant of arrest and attachment order issued by Distirct Certificate Officer against petitioner in certificate case no. 10/2014-15.
 - (ii) For stay of the aforesaid warrant of arrest and attachment order issued against petitioner during the pendency of present writ petition
 - (iii) Petitioner further seeks indulgence of this Hon'ble Court to implead/add the necessary State authorities as party respondents in the present writ petition in the interest of justice.

2. That the aforesaid writ application has been filed on behalf of the petitioner above named for direction to respondent authorities to extend the time of depositing CMR rice in procurement year 2012-13 as the same has not been accepted due to non-availability of space. After the due time of deposit, the petitioner has filed application for extension of time for lifting of CMR as petitioner has been ready to supply the dues CMR, but no positive action by the respondent authorities.

3. That since the grievance of petitioner was related to SFC authorities, the State authorities were not impleaded as party respondents in the writ petition. However, it appears that during the pendency of present writ petition before this Hon'ble Court, respondent no.5 District Manager, SFC, Madhepura instituted Certificate Case no. 10/2014-15 against petitioner before District Certificate Officer, Madhepura in the month of July, 2014.
4. That when the notice under section 7 of Public Demand Recovery Act was issued to the petitioner, petitioner came to know about the certificate proceeding. It is relevant to point out that no certificate was attached with the said notice. However, the petitioner duly appeared before District Certificate Officer, Madhepura and filed his objection in the said certificate proceedings on 12.02.2015.

A true copy of notice and objection petition dated 12.02.15 is annexed herewith and marked as Annexure 1/1 & 1/2 to this application.

5. That while the certificate proceeding was pending and no order has been passed on objection petition filed by petitioner, all of a sudden, warrant of arrest and attachment order has been issued against petitioner by District Certificate Officer, Madhepura and the same has also been sent for execution before officer-in-charge, Gwalpara police station. The petitioner came to know about the said warrant of arrest and attachment order from paper publication

in Hindustan on 14.05.2015.

A true copy of paper publication dated 14.05.15 is annexed herewith and marked as Annexure I/3 to this application.

6. That immediately thereafter, petitioner tried to obtain the copy of warrant of arrest and attachment order, but the same was not supplied by the office of certificate officer, Madhepura. However, somehow, petitioner managed to obtain the copy of letter issued by Certificate Officer, Madhepura addressed to officer-in-charge, Gwalpara police station for execution of attachment order.

A true copy of letter issued by certificate officer is annexed herewith and marked as Annexure I/4 to this application.

7. That in view of developments during the pendency of present writ petition, petitioner seeks indulgence of this Hon'ble Court to implead the following state authorities as party respondents in the present writ petition :-

- in State of Bihar + maghe*
 (i) District Magistrate, Madhepura
 (ii) District Certificate Officer, Madhepura
 (iii) Officer-in-charge, Gwalpara Police Station, Madhepura

8. That it is further stated and submitted that order issuing warrant of arrest and attachment in the midst of certificate proceeding is

patently illegal as objection petition of the petitioner has not been disposed by Certificate Officer as yet. Further, it is manifest that the said order issuing warrant of arrest and attachment has been issued on the specific direction of District Magistrate, Madhepura which shows non-application of mind by the Certificate Officer, Madhepura and hence, the said order issuing warrant of arrest and attachment is liable to be quashed.

9. That it is relevant to point out that during the pendency of present writ petition, the petitioner also approached District Magistrate, Madhepura for arbitration bearing arbitration case no. 03/2015 under clause 16 of the agreement on 04.02.15 and this fact was duly stated in objection petition with request to stay the certificate proceeding till decision in arbitration proceeding and passing of award. However, an award has been made against the petitioner in the said arbitration proceeding and the petitioner has challenged the award before the competent civil court under section 34 of Arbitration and Conciliation Act, 1996. It is pointed out that the award cannot be enforced under section 36 of the Act, unless the application for setting aside award has been rejected by the competent civil court.
10. That the order issuing warrant of arrest and attachment by the Certificate Officer in the midst of certificate proceeding is violation of the statutory provisions and the respondent authorities have not acted in good faith.

11. That the principles of equity also calls for immediate stay of the operation of order issuing warrant of arrest and attachment, since the objection petition filed by petitioner in the certificate proceeding has not been disposed as yet and there is dispute also in accounting in such circumstances, the execution of warrant of arrest and attachment will be very harsh damaging the petitioner materially and socially.
12. That the balance of convenience is in favour of the petitioner in as much as the petitioner is always ready and willing to deposit CMR or to make the payment after adjustment of dues and settlement of accounts, for which the petitioner is pursuing the arbitration proceeding. Further even if in the most remote eventuality the present proceedings are decided against the petitioner, the respondent authorities shall stand to implement the order, whereas if the operation of order issuing warrant of arrest and attachment is not stayed, the same will cause the petitioner an irreparable loss and injury which can not be rectified even if proceedings are decided in favour of petitioner.
13. That in view of aforesaid circumstances, the present interlocutory application be allowed, the necessary state authorities be impleaded as party respondents in the present writ petition and the order issuing warrant of arrest and attachment against the petitioner be stayed during the pendency of present writ petition in the interest of justice.

14. That the petitioner has not filed any such other interlocutory application for the reliefs prayed in the present application in the instant matter hereto before.

It is, therefore, prayed that your lordships may graciously be pleased to allow the present Interlocutory Application and after hearing the parties, be further pleased to stay the order issuing warrant of arrest and attachment issued by Certificate Officer, Madhepura against the petitioner during the pendency of present writ petition

AND/OR

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

And for this the petitioner shall ever pray.

AFFIDAVIT

I, Shailesh Kumar Singh, aged about 43 years, son of Late Gauri Shankar Singh, resident of village Bara, Police Station Khokhsi saranpur, District Madhepura do hereby solemnly affirm and state as follows:-

1. That, I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That I have read the contents of this petition and have understood the same and the statements made in paragraph nos. 1. 2. 3 & 7 to 14 are true to my knowledge and the statements made in paragraph no. 4 to 6 are true to my information derived from the records of the case and the rests are by way of submission before this Hon'ble Court.

OLC
12-2-15

Ann pu - 1/2 (10)

In,

The Court of Certificate Officer

Madhepuras

Certificate Case No: 10/014-15

State

versus

M/S bara Rice Mill - - - - - Accused

Humble petition U/s 9 Bihar and
Orissa Public Demands Recovery
Act denying liability of Certi-
ficate requisition amount on
behalf of O.P. Certificate
debtor M/s Bara Rice Mill
Khokhasi PACS proprietor
(1) Shallesh Kumar Singh (PACS
President) Khokhasi PS-Gwalpara
Distt- Madhepura most
respectfully Prayeth :-

1. That, the certificate case under reference has not
been filed by the authority authorised in terms of section 4
of the Act nor the requisition stands verified and signed in
accordance with section 5 (2) of the Act which is mandatory

(11)

in law (Reliance is placed in P.L.J.R. 1976 Page 265):

2. That, similarly the certificate officer has to state about his satisfaction in writing that the demand is recoverable under the Act as provided U/S 6 of the Act.

3. That, the O.P. emphatically deny his liability to pay the certificate amount as the O.P. has already deposited Rs. 85,00,000-00 (Eighty five lacs) through R.T.G.S. Bank Draft viz 70 Lacs through demand draft dt. 5.6.2014, 5 lacs dt. 22.10.14 and 10 Lacs dt. 8.9.2014.

4. That, besides the above mentioned PDK payment, the amount of the U.P. has not been adjusted towards his transportation cost, handling charge, gunny price and shortage delivery of paddy by the authority concerned.

5. That, not only this but on account of illegal seal of godown of the U.P. 990 bags of rice was found damaged and 825 bags paddy was damaged which find support from the report of the authority concerned viz report dt. 30.1.2013 sent to the learned District Magistrate in compliance of his memo No. 3 Agriculture dt. 2.1.013 which further find support from memo no. 448 dt. 23.11.012 of the learned Commissioner Office, Kosi Division, Saharsa.

12

6. That the O.P. has several times requested and made demand to settle the dispute in respect of actual and correct balance amount but the authority concerned on one plea or the other has failed to consider the representation & settle the dispute.

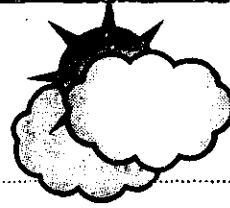
7. That, on account of failure on the part of the authority concerned to settle the dispute the O.P. has lastly filed Arbitration petition No.3/015 before the learned Arbitrator cum D.M. in terms of clause 16 of Agreement dt. 22.5.013 read with section 16 Arbitration conciliation Act 1996 which is subjudiced before the learned Arbitrator cum District Magistrate, Madhepura.

Under the above facts and circumstances the authority concerned (requisitioned officer) may be called upon to produce document and make the payment adjusted and after hearing the proceeding may be dropped and in the meantime, proceeding may be stayed at least till the decision of Arbitration case No.3/015 pending before the learned Collector, Madhepura.

O.P.

Through

Advocate



सर्टिफिकेट केस में डीएम के निर्देश पर मिलों के खिलाफ जारी हुआ वारंट

11 राइस मिलों पर वारंट जारी

कार्रवाई

मधेपुरा | हिन्दुस्तान प्रतिनिधि

करोड़ों रुपये का चावल गबन करने वाले राइस मिलों के खिलाफ जिला प्रशासन ने कड़ा रुख अख्तियार किया है। बुधवार को डीएम गोपाल मोण के निर्देश पर 11 राइस मिलों के मालिकों के खिलाफ गिरफ्तारी का वारंट जारी कर दिया गया। दो मिलों की कुर्की जब्ती के लिए आदेश निर्गत किया गया है। इन मिलों के खिलाफ चल रहे सर्टिफिकेट केस के तहत यह कार्रवाई की गयी है।

गौरतलब है कि मिलिंग के नाम पर करोड़ों रुपये का चावल गबन करने वाले राइस मिलों को जिला प्रशासन की ओर से ब्लैक लिस्टेट करते हुए उनपर सर्टिफिकेट केस दर्ज किया गया था। जिला निर्यात पत्र पदाधिकारी रामजो साह ने बताया कि डीएम के निर्देश पर डिफॉल्टर मिलों के विरुद्ध कार्रवाई तेज कर दी गयी है। सभी 11 डिफॉल्टर मिलों के खिलाफ संबंधित थानों में गिरफ्तारी वारंट भेजा जा रहा है।

वर्ष 2012-13 में 19 राइस मिलों पर 30 करोड़ 81 हजार 576 रुपये और वर्ष 2011-12 में 14 राइस मिलों पर 13 करोड़ 91 लाख 41 हजार 629

इन राइस मिलों पर है करोड़ों का बकाया

राइस मिल	बकाया राशि
● प्यमा राइस मिल मुरलीगंज	24830553
● मंगलवा राइस मिल शंकरपुर	5348308
● निभा मिनी राइस मिल अर्राहा महुआ	8099194
● जय बाबा धर्मराज मिल पैलाढ़	4153980
● सीम्या सरोज राइस मिल मरुआहा	9387702
● मां दुर्गा राइस मिल अरार	12946,890
● कोसी राइस मिल पावर ग्रीड पूर्णिया	57523574
● श्री लक्ष्मी राइस मिल केटावन सिंहेश्वर	13485656
● विवेक राइस मिल पूर्णिया	2768712
● गीता राइस मिल अलीगंज	12830921
● यादव राइस मिल चकफजुला	4049597
● रागिनी राइस मिल बारा	52899164

रुपये का बकाया रहने पर जिला प्रशासन कार्रवाई तेज की। जानकारी हो कि जिले के 33 राइस मिलों पर 43 करोड़ रुपये से अधिक का चावल बकाया रहने को लेकर सर्टिफिकेट केस दर्ज भी किया गया।

इतना ही नहीं डिफॉल्टर राइस मिलों की सूची सार्वजनिक स्थानों पर टांगी गयी थी। कई मिलों पर केस भी दर्ज किये गये। जिला प्रशासन ने दबाव बनाने के लिए कई ऐसे पैक्सों को भी सुविधाओं से वंचित कर दिया था, जिसके अध्यक्ष

मामला

- 33 राइस मिलों पर 40 करोड़ रुपये से अधिक का है चावल बकाया
- सार्वजनिक स्थानों पर भी टांगी गयी थी डिफॉल्टर राइस मिलों की सूची

डिफॉल्टर राइस मिल के मालिक थे। सरकार के निर्देश पर कुछ मिलों पर केस भी दर्ज करने की कार्रवाई हुई थी।

इन मिलों का जारी हुआ गिरफ्तारी वारंट

प्यमा राइस मिल मुरलीगंज के प्रोपराइटर अशोक कुमार सिंह, हीरोलवा राइस मिल शंकरपुर के सियाराम यादव, निभा मिनी राइस मिल अर्राहा महुआ के रंजीत साह, जय बाबा धर्मराज मिल पैलाढ़ के पिटू कुमार और खोखा यादव, सीम्या सरोज राइस मिल मरुआहा के सीम्या सरोज, मां दुर्गा राइस मिल अरार के रवीन्द्र प्रसाद यादव, कोसी राइस मिल पावर ग्रीड पूर्णिया के निखिल कुमार सिंह, श्री लक्ष्मी राइस मिल केटावन सिंहेश्वर के रंजीत कुमार, विवेक राइस मिल पूर्णिया के जेटू लाल प्रसाद, गीता राइस मिल के योगेन्द्र प्रसाद यादव एवं यादव राइस मिल चकफजुला के जनार्दन यादव के विरुद्ध वारंट जारी किया गया है।

होगी कुर्की-जब्ती

रागिनी राइस मिल बारा के दिलीप कुमार सिंह और कृष्ण कुमार सिंह एवं बारा राइस मिल खोखसी के शैलेश कुमार सिंह के विरुद्ध कुर्की जब्ती आदेश निर्गत किया गया है।

Amul - 1/4

14

न्यायालय, जिला नीलाम पत्र, पदाधिकारी, मधेपुरा।

पत्रांक...../नी० प०

प्रेषक,

जिला नीलाम पत्र पदाधिकारी,
मधेपुरा।

सेवा में,

थाना अध्यक्ष,

..... जवाहरपाड़ा (मधेपुरा)

मधेपुरा दिनांक.....

विषय:- न्यायालय से निर्गत ~~किराया~~ / कुर्की वारंट पर कार्यान्वयन के लिए प्रेषण।

महाशय,

उपर्युक्त विषयक प्रासांगिक संदर्भ में कहना है कि इस न्यायालय से बिसर राजू राय निराम, मधेपुरा के बकाया ऋण के देनदार से वसूली की कार्यवाई के क्रम में निर्गत गिरफ्तारी वारंट संलग्न कर भेजे हुए आपसे अनुरोध है कि संलग्न वारंट पर बकाया राशि के वसूली के हित में अपेक्षित सहयोग के तहत कार्यान्वयन प्रतिवेदन निर्धारित तिथि 30/5/15 के अन्दर वापस करने भेजने की कार्यवाई की जाय

क०	डी०वी० नं०	केश नं०	देनदार का नाम	वारंट का प्रकार
1.	01/9.5.15	10/14-15	श्रीमती कुंसी देविपति एवं श्रीमती सिंह 55-बाड़ा रवेसी मधेपुरा	कुर्की जप्री वारंट
2.	02/9.5.15	05/14-15	दिनीप कुंसी देवि कृष्ण कुं सिंह पति 2 धुपति सिंह, 55 55 रवेसी मधेपुरा (यंता)	कुर्की जप्री वारंट

विश्वासभाजन

हूँ
जिला नीलाम पत्र पदाधिकारी,
मधेपुरा।