

NOTICE

9472229759
Phone No. 2504193

4, Bihar Bar Council Bhawan, Patna

From:

Mr. Bhashkar Shankar,
Mr. Rakesh Singh
Advocate for petitioner(s)/Appellant(s)

To

1. The Advocate General
High Court, Patna

2.

3.

4.

Case

No. _____ of 2014
Yubraj Chopal

Petitioner(s)/Appellant(s)

Vrs.

The State of Bihar ~~vs~~ G.P./Respondent(s)

Sir,

Please take notice that the above noted case is going to be filed on behalf of the petitioner(s)/Appellant(s) copy of the same is enclosed herewith for your information and use.

Please acknowledge receipt hereof.

Rakesh Singh.

A.O.R. No. 00162

Advocate for petitioner(s)/Appellant(s)

Dated: 22.09.2014

Basem Shukh
G.A. 2
23/9/14

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No. _____ of 2014

Yuvraj Bhagat Proprietor of

M/s Arti Mini Rice Mill

....Petitioner

Versus

The State of Bihar & others

....Respondents

SYNOPSIS

This writ petition is for setting aside the notice dated 2.4.2013, u/s 7 of the Bihar and Orissa Public Demands Recovery Act 1914 and subsequent notice dated 10.10.2013 u/s 53 of the Bihar and Orissa Public Demands Recovery Rules as contained in Annexure-2 as well as Annexure-4 respectively issued by the respondent District Certificate Officer, Madhepura in Certificate Case No. 01/2013-14 which was instituted for recovery of Rs. 1,1608579/- from the petitioner with 18% of its interest.

22.2.2012 : The petitioner no. 1 who is proprietor of M/s Anurag Rice Mill situated at Aliganj,

Bhagalpur entered into an agreement with District Manager Bihar State Food and Civil Supplies Corporation Ltd. Madhepura for preparation rice from the paddy supplied by the corporation.

Petitioner received 3389 quintals of paddy accordingly he had to supply 2271 quintals of rice. Supplied 1620 quintals of rice.

02.04.2013 : A Certificate proceeding i.e. Case No. 01/2013-14 was initiated against the petitioner for recovery of amount of the rice which was to be delivered by them and notice u/s 7 of the Act was issued.

12.04.2013 : The petitioner filed application in reply to the notice u/s 7 of the Act.

11.07.2013 : On the District Certificate Officer issued notice to the petitioner u/s 53 of the Bihar and Orissa Public Demands Recover Rules.

- : The Certificate Officer Madhepura without determining and deciding the reply filed by the petitioner issued notice u/s 53 of the Rules which is illegal and contrary to the law.
- 13.11.2013 : Distress warrant has been issued against the petitioner.
- 29.07.2013 : In CWJC No. ¹³⁷⁴⁶~~3674~~ of 2013 and other analogous cases this Hon'ble Court has been pleased to direct the petitioner to approach before the Collector for same issue and in the meantime it has been ordered for not taking coercive action against them.
- : There is no agreement or written instrument in terms of Item 15 Schedule-I of Bihar and Orissa Public Demands Recovery Act by the petitioner that any demand will be recoverable as public demand 1998 (3) PLJR 526.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No. _____ of 2014

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

And

In the matter of
Yuvraj Bhagat Proprietor of M/s Arti Mini Rice Mill,
Bajnathpur (Saharsa) S/o Late Satydeo Bhagat, resident of
Village-Bajnathpur, P.S.-Sour Bazar, District-Saharsa.

....Petitioner

Versus

1. The State of Bihar
2. The Managing Director Bihar State Food and Civil Supplies Corporation Ltd.
3. The Collector, Madhepura
4. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd., Madhepura.

5. The District Supply Officer, Madhepura.
6. The District Certificate Officer, 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 petition on behalf of above named petitioner;

Most Respectfully Sheweth:-

1. That, this is an application for issuance of an appropriate writ for setting aside the notice dated 2.4.2013 issued by the respondent District Certificate Officer, Madhepura to the petitioners in a certificate proceeding i.e. Case No. 01/2013-14 u/s 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 as contained in Annexure-2 for recovery of Rs. 1,1608579/- with 18% of its interest and subsequently the notice dated 10.10.2013 issued by

the respondent District Certificate Officer, Madhepura u/s 53 of the Bihar and Orissa Public Demand Recovery Rules to the petitioners as contained in Annexure-4 by which the petitioner has been called upon before him and show-cause why they should not be committed to civil prison, which is wholly illegal and contrary to the law. In fact, the said certificate proceeding is wholly illegal and without jurisdiction.

2. That, the points involved in this writ petition are as follows:-

- (i) Whether the respondent certificate officer is justified in issuing notice u/s 53 of the Bihar and Orissa Public Demands Recovery Rule without determining and deciding the application filed by the petitioner in reply to the notice issued u/s 7 of the Act ?
- (ii) Whether it was incumbent upon the respondent certificate officer to hear and determine the application filed by the petitioner in reply to the notice u/s 7 of the Act wherein it was stated that he is ready to supply

the remaining rice to the corporation ?

(iii) Whether the action of the respondent certificate officer is illegal without jurisdiction and contrary to law ?

(iv) Whether the whole certificate proceeding is illegal and without jurisdiction in view of the fact that there is no agreement by the petitioner No. 1 that the any demand shall be recoverable by Public Demand under Schedule-I Item-15 of the Act ?

3. That, the petitioner is a citizen of India.

4. That, the petitioner is proprietor of M/s Arti Mini Rice Mill situated at village-Bajnathpur, District-Saharsa by which rice is prepared from paddy. He entered into an agreement with the District Manager Bihar State Food and Civil Supplies Corporation Ltd. Madhepura on 30.12.2011 for preparation of custom milling Rice from paddy to be supplied by the corporation. The said rice was to be delivered by the petitioner according to the terms and condition of the agreement.

Photo/Type copy of the agreement dated 30.12.2011 is being annexed herewith and marked as Annexure-1 to this writ petition.

5. That, after the said agreement the petitioner was supplied 35453.08 quintals of paddy from different purchase centers and accordingly the petitioner had to supply 23753.56 quintals of rice to the corporation.
6. That, after supply of said paddy the petitioner started milling the rice and uptill date delivered 18090 quintals of rice to the corporation.
7. That, the petitioner time without member requested the authorities to take delivery of remaining rice but they deliberately did not receive the same for the reason best known to them.
8. That, on 2.4.2013 a certificate proceeding was initial against the petitioner before the respondent District Certificate Officer, Madhepura vide Case No. 01/2013-14

for recovery of Rs. 1,1608579/- with 18% of its interest for the rice which was to be delivered by the petitioner to the corporation and accordingly the notices u/s 7 of the Bihar and Orissa Public Demands Recovery Act 1914 were issued to the petitioner on 2.4.2013 itself.

Photo/Type copies of the notices dated 2.4.2013 issued to the petitioners u/s 7 of the Bihar and Orissa Public Demands Recovery Act 1914 is being annexed herewith and marked as Annexure-2 to this writ petition.

9. That, in reply to the notice u/s 7 of the Bihar and Orissa Public Demands Recovery Act 1914, the petitioner filed applications before the District Certificate Officer Madhepura stating therein that he was ready to deposit rest of the rice but it was not received. However he is still ready to deposit the rest of the rice.

10. That, although petitioner filed application before the District Certificate Officer, Madhepura in reply to the notice u/s 7 of the Act within 30 days but the respondent District Certificate Officer, Madhepura without determining and deciding the application issued notices dated 10.10.2013 to the petitioner calling upon before him to show-cause why they should not be committed to civil prison u/s 53 of the Bihar and Orissa Public Demands Recovery Rules.

Photo/Type copies of the notice u/s 53 of the Bihar and Orissa Public Demands and Recovery Rules is being annexed herewith and marked as Annexure-3 to this writ petition.

11. That, it is stated and submitted that the respondent District Certificate Officer, Madhepura without looking into and determining the application filed by the petitioner in reply to the notice u/s 7 of the Act, has issued notice

u/s 53 of the Bihar and Orissa Public Demands Recovery Rules which is wholly illegal and contrary to the law.

12. That, it is stated and submitted that there is no agreement or written instrument in terms of Item No. 15 Schedule-I of the Bihar and Orissa Public Demands Recovery Act 1914 by the petitioner, that any demand shall be recoverable as Public Demand. It has held by this Hon'ble Court as reported in 1998 (3) PLJR 526 that dues of a Corporation can be recovered as Public Demand only where the person liable to pay has agreed by a written instrument that it shall be recoverable as public demand. In this case there is no such agreement or written instrument, therefore in this view of the matter this certificate proceeding is wholly illegal and without jurisdiction.

13. That, the petitioner tried to obtain certified copy of entire order sheet of Certificate Case No. 11/2013-04 pending before the District Certificate Officer, Madhepura but the authorities concerned refused to give the certified copy of

the order sheet therefore the petitioner apprehends that that warrant of arrest might have issued against him.

14. That, having similar matters this Hon'ble Court has been pleased to allow the writ petition in CWJC No. 13746 of 2013 and other cases and entire proceeding of certificate case including impugned notice u/s 7 of the Act has been quashed.

Web copy of the order passed in CWJC No. 13746 of 2013 is being annexed herewith and marked as Annexure-4 to this writ petition.

15. That, it is stated and submitted that the petitioner is ready to deposit the rest of the rice. The corporation has wrongly claimed that 3752 quintals of paddy was supplied to the petitioner which a matter of verification. In fact the petitioner has received 3389.75 quintals of paddy.
16. That, there is no efficacious, alternative and expedient remedy other than by way of this writ petition.

17. That, the petitioner has never moved before this Hon'ble Court for the relief sought for.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this writ petition issue Rule NISI calling upon the respondents and after hearing the parties set-aside the notice dated 2.4.2013 u/s 7 of the Bihar and Orissa Public Demands Recovery Act 1914 and subsequent notice dated 10.10.2013 u/s 53 of the Bihar and Orissa Public Demands Recovery Rules as contained in Annexure-2 as well as Annexure-4 respectively issued by the respondent District Certificate Officer, Madhepura in

Certificate Case No. 01/2013-14.

And/or

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

And for this the petitioner shall ever pray.

AFFIDAVIT

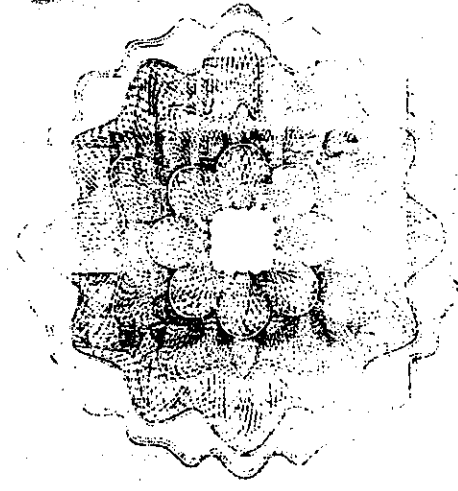
I, Yuvraj Bhagat, aged about 39 years, S/o Late Satydeo Bhagat, resident of Village-Bajinathpur, P.S.-Sour Bazar, District-Saharsa, do hereby solemnly affirm and say as follows:-

1. That I am petitioner in this case and as such am fully acquainted with the facts and circumstances of the case.
2. That I have read the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same.
3. That the statements made in paragraph no. 3 to 10 are true to my knowledge, those made in paragraph no. X are true to my informations derived from the records of the case which I believe those to be true.
4. That the annexures are photo copies of their respective originals.

5

ANNEXURE-1

13



4098 50x1=50=10 मा 10 प्रसर्स अनादी मीनी राईस मिल
 बिहार BIHAR 29/12/11 श्री भुवराज भगत कृष्णापुर जिला 362805
 अनुलग्नक-2 सहारसा समेत प्रसाद म...

Excecitopm of bond framed under terms and conditions with the District Office Saharsa
 Manager, Bihar State Food & Civil Supplies Corporation Ltd. District Office Saharsa
 regarding lifting of paddy and delivering of advance Rice against paddy lying in the
 godowns/Procurement Centres under. District Office of Bihar State Food & Civil
 Supplies Corporation Ltd... Madhepura.....under custom milling of
 paddy.

I, the proprier of M/S ARTI MINI RICE MILL declared that I am willing to
 mill Bihar State Food & Civil Supplies Corporation Ltd. Paddy lying at the RICE
 PRODUCTION centre under Bihar State Food & Civil Supplies Corporation Ltd.
 District Office SAHARSA on delivery of Rice RBC/RRC in advance 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 ARTI MINI RICE MILL Registration No. 1001211Q0064 date 06.08.2007
 valid upto issued by Directors of Industry Govt. of
 Bihar,(VAT No. 10513291034) will delivere advance rice raw/par boiled
 confirming to Govt. of India uniform specification for KMs 2007-08 in 50Kg
 net packing.
2. After deliver of advance rice proportionate paddy will be issued to the miller by
 Bihar State Food & Civil Supplies Corporation Ltd... Madhepura.....
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

Signature

भुवराज भगत

ANNEXURE-1

'Type Copy'

Execution of bound framed under terms and conditions with the District Manager, Bihar State Food & Civil Supplies Corporation Ltd. District Office, Saharsa regarding lifting of paddy and delivering of advance Rice against paddy lying in the godowns/procurement centres under District Office of Bihar State Food & Civil Supplies Corporation Ltd., Madhepura under custom milling of paddy.

I, the proprietor of M/S ARTI MINI RICE MILL declared that I am willing to mill Bihar State Food & Civil Supplies Corporation Ltd. Paddy lying at the RICE PRODUCTION centre under Bihar State Food & Civil Supplies Corporation Ltd. District Office SAHARSA on delivery of Rice RBC/RRC in advance 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 ARTI MINI RICE MILL Registration No. 1001211Q0064 Date 06.08.2009 Valid upto issued by Directors of Industry Govt. of Bihar. (VAT No. 10513291034) will delivered advance rice raw/par boiled comming to Govt. of India uniform specification for MKs 2007-08 50 Kg. net packing.
2. After delivery of Advance Rice Proportionate Paddy will be issued to the Miller by Bihar State Food & Civil Supplies Corporation Ltd., Madhepura.
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

The miller has already deposited Rs. 50000/- as security money through DD
No. dt. Rs. in
favour of District Manager, Bihar State Food & Civil Supplies Corporation

14

- Ltd.
5. Out turn ratio for 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 of miller.
 6. Rs 25/- per quintal of paddy milling charges will be paid for par boiled rice and Rs 15/- per quintal milling charges will be paid for raw to the miller after getting the proper bill from the miller.
 7. Rice shall be bagged in standard weight of 50Kg . and all bags are to be double machine stitched 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. Price of Excess Gunny bags (in which paddy supply to miller) will be deducted by the corporation at the rate 60% of New Gunny bags Price.
 9. The miller will supply rice to be tagged depot of Food Corporation of India in advance within 7 (Seven) days on getting Release order from Bihar State Food & Civil Supplies Corporation of receipt of rice at F.C.I end proportionate paddy will be actually released by Bihar State Food & Civil Supplies Corporation Ltd. ... to the miller from different procurement centre.
 10. Transportation Charges @ 17 paise per quintal per Kilometer for distance upto 100Kms excluding 8 K.M. is admissible for milling of paddy. Transportation charges in respect of delivery of rice will be restricted to the nearest F.C.I. rice receipt centre.
 11. In case of any deviation from above agree terms and conditions/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.
 12. The miller also agreed to abide by the instruction issued from time to time by the Bihar State Food & Civil Supplies Corporation/relating to miller of procured paddy.

District Manager

Bihar State Food & Civil Supplies Corporation Ltd.

Date 30th December 2011

M/S A. & M. Rice Mill

Proprietor

M/s

Handwritten signature and text: 392177770, 07/01/11, 9/12/11

4. That Miller had already deposited Rs. 50000/- as security money through DD No. _____ dt. _____ Rs. _____ in favour of District Manager, Bihar State Food & Civil Supplies Corporation Ltd.
5. Out turn ration for par boiked rice is 68% and for raw Rice is 67% on As is where is basis and by product broken etc. obtain from milling shall be property of Miller.
6. Rs. 25/- per quintal of paddy milling charge will be paid for per bolled Rice and Rs. 15/- per quintal milling charge will be paid for raw to the Miller after getting the proper bill from the Miller.
7. Rice shall be bagged in standard weight of 50 Kg. and all bags are to be double machine stiched in Green thread and bags should be duly stencilled with Red color showing name of the Miller and station crop year, net weight, commodity and variety.
8. Price of excess Gunny bags (in which paddy supply to miller) will be deducted by the corporation at the rate of 60% of new Gunny bags Price.
9. The miller will supply Rice to the tagged depot of Food Corporation of India in advance within 7 (seven) days on getting Release Order from Bihar State Food & Civil Supplies Corporation Ltd. District Office Madhepura for lifting of Paddy. On conformation of receipt of Rice at F.C.I. and Proportionate Paddy will be actually released by Bihar State Food & Civil Supplies Corporation Ltd. Madhepura to the Miller from different procurement Centre.
10. Transportation charge @ 17 paise per Kilometer for distance up to 100 K.M. excluding 8 K.M. is admissible for milling of Paddy. Transportation charges in respect of delivery of Rice will be restricted to the nearest F.C.I. Rice receipt centre.
11. In case of any deviation from above agreed terms and conditions/ any default on the part of Miller, security money deposited by the Miller will be forfeited by the Corporation. And legal action against the miller shall be taken.
12. The Miller also agreed to abide by the instruction issued from time to time by the Bihar State Food & Civil Supplies Corporation/relating to milling of procured Paddy.

District Manager
Sd/-
Bihar State Food & Civil
Supplies Corporation Ltd.
Date : 30th Dec., 2011

Proprietor
Sd/-
M/s Arti Mini Rice
Mill, Baijnathpur

(Non Judicial Stamp of Rs. 100/-)

BIHAR STATE FOOD & CIVIL SUPPLIES CORPORATION LTD.

DEED OF AGREEMENT

Execution of bond framed under terms and conditions with the District Manager, Bihar State Food & Civil Supplies Corporation Ltd. District Office Paddy lying in the godowns /Procurement Centres under District Office of Bihar State Food & Civil Supplies Corporation Ltd. in custom milling of Paddy (herein after called the first party).

I, the proprietor of M/s..... declare that I am willing to mill, Bihar State Food & Civil Supplies Corporation Ltd's Paddy lying at the Centre under Bihar State Food & Civil Supplies Corporation Ltd. District Office On delivery of Rice (RBC/RRC) as per Government of India specification and as per terms and conditions of Bihar State Food & Civil Supplies Corporation Ltd. in vogue (herein after called the second party)

1. M/s.....Registration No..... valid up to issued by Directors of Industry Government of Bihar and (VAT No.....) will deliver raw rice/par boiled rice confirming to Government of India uniform specification for KMS 2012-13 in 50 Kg net packing.

2. The second party has monthly milling capacity of MT of Paddy but, he has to furnish Bank Guarantee equivalent to the value of Paddy taken by him for milling in concerned procurement season and in case, he requires further quantity of paddy for milling, he has to furnish further Bank Guarantee equivalent to the value of paddy desired by him to be taken for milling. However, he has to deliver C.M.R. in time before next lot of paddy is taken by him. The said Bank Guarantee of Rs.....(.....) issued in favour of District manager, Bihar State Food & Civil Supplies Corporation Ltd., vide serial no..... dated..... has been submitted by the second party as per State Government instruction from time to time.

3. The second party is at liberty to take paddy for milling as much as the quantity he desires during the said procurement season in accordance with his monthly milling capacity but, he has to furnish Bank Guarantee for the value of paddy which he takes for milling or in case, he is not capable of furnishing Bank Guarantee, he has to pledge immovable property in the form of mortgage bond for the rest amount or he can pledge immovable property for the entire value of paddy which he takes for milling. The property details so mortgage must be certified to be in his own name by the competent authorities either by circle officer of the block or SDO of the concerned sub-division so that in case of default of second party or any deviation of paddy may be recovered.

4. Out turn ratio for par boiled rice is 68% and for raw rice 67% on "As where is" basis and by-product like husk, broken etc. obtain from milling shall be property of the second party.

5. After receipt of paddy second party will deliver proportionate percentage of rice within a month from the date of receipt of paddy and only then, any further paddy as desired according to monthly milling capacity will be issued to the second party by the first party. In case of delay in delivery of proportionate percentage of rice, appropriate penalty in terms of money will be charged by the competent authorities with interest at Bank lending rate.

KK

16

6. Rice will be accepted in the same Gunny bags in which the paddy is delivered by the first party. For the first consignment/lot, rice will be delivered by the second party in new SBT gunny bags. The excess gunny bags will be returned by the second party and if retained by the second party, the cost of excess gunny bags (in which paddy is supplied to second party) will be deducted by the first party @ 60% of new gunny bags at the purchase rate from DGS & D, Kolkata for KMS 2012-13 and will be adjusted from the bills submitted by the second party.

16

7. The second party will provide godowns at their mill premises as per milling capacity for storage of paddy, CMR, so that the authorised representative of first party or Food and Consumer Protection Department can inspect the stock quantity and quality of CMR ready for delivery to first party. The second party will store paddy at the mill premises only. Storage of paddy shall not be store at any other place.

8. Rs.20/- per quintal as paddy milling charges will be paid for par boiled rice and Rs.10/- per quintal milling charges will be paid for raw rice to the second party after getting the proper bill from the second party.

9. Rice shall be bagged in standard weight of 50 Kg. and all bags are to be double machine stitched in red thread and bags should be duly stencilled with blue colour showing name of the mill and station, crop year, net weight, commodity, variety and lot No.

10. The second party will supply CMR to the first party. CMR received from second party will be transported by the first party to the tagged depot of Food Corporation of India, proportionate paddy will be actually released by the Bihar State Food & Civil Supplies Corporation Ltd..... to the second party from different Procurement Centres.

11. The second party will submit daily/weekly/monthly report of ready CMR for delivery and status of paddy lying in mill to the concerned District Manager and District authority.

12. In case of any deviation from above agreed terms and conditions or any default on the part of the second party, bank guarantee submitted by the second party will be forfeited by the first party and Legal action against the second party shall be taken including recovery of amount from the mortgaged immovable property by way of attachment and sale.

13. It has also been agreed that payment of milling charge will be made only after delivery of due rice as per specification and acceptance of CMR by Food Corporation of India.

14. The second party also agrees to abide by the instructions issued by State Government from time to time, and the terms of agreement.

15. The second party agrees that in case, any amount found recoverable on account of default, loss, damage on the part of the second party, the said recoverable amount with interest will be recovered as Land Revenue under Bihar & Orissa Public Demands Recovery Act, 1914 by instituting Certificate case before the concerned District Certificate Officer.

16. In case of disputes both parties agree to settle the issue(s) on mutual discussion. Failure to reach agreement the matter will be referred to arbitrator. It has been also agrees that the arbitrator will be District Collector of the concerned District whose decision shall be final, concerning the dispute referred to him.

District Manager,
Bihar State Food & Civil Supplies Corporation Ltd. M/s.....

Proprietor

Date:

17

BB
50.10.12
89.19.12

STAMP OF RS. 100/-

DEED OF PLEDGE

To,
The District Manager,
Bihar State Food & Civil Supplies Corporation Ltd.,

Sir, _____, S/o-_____

at.....P.O:-.....,P.S.-.....

District-....., as required to deposit Title deeds of my landed property/mill of proportionate amount of per month milling capacity of paddy i.e. Rs..... as security with the District Manager,, Bihar State Food & Civil Supplies Corporation and I, therefore, request you to keep the said Title Deeds of my self acquired/inherited landed property and the ownership paper of mill in your possession which are being pledged by me as security.

I undertake to pay proportionate value of paddy of the concerned procurement year calculated as per monthly milling capacity of paddy i.e. Rs.....to Bihar State Food & Civil Supplies Corporation Ltd. in case of loss, damage or any default or found doing black marketing business by me.

I agree that landed property shall be salable by auction sale/legal procedure by the pledgee, even if, the security has been forfeited and the loss/damage caused is not suitably compensated and the same shall not be objected to by me for taking steps to sale the pledged property by the District Manager (Bihar State Food & Civil Supplies Corporation)....., Bihar.

xx

mm

(.....)
S/o-.....
Vill:-.....
P.O + P.S.-.....
District:-.....
Bihar.

डी.बी.नं. 568
2/4/13
Schedule xlv-Form NO- 52 H.
का फार्म सं० ६७ सी ।

बिहार स्टेट फूड एण्ड सिविल सप्लाय
कॉरपोरेशन लिं. मधुपुरा ।

सर्टिफिकेट देनदार की नोटिस

देखिये दफा ७, बिहार वो उड़ीसा ऐक्ट नं० ४ सन् १९१४ का ।
आरती मिनी स्टारल मिड ईथनाशपुर

सर्टिफिकेट देनदार का नाम प्रो. श्री. श्री. राजा भगत पिता सत्यदेव भगत, २०१५
के नाम आपको इसकी रू० से जनाया जाता है कि आप के ऊपर 1,16,08,579=०० (18% अतिरिक्त)
रुपये के लिए जो आपसे CMR

की बाबत पावना है बिहार और उड़ीसा के सरकारी मोतालवी के वसूल करने के ऐक्ट सन् १९१४
की दफा 7 की रू० से एक सर्टिफिकेट आज के दिन मेरे ऑफिस में नथी किया गया

है । जो आपके ऊपर बताये हुए 1,16,08,579=०० रुपये देने की अपनी जिम्मेवारी को नकारते
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 हैं । तो आप ऊपर बताये हुए तीस दिन के भीतर

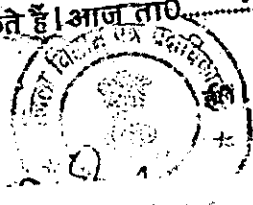
दरखास्ता दाखिल करें या इस बात के लिए सबबन दिखलाईएगा या पूरा सबब न दिखलाईए कि ऐसा
सर्टिफिकेट क्यों न जारी किया जाना चाहिए तो वह आपके

1,16,08,579=०० रुपये (18% अतिरिक्त) रूपया मोतालवे
के और 6.70 रूपया वसूल करने के खर्च के लिए) मेरे ऑफिस में न दिया जाय को

कहे हुए ऐक्ट 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 जायदाद या उसके किसी
हिस्से को बिक्री दान बन्धक या और किसी को छिपाईएगा, हटाईएगा तो वह सर्टिफिकेट फोरन जारी
किया जायगा ।

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

माह 5 सन् 2013



Handwritten signature and initials.

डी.बी. नं०-578/2.4.13

बिहार स्टेट फुड एण्ड सिविल कॉरपोरेशन लि०, मधेपुरा

वाद सं०-01/13-14

सर्टिफिकेट देनदार की नोटिस

देखिये दफा 7, बिहार वो उड़ीसा एक्ट नं०-4 सन् 1914 का।

आरती मिनी राइस मिल, वैद्यनाथपुर

सर्टिफिकेट देनदार का नाम प्रो० श्री युवराज भगत पिता-सत्यदेव भगत, ग्राम-बैजनाथपुर जिला-सहरसा के नाम आपको इसकी रू० से जनाया जाता है कि आप के उपर 1,16,08,579.00 रूपये के लिए जो आपसे CMR (18% सूद अतिरिक्त) की बाबत पावना है बिहार और उड़ीसा के सरकारी मोतालवी के वसूल करने के ऐक्ट सन् 1914 की दफा 7 की रू० से एक सर्टिफिकेट आज के दिन मेरे ऑफिस में नत्थी किया गया है। जो आपके उपर बताये हुए 1,16,08,579.00 (18% अतिरिक्त) रूपये देने की अपनी जिम्मेवारी को नकारते 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 उपर बताये हुए तीस दिन के भीतर दरखास्त दाखिल करे या इस बात के लिए सबबन दिखलाईएगा या पूरा सबब न दिखलाईए कि ऐसा सर्टिफिकेट क्यो न जारी किया जाना चाहिए तो वह आपके 1,16,08,579.00 रूपये (18% अतिरिक्त) रूपया मोतालवे के और 4,50 रूपया वसूल करने के खर्च के लिए मेरे ऑफिस में न दिया जाय को कहे हुए एक्ट की शर्ती के मुताबिक जारी किया आपका अब तक बची हुई रकम इस तरह से न दी जाय आपको इसकी रूपया से मना किया जाता है कि आप अपनी गैर मनसुबा जायदाद या उसके किसी हिस्से को बिक्री दान बंधक या और किसी को छिपाईएगा, हटाईएगा तो वह सर्टिफिकेट फोरन जारी किया जायगा।

ऊपर बताये हुए सर्टिफिकेट के एक परत उसके साथ नत्थी की जाती है। आप सर्टिफिकेट का नम्बर और सन् लिखकर मनिऑर्डर के जरिये रूपया भेज सकते है। आज ता० 2 माह 4 सन् 2013 ई०।

ह०/-अस्पष्ट

जिला सर्टिफिकेट ऑफिसर

मधेपुरा

डी.डी. नं०-1423
10.10.13

ANNEXURE-3

फारम सं०-96

13

गिरफ्तारी का वारंट क्यों न जारी किया जाय, इसके कारण बताने के लिए सूचना ।

नाम: मे आबुली रमिनी रक्षिस मिल
(नियम 93 देखें) कैजनाचपुर (बहरसा)
पिता धुवराज भठ्त पिता सत्य
देव भठ्त शठ कैजनाचपुर
मिल्य बहरसा

सेवा में, Sir:

चूंकि श्री. कि० हरि प्र० लठ कि० शठ
का० कि० मधेपुरा ने सर्टिफिकेट सं० 01/13-14

के इजराय के लिए आपको

गिरफ्तार कर जेल में बन्द कर देने का आवेदन किया है । इसलिए आपसे अपेक्षा

की जाती है कि आप ता० 25/10/13 को मेरे सामने उपस्थित हो और कारण

बतायें कि उक्त सर्टिफिकेट के इजराय में आपकी क्यों न दीवानी जेल में भेजा जाय ।

मेरे हस्ताक्षर और मुहर से आज ता० 10/10/13 को

यह सूचना दी गयी ।



जिला सर्टिफिकेट ऑफिसर

10/10/13 मधेपुरा

ANNEXURE-3

'Type Copy'

डी.बी. नं०-1123/10.10.13

फारम सं०-17

गिरफ्तारी का वारंट क्यों न जारी किया जाय, इसके कारण बताने के लिए

सूचना

(नियम 53 देखें)

बनाम में आरती मीनी राईस मिल बैजनाथपुर (सहरसा) प्रो० युवराज भगत पिता-सत्यदेव
भगत सा०-बैजनाथपुर, जिला-सहरसा।

सेवा में,

चूँकि श्री वि० स्टेट फुड एण्ड सि०स०कॉ०लि० मधेपुरा ने सर्टिफिकेट
सं०-01/13-14 के इजराय के लिए आपको गिरफ्तार कर जेल में बंद कर देने का
आवेदन किया है। इसलिए आपसे अपेक्षा की जाती है कि आप ता० 25.7.13 को मेरे
सामने उपस्थित हो और कारण बताये कि उक्त सर्टिफिकेट के इजराय में आपकी क्यों
न दीवानी जेल में भेजा जाय।

मेरे हस्ताक्षर और मुहर से आज ता० 10.10.13 को यह सूचना दी गयी।

ह०/-अस्पष्ट

10.10.13

जिला सर्टिफिकेट ऑफिसर

मधेपुरा।

COURT FEE
 Authorization No. 2675

Anx-4

20

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13746 of 2013

Sone Valley Rice Mill At- P.O. Sahuka, Ramgarh, District- Kaimur (Bhabhua)
 Through Its Proprietor Sudhakar Singh, Son Of Sri Jagdanand Singh At-P.O.-
 Sahuka, P.S.- Ramgarh, District- Kaimur (Bhabhua)

Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. Of Bihar, Patna
2. The Bihar State Food and Civil Supply Corporation Through Its Managing Director, Sone Bhavan, Veerchand Patel Path, Patna
3. The District Manager, State Food Corporation, Kaimur, Bhabhua
4. The Certificate Officer-Cum-Senior Deputy Collector, Kaimur at Bhabhua
5. The Circle Officer, Ramgarh, District- Kaimur at Bhabhua

..... Respondent/s

Appearance :

- For the Petitioner/s : Mr. Vinod Kantha, Senior Advocate
 Mr. Dinu Kumar, Advocate
 Mr. Arvind Kumar Sharma, Advocate.
- For the F.F.S.C. : Mr. R.S.Pradhan, Sr. Advocate.
 Mr. Shailendra Kumar Singh, Advocate.
 Mr. Anand Narain Rai, Advocate.
- For the FCI : Mr. Babhakar Tekriwal, Advocate.

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
 JUDICIAL JUDGMENT

Date: 22-07-2014

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

"1(I) For quashing the proceeding of Certificate Case No. 36(Y)2012-13 initiated against the petitioner by Certificate Officer-cum-Senior Deputy Collector, Kaimur at Bhabhua under the Bihar & Orissa Public Demand Recovery Act, 1914 with regard to alleged Public demand of Rs. 4,66,68,330/-.

(II) Also for quashing the notice as contained in Annexure-8 issued by the Certificate Officer, Kaimur

COPYING

21

at Bhabhua in Case No. 36(Y)2012-13 with regard to certificate for Rs. 4,66,68,330/- (Rs. Four Crores, Sixty Six Lac, Sixty Eight Hundred Three Hundred Thirty) to that extent office order vide memo no. 12 dated 13.05.2013 was issued under the signature of Certificate Officer, Kaimur at Bhabhua, whereof copy was also issued to the Circle Officer, Ramgarh, District-Bhabhua for service of notice.

(III) Also for directing the respondents especially Certificate Officer-cum-Senior Deputy Collector, Kaimur at Bhabhua to not proceed with in case no. 36(Y)2012-13 instituted against the petitioner."

3. Mr. Vinod Kanth, learned senior counsel appearing for the petitioner, has submitted that the initiation and continuation of the certificate proceeding under the provision of the Bihar Public Demand Recovery Act, 2014 (hereinafter to be referred to as 'the Act') against the petitioner is wholly without jurisdiction, inasmuch as, the amount involved in certificate proceeding is not a public demand as defined in Section 3(6) of the Act. He has further submitted that there is infact an inter parte agreement between the petitioner and the Bihar State Food & Civil Supplies Corporation (hereinafter to be referred to as 'the Corporation') as with regard to performance of certain work by the petitioner awarded by the Corporation but, the same does not envisage that any amount allegedly due against the petitioner can be recovered by taking recourse to certificate proceeding under the Act.

4. Mr. Kantha in this regard has also placed by him on a

22

judgment of this Court in the case of *M/s Murlidhar Sohanlal v. State of Bihar and Others* reported in 1998 (3) PLJR 526 which, according to Mr. Kanth, squarely covers the case of the petitioner, inasmuch as, the said judgment was rendered with regard to the similar contemplated recovery of dues of a firm by this very Corporation wherein it was held by this Court that in absence of a written instrument between the certificate debtor and the certificate holder (Corporation), the recourse to certificate proceeding in terms of Clause-15 of Schedule-I of the Act was wholly without jurisdiction. Mr. Kanth has also disputed the amount of dues claimed by the Corporation to the tune of Rs. 4,66,68,330/- which has been sought to be recovered from the petitioner by way of certificate proceeding on various grounds including non-fulfilment of the terms and condition of the agreement by the Corporation and, according to him, the demand notice issued by the Corporation to the petitioner for recovery of Rs. 4,61,49,152/- was itself wholly unsustainable on fact and in law due to breach of terms and conditions by the officials of the Corporation.

5. Per contra, Mr. R.S. Pradhan, learned senior counsel for the Corporation, has taken a stand that though it is true that there is no written agreement between the petitioner and the Corporation for recovery of the alleged dues of the Corporation by taking recourse to certificate proceeding under the Act but, then, the paddy, in question,

23

entrusted to the petitioner by the Corporation, was actually the property of the State Government of Bihar and the Corporation had only acted as a nodal agency either in entrusting such paddy to the petitioner or making demand for dues from the petitioner. According to Mr. Pradhan the certificate proceeding against the petitioner therefore, will be very much maintainable in view of Entry No. 8A of Schedule-I of the Act. Reference in this regard has been placed by him on a judgment of this Court in the case of *Binod Kumar Yadav v. State of Bihar & Ors.* reported in 2003 (1) PLJR 215. Mr. Pradhan has highlighted that the petitioner was given 37,401.60 quintals of paddy and since he did not return the Customed Milled Rice to the proportionate quantity of 49.08 quintals, it had become liable to pay its price at the rate of Rs. 1903.13 per quintal totaling to the tune of Rs. 4,61,49,152/-.

6. In the light of the aforementioned submission, the first and foremost question which would go to the root of the matter is as to whether a certificate proceeding against the petitioner under the Act is maintainable?

7. From the facts of this case and in fact a large number of cases which have been heard together today, it is absolutely clear that such agreement for either supply of paddy or collection of rice on payment of milling and transporting charges was entered into between

24

the Corporation and the concerned rice mill. In the present case also in fact an agreement much before the aforesaid government policy as explained the letter of Corporation dated 24.1.2012 (Annexure-D to the counter affidavit) had been entered on 22.12.2011 vide Annexure-1 to the writ application which, for the sake of clarity, is quoted hereinbelow:-

"Excerpt of ~~and~~ framed under terms and conditions with the District Manager, Bihar State Food & Civil Supplies Corporation Ltd. District Office, Bhabua regarding lifting of Paddy and delivering of advance Rice against paddy lying in the godowns/procurement Centres under District Office of Bihar State Food & Civil Supplies Corporation Ltd. Bhabua under custom milling of paddy.

I, the proprietor of M/s Sone Valley Rice Mill declared that I am willing to mill, Bihar State Food & Civil Supplies Corporation Ltd. Paddy lying at the Ramgarh centre under Bihar State Food & Civil Supplies Corporation Ltd. District Office Bhabua on delivery of Rice RBC/RRC in advance 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 Sone Valley Rice Mill Registration No. 100311100565 date 05/06/2009 valid upto issued by Directors of Industry Govt. of Bihar, (VAT No. 10181599084) will deliver advance rice raw/per boiled confirming to Govt. of India uniform specification for KMS 2011-12 in 50 Kg. net packing.*
- 2. After deliver of advance rice proportionate paddy will be issued to the miller by Bihar State Food & Civil Supplies Corporation Ltd. Bhabua.*
- 3. Rice will be accepted in the same Gunny Bags in which the paddy is delivered by the corporation. For the First*

COPY

W R I T

25

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. 368252 dt. 12.2.2011 Rs. 50,000/- in favour of District Manager Bihar State Food & Civil Supplies Corporation Ltd. Bhabua.
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 of miller.
6. Rs. 25/- per quintal of paddy milling charge will be paid for par boiled rice and Rs. 15/- per quintal milling charge will be paid for raw to the miller after getting the proper bill from the miller.
7. Rice shall be bagged in standard weight of 50 Kg. and all bags are to be double machine stitched in green thread and bags should be duly stenciled with green colour showing name of the miller and station, crop year, net weight, quantity, variety and lot No.
8. Price of Excess Gunny bags (in which paddy supply to miller) will be deducted by the corporation at the rate of 60% of New Gunny bags price.
9. This miller will supply rice to be tagged depot of Food Corporation of India in advance within 7 (seven) days on getting Release order from Bihar State Food & Civil Supplies Corporation of receipt of rice at F.C.I. and proportionate paddy will be actually released by Bihar State Food & Civil Supplies Corporation Ltd. Bhabua to the miller from different procurement Center.
10. Transportation charge @ 17 paise per quintal per kilometer for distance upto 100 Kms excluding 8 K.M. is admissible for milling of paddy. Transportation charges in respect of delivery of rice will be restricted to the nearest F.C.I. rice receipt centre.

COPY

26

11. In case of any deviation from above agree to terms and conditions 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.

12. The miller also agreed to abide by the instruction issued from time to time by the Bihar State Food & Civil Supplies Corporation/relating to miller of procured paddy.

Sd./- 22.12.11

District Manager

Bihar State Food & Civil
Supplies Corporation

Date 22.12.11"

Sd./- 22.12.11

SD./- Sudhakar Singh

Proprietor

(underlining for emphasis)

8. From a bare reading of the aforementioned agreement between the petitioner and the Corporation and specially its underlined portion it is absolutely clear that such agreement was entered between the Corporation and the petitioner regarding lifting of paddy and delivery of advance rice against paddy lying in the godown in the authorized district offices of the Corporation. Added to it the said agreement was made only after the petitioner had deposited the security money to the Corporation to the tune of Rs. 50,000/- on 21.12.2011. The different clauses of agreement, therefore, will leave nothing for speculation that a relationship for performance of the contract of either procuring paddy by the petitioner, a rice mill, from the Corporation or its being returned in the form of CMR to the Corporation was confined exclusively between the petitioner and the

27

Corporation.

9. The term of agreement in fact also makes it clear that it was the Corporation which had to pay the milling charges of CMR after getting the bill from the rice mill, in question. The accounting procedure given by deducting the price of excess paddy bags supplied to the rice mill by the Corporation is again a proof of the fact that the entire amount with regard to supply of paddy to the rice mill and its being returned by the rice mill in the form of CMR was between the Corporation and the concerned rice mill. As a matter of fact, Clause-11 & 12 of the agreement will be a complete answer to the submission of Mr. Pradhan that the transaction, in question, in the form of agreement between the Corporation and the rice mill had no where indicated the said paddy to be the property of the State Government being made available to the petitioner rice mill on or on behalf of the State Government. As a matter of fact when on deviation on the part of the rice mill by way of default, the security money deposited by the petitioner miller as per clause 11 of agreement could be forfeited by the Corporation and even legal action was to be taken against the petitioner only by the Corporation, it will be too late in the day to now read into this agreement with the Corporation was a mere name lender and had entered into the agreement on behalf of the State Government.

10. Let it be noted that the Corporation is a government company under Section 617 of the Company Act in which the State of Bihar and its officials hold 100% shares. The Corporation however as per the Memorandum of Article of Association having set out its object in detail including undertake the business of purchasing, storing, transporting, distributing, stocking and movement of food grain and other food stuffs in the state of Bihar and elsewhere cannot be heard to say that when it had entered into the agreement with the petitioner on 22.12.2011, it was not acting in its independent capacity. As a matter of fact, Clause-14 of the Memorandum of Association of Corporation would make it further clear that the Corporation itself had set out its one of the object to enter into any arrangement with the Government of India or Government of Bihar for the purpose of carrying out the object of the company and, therefore, whatever may have been the government policy decision with regard to procurement of sugar and obtaining CMR, the same was well within the framework of the object of the Corporation. Article 76(7) of the Article of Association of the Corporation infact also authorizes the Corporation to institute, contact, defer, compound or abandon any legal proceedings by or against the company or its officers or otherwise concerning the affairs of the Company and also to compound and allow time for payment of satisfaction of any claims or

30

13. A question however would be was any loan and/or advance given to the petitioner by the State Government or by the Department of the State Government or by the officers of the State Government. There is infact nothing on record to show any transaction directly involving the petitioner, as with regard to procurement of paddy by way of loan/advance from the State Government or Department of State Government or official of the State Government.

14. The reliance placed by Mr. Pradhan on a government policy of procuring paddy contained in memo no. 9624 dated 7.12.2011 issued by the Department of Food and Consumer Protection wherein was the Corporation which had been nominated as a nodal agency to implement the government programme for procurement of paddy is also wholly misplaced. As a matter of fact, from a bare reading of the aforesaid government letter dated 7.12.2011, it would be clear that the Government had only fixed the price for procurement of paddy as also authorized the Corporation to work as a nodal agency for implementing the programme. The aforesaid government decision however, does not in any way make the government directly responsible for entering into any agreement with the rice mill to whom the paddy was to be handed over by the Corporation for its being returned in the form of Customed Milled Rice (CMR) only to

the Corporation. This would in fact become very clear from the contents of follow up letter issued by the Corporation on 24.1.2012 as contained in Annexure-D to the counter affidavit where it was said that a decision was taken at the level of cabinet minister that for implementing the aforesaid government decision dated 7.12.2011 it was that the district administration which should enter into agreement with rice mills and the Corporation had to only ensure that the stored paddy is made available to the concerned rice mill.

15. Let it be noted that had it been a government loan or advance in terms of the Entry 5A the requisition was to be filed by the State Government and/or its officials of the Department but here it is on record that such requisition in terms of Form-I for the certificate of public demand was filed by the District Manager of the Bihar State Food Civil Supply Corporation, Kaimur, Bhabhua in capacity of Certificate Holder. Consequently, notice issued under Form-II against the petitioner on 13.5.2013 as contained in Annexure-A also bore a clear endorsement that the certificate against the petitioner for Rs. 4,66,68,330/ which was said to be payable by way of dues on account of District Manager, Bihar State Food Civil Supplies Corporation, Kaimur was to be recovered from the petitioner. Thus, the requisition of the District Manager, Bihar State Food Supply Corporation, Bhabhua dated 10.5.2013 in Form-II in

terms of Section 5 of the Act will again leave nothing for speculation that such requisition was out and out a requisition of the Corporation in terms of the agreement but if that agreement being a written instrument itself did not contemplate realization of the amount from the petitioner by way of recovery of the amount from him by way of public demand, the consequential certificate issued by the Certificate Officer on 11.5.2013 in Form-I and the notice under Section 7 of the Act issued on 13.5.2013 as also the further entire proceeding of the Certificate Case No. 36(Y)/2012-13 would be essentially wholly without jurisdiction.

16. As noted above there is an agreement only between the Corporation and the petitioner, rice mill, that on supply of paddy by the officials of the Corporation, the petitioner, rice mill, shall return CMR and would be entitled to get milling and transporting charges. In the event of failure of the rice miller to do so, legal action could be only be taken by the Corporation, which had also power to confiscate the security amount of the rice miller. Thus, this Court will have no difficulty in holding that the only way the Corporation could have instituted certificate proceeding for recovery of the amount under the demand notice issued to the petitioner was in the event of there being a written instrument wherein the petitioner had agreed for recovery of amount by way of public demand. This would become

absolutely clear from entry no.15 to the Schedule-I of the Act which reads as follows:-

"15. Any money payable to

- (i) State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955)
 - (ii) a Bank specified in column (2) of the first schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Act V of 1970); or
 - (iii) a company or a statutory body, including a registered society carrying on financial transaction, owned by or in which, Government has a majority of shares or which is managed by an authority appointed under any law for the time being in force; or
 - (iv) the Bihar State Electricity Board.
- in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as public demand."

17. In the present case and in fact the other similar cases which have been heard today, all the agreements entered into between the Corporation and the concerned rice mill including the petitioner for the year 2011-12, there is no stipulation that the amount payable by the rice mill in the event of not returning the CMR could be realized by taking recourse to certificate proceeding. On the other hand, this Court, while hearing the batch of writ applications listed today, has found that in all the agreement entered into between the Corporation and the Rice Miller for the year 2012-13, there is a

specific provision in Clause-15 for recovery of such amount from the concerned rice miller by taking recourse to the certificate proceeding and that has been agreed by the concerned rice miller.

18. Thus, it is this basic difference in the two types of agreements whereas for the financial year 2011-12 including the case in hand and the other cases where Clause-15 of the agreement for the year 2012-13, that would be clincher on the issue that the Corporation itself became subsequently wise to make a provision for recovery of its dues against the concerned rice miller by taking recourse to certificate proceeding. This Court, therefore, will have no difficulty in holding that in all the agreement including one of the petitioner of the financial year 2011-12 where there is no provision for recovery of the amount by taking recourse to certificate proceeding under the Act, the same cannot be realized by way of instituting and/or continuing with the certificate case.

19. The view that this Court has taken in the present case also finds support from an earlier judgment in the case of *M/s Murtdhar Sohanlal* (supra) wherein as with regard the action of this very Corporation of realization of the dues by taking recourse to certificate proceeding under the Act was considered at length after noticing the provision of Entry No. 15 of Schedule-I of the Act and it was held as follows:-

- "4. From a bare perusal of the aforesaid provision, it would appear that dues of the respondent Corporation can be realized through a certified proceeding and treated as public demand if the person liable to pay the same has agreed by a written instrument that it shall be recoverable as public demand. In the present case, the petitioner has categorically stated in the writ application that no such agreement has been entered into by the petitioner with the respondent Corporation.
5. A counter affidavit has been filed on behalf of the respondent Corporation, paragraph 10 whereof reads thus:-

"10. That in reply to the statement made in paragraph 12 of the writ application, it is submitted that it is not correct that there was no agreement all together. In this regard Clause 23 of the agreement is referable, "all sums due to the Corporation can be realized by any manner the Corporation deems fit." Hence the claim to this effect enlarges scope for jurisdiction under the Act and impliedly there is an agreement to recover the dues by any mode including as public demand."

From a bare perusal of paragraph 10 of the counter affidavit, wherein relevant clause of agreement has been quoted, it would appear that the Corporation could realize its dues in the manner it deemed fit and proper. It has nowhere been stated in the agreement that the dues shall be recoverable as public demand.

6. This being the position, in my view, in absence of any agreement as required under law the dues of the

COPYING
WRIT

36

Corporation against the petitioner could not be treated a public demand within the meaning of the Act and realized thereunder. Therefore, action for realization of the same through a certificate proceeding initiated by the District Certificate Officer, Saharsa and impugned orders passed therein are per se invalid and liable to be quashed."

20. This Court, therefore, is of the opinion that the case in hand of the petitioner is also squarely covered by the ratio laid down in the case of *M/s Murlidhar Sahantol* (supra).

21. The reliance placed by Mr. Pradhan on the judgment of this Court in the case of *Binod Kumar Yadav* (supra) is wholly misplaced, inasmuch as from reading of the same, it would be clear that the petitioner in that case had taken an advance for construction of RCC Road Bridge from the government department and, therefore, the provision of Entry 87 was sought to be relied for holding that the certificate proceeding as with regard to the advance given by the State Government or its officials of the Road Construction Department was maintainable. Thus, there would be no difficulty for this Court to hold that the ratio in the case of *Binod Kumar Yadav* (supra) will be of no help and avail to the facts of the present case.

22. There is also no escape from the settled position in law that unless the money due is a public demand, the certificate proceedings under the Act cannot be instituted much less continued.

37

Reference in this connection may be usefully made to the division bench judgment of this Court in the case of *Narendra Narayan Singh Vs. State of Bihar and others* reported in 2002(4) PLJR 176.

23. Thus when the amount sought to be recovered from the petitioner is not public demand within the meaning of Section 3(6) of the Act, there can also be no escape from the irresistible conclusion that recourse to certificate proceedings against the petitioner under the Act would be clearly illegal without jurisdiction and abuse of process of court. This aspect of the matter has also been considered in an earlier judgment of this Court in the case of *Rabindra Nath Singh Vs. State of Bihar & Ors.* reported in 2007(1) PLJR 192 relevant portion whereof reads as follows.

"8. Needless to say that the proceeding which is wholly without jurisdiction a party is not required to submit to the jurisdiction and take an objection as regards the jurisdiction. A party has an opportunity to come to this Court directly and challenge the jurisdiction and is entitled to relief by this Court.

9. The proceedings being wholly without jurisdiction. In my view, leaves no discretion to this Court. It is established that no person can be deprived of his life, liberty or property except by authority of law and by procedure established by law. As in the present case the petitioner is sought to be deprived of his life and liberty (Coercive steps contemplated under Public Demand Recovery Act) and his property (Attachment and others provision of the Public Demand Recovery Act) under the law which has no application. Thus, it has to be held that the proceedings are in violation of Articles 14, 21 as well as 300A of the Constitution."

24. That being so, this writ application is allowed and the entire proceeding of Certificate Case No. 36(Y)/2013 including the impugned notice under Section 7 of the Act dated 13.05.2013 as contained in Annexure-8 is hereby quashed.

25. It is, however, made clear that nothing said in this judgment shall stand as a bar in realization of the dues amount from the petitioner by taking appropriate legal action in terms of Clause-11 of the agreement between the petitioner and the Corporation.

sdlr

(Mihir Kumar Jha, J)

Patna High Court
Dated 22nd of July, 2014
A.F.R./Sujit/Rishi

U

COPYING IN WRIT

CERTIFIED TO BE TRUE PHOTO COPY

Keats Keats
11/9/2014

For Joint Registrar (J)
Patna High Court

Authorized U/S 76 Act I of 1872

A. H. ...
11/9/2014
2012/10/5/22

29

demands by or against the Company i.e. Corporation.

11. Therefore, when an agreement was entered into between the Corporation and the petitioner in keeping with the objects, power and function of Corporation as set out in Memorandum and Article of Association of the Corporation, it will be difficult to accept the submission of Mr. Pradhan that the paddy, in question, was government property and the same was given by way of advance to the petitioner so as to make entry no. 8A of Schedule-I of the Act applicable. Entry No.8A of Schedule-I of the Act has to be essentially read in the light of the definition of the expression (Public demand) as per under Section 3(6) of the Act which reads as follows:-

"3(6) "Public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon into the date on which a certificate is signed under Part II;"

12. It thus becomes clear that in order to institute a certificate proceeding for recovery of any money by way of public demand it has to be essentially covered by any of the entry made in Schedule-I. Schedule-I has 15 entries including entry no. 8A, which reads as follows:-

"8-A. Any outstanding loans and advances payable to State Government or to a Department or Official of the State Government by any body whatsoever."

: There is difference in the quantity of paddy. According to corporation 3752 quintal paddy was given to the petitioner but in fact 3389 quintals of paddy received by the petitioner.

Hence this writ application.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No. _____ of 2014

Yuvraj Bhagat Proprietor of

M/s Arti Mini Rice Mill

....Petitioner

Versus

The State of Bihar & others

....Respondents

Sub:-Public Demand Recovery Act

INDEX

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Application under Article 226 of the Constitution of India with Affidavit.	1 to 12
2. Annexure-1	Photo/Type copy of the agreement dated 30.12.2011.	13-17
3. Annexure-2	Photo/Type copies of the notices dated 2.4.2013 issued to the petitioners u/s 7 of the Bihar and Orissa Public Demands Recovery Act 1914.	18-x
4. Annexure-3	Photo/Type copies of the notice u/s 53 of the Bihar and Orissa Public Demands and Recovery Rules.	19-x
5. Annexure-4	^{Photo} Web copy of the order passed in CWJC No. ¹³²⁴⁶ 17346 of 2013.	20-38.
6. Vakalatnama		