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**(2015) 04 PAT CK 0070**

**In the Patna High Court**

**Case No :** LPA No. 1709 of 2014 in CWJC No. 8172 of 2014, LPA No. 1518 of 2014 in CWJC No. 10490 of 2014, LPA No. 1668 of 2014 in CWJC No. 12887 of 2014, LPA No. 1690 of 2014 in CWJC No. 10885 of 2014, LPA No. 1681 of 2014 in CWJC No. 10279 of 2014, LPA No. 1586 of

Arvind Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 17-04-2015

**Acts Referred:**

**Citation :** (2015) 4 PLJR 422

**Hon'ble Judges :** L. Narasimha Reddy, C.J. and Sudhir Singh, J.

**Bench :** Division Bench

**Advocate :** Shashi Bhushan Kumar and Sushmita Mishra, for the Appellant; Anjani Kumar, Shailendra Kumar Singh, K.K. Jha and Gyan Prakash Ojha, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

L. Narasimha Reddy, C.J.

1. In this batch of Letters Patent Appeals, orders passed in various writ petitions, that have several common features, are challenged. The facts in all the Letters Patent Appeals, are almost common. The Bihar State Food Civil Supplies Corporation (for short Bihar Corporation) has undertaken the work of procurement of paddy from the farmers in the State of Bihar under a scheme evolved by the Food Corporation of India (for short F.C.I.). The scheme provided that the paddy procured by the Bihar Corporation has to be converted into rice and the rice shall, in turn, be purchased by the F.C.I. As and when the paddy was procured by the Bihar Corporation, various quantities were allotted and delivered to the rice mills in the State under specific agreements, for the purpose of custom milling. The resultant rice, which is fixed at 67% of the quantity of paddy supplied to the rice millers, was to be offered to the Bihar Corporation and thereby to the F.C.I., within a stipulated time.

2. The appellants herein are the rice millers. They were allotted and supplied different quantities of paddy. However, the entire resultant rice was not offered or supplied to the Bihar Corporation, or for that matter, the F.C.I. Therefore, initially notices were issued for recovery of the cost of the deficit quantity of the rice and thereafter proceedings under the Bihar and Orissa Public Demand Recovery Act (for short the Act) were initiated in quite large number. In certain cases, the proceedings under the Act were set aside by this court, when challenged, after taking into account the provisions of the Act as well as the terms of agreement.

3. The appellants also challenged the proceedings initiated against them, by raising various grounds. In the course of hearing, they were not able to point out any acceptable ground, of fact or law. However, the agreements between the Bihar Corporation, on the one hand, and the appellants, on the other hand, contained Clause-16, that provided for the mechanism of conciliation, for resolution of disputes, if any, and, if that fails, to have recourse to arbitration. This aspect was dealt with in detail, in one writ petition being C.W.J.C. No. 9133/14 and through order dated 22.7.2012, it was held that the writ petition is not maintainable in view of the existence of an arbitration clause. Directions were issued to the effect that in case the petitioners submit application in terms of Clause-16 of the agreement, the concerned authority shall take necessary steps. An assurance was also given on behalf of the respondents to the effect that till the disposal of the representation in terms of Clause-16, no coercive steps would be taken against the petitioners beyond what was already taken. In terms of the said order, all the other similar writ petitions were disposed of. Hence, this batch of Letters Patent Appeals.

4. Heard Shri Shashi Bhushan Kumar and Smt. Sushmita Mishra, learned counsel for the appellants, and Shri Anjani Kumar, Shailendra Kumar Singh, Shri K.K. Jha and Shri Gyan Prakash Ojha, learned counsellor the respondents.

5. The large scale irregularities that have taken place, in the context of procurement of paddy and the receipt of the resultant rice from the millers during the years 2011-12, 2012-13 and 2013-14 are the subject matter of several proceedings. The amount involved is about fifteen thousand crore rupees. As per the estimates of the Government, as and when pressure mounted, the authorities of the State initiated steps for recovery of the amount mainly from the rice millers. In certain cases, the rice millers have paid the cost of deficit quantity of rice and, in some other cases, excuses were pleaded. Wherever the amounts were not paid by the rice millers, proceedings under the Act were initiated. There again, dichotomy existed.

6. The initiation of proceedings under the Act becomes permissible if only there is an agreement between the parties to that effect. While in certain cases the clauses providing for initiation of proceedings existed, in certain other cases, such clauses did not exist. This Court had to set aside the proceedings if the agreements did not contain a clause providing for the recourse to proceed under

the Act. In this batch of Appeals, such a problem does not exist. The respective agreements contained Clause-15 that enabled the Bihar Corporation and thereby the State to initiate proceedings under the Act. The clause reads:--

"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 Demand Recovery Act, 1914, by instituting certificate case before the concerned District Certificate Officer."

7. If it is well established that even in cases of such nature this Court certainly can interfere. However, one peculiar situation that emerges in these cases is that apart from enabling provision, i.e. Clause-15, the agreements contained Clauses-16 that provided for conciliation or arbitration. It reads as under:--

"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 agreed that the arbitrator will be District Collector of the concerned District whose decision shall be final, concerning the dispute referred to him."

8. From a perusal of this, it becomes clear that if there exists the dispute between the parties, the recourse must be had to conciliation, as a first step and, if that does not fructify, the steps need to be taken to get the dispute resolved through arbitration. It is a different matter that the Collector is the named arbitrator in all these cases.

9. Once the parties have agreed to a particular mode of resolution of dispute, that too, those covered by Arbitration and Conciliation Act, 1996, the question of entertaining the writ petition, in relation to that very dispute, does not arise. The plea of the appellants that the arbitration by the Collector may not be effective, can be certainly agitated before the proper forum, but not in the writ petition. Such a course would invariably be available in the process of availing the remedy of arbitration, but not outside the same.

10. The learned Single Judge has taken correct view of the matter in refusing to entertain the writ petitions after taking note of the existence of clauses providing for arbitration. The interests of the appellants have already been adequately protected by stipulating time for the concerned authorities to take action in the event of any representations in terms of Clause-16 being made.

11. Learned counsel for the appellants submits that substantial amounts, covered by certain proceedings have been paid in terms of the interim orders passed in the writ petitions and their clients are ready to pay the balance, if reasonable time is granted.

12. In the facts and circumstances of the case, we dispose of all the Appeals by directing:--

(A) The order passed by the learned Single Judge in all the writ petitions is

upheld;

(B) Wherever the appellant offers to pay the balance of the amount covered by the certificate proceedings, Bihar Corporation shall receive the same, if paid within two months from today;

(C) The respective appellants shall be entitled to sell the rice, if any, with them and for that purpose if any permission is needed from the Government or the Bihar Corporation, the same shall be accorded, subject to an undertaking given to the effect that they shall have the first charge over the sale proceeds;

(D) Criminal proceedings, if any, pending against them shall stand abated, on payment of the entire amount.

13. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.