(2020) 05 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1328 Of 2020

Assay Ceramics & Chemicals Pvt. Ltd — APPELLANT

Vs

State Of Jharkhand — RESPONDENT

Date of Decision : 06-05-2020

Acts Referred:

Bihar & Orissa Public Demand Recovery Act, 1914 — Section 7, 10
Indian Penal Code, 1860 — Section 34, 409, 420, 467, 468, 471

Citation : (2020) 05 JH CK 0029

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Atanu Banerjee

Judgement

1. The present case is taken up through Audio/Video conferencing.

2. Learned counsel for the petitioner undertakes to file the court fee as soon as the judicial work in the High Court gets normal after end of the lockdown prevailing due to Corona (Covid-19) pandemic.

3. The present writ petition has been preferred by the petitioner for quashing and setting aside the notice dated 17.04.2020 issued by the District Certificate Officer, Seraikella-Kharsawan (the respondent no.5) whereby the Director of the petitioner-company has been directed to show cause as to why he should not be committed to civil prison for not depositing the certificate amount. Further prayer has been made for quashing and setting aside the letter as contained in memo no. 667 dated 16.04.2020 issued by the Deputy Commissioner, Seraikella-Kharsawan (the respondent no. 3) directing the respondent no. 5 to immediately issue warrant of arrest against the Director of the petitioner-company and to take steps for attachment of its property. The petitioner has also prayed for setting aside the final order if any passed under Section 10 of the Bihar & Orissa Public Demand Recovery Act, 1914 (in short "the Act, 1914") and to restrain the respondent authorities from taking any precipitate action against the petitioner including suspension of its agreement for milling of rice. Learned counsel for the

petitioner, in course of argument has also prayed for an interim protection from any action to be taken by the respondent authorities pursuant to the impugned notice dated 17.04.2020.

4. Heard learned counsel for the petitioner as well as the learned Sr.S.C.-III appearing for the respondents on the issue of interim protection as prayed by the petitioner.

5. Learned counsel for the petitioner submits that the petitioner is the registered company having its rice mill unit situated at Gamharia in the district of Seraikella-Kharsawan and in terms with the agreement executed with various LAMPS/ PACKS during Kharif Marketing season 2011-12 and 2012-13, it milled and transported the paddy to the Food Corporation of India (F.C.I.) godowns which was supplied to it. The respondent authorities made demand of Rs.1,27,34,436.70 towards the cost of paddy supplied to the petitioner which was allegedly not delivered to the F.C.I. godowns. The petitioner deposited an amount of Rs.30,00,000/- with the respondent authorities as mentioned in its letter dated 30.03.2015. However, subsequently a Certificate Case No. 01/2018-19 was instituted against the petitioner by the District Cooperative Officer, Seraikella-Kharsawan (the respondent no. 4) in the court of the respondent no. 5 for recovery of an amount of Rs. 1,27,34,436.70. Pursuant to issuance of notice under Section 7 of the Act, 1914 by the respondent no. 5, the petitioner filed its objection stating inter alia that it is ready to deposit the outstanding amount subject to adjustment of the amount receivable by it towards milling, transportation, handling and other changes, however the authorities did not take any step for determining the exact amount receivable by the petitioner. All of a sudden, the respondent no. 3 vide his letter contained in memo no. 667 dated 16.04.2020 directed the respondent no. 5 to immediately issue warrant against the petitioner and to attach its property within 48 hours to ensure the recovery of certificate amount. The respondent no. 5 issued notice dated 17. 04.2020 directing the Director of the petitioner-company to show cause as to why he should not be committed to civil prison in execution of the said certificate. Learned counsel for the petitioner also submits that the respondent authorities have proceeded arbitrarily against the petitioner as they have not yet determined the exact amount receivable by the petitioner for execution of its work in the concerned Kharif Marketing season. On the contrary, the authorities are bent upon to harass the petitioner by issuing the impugned notice as the alleged amount of Rs. 1,27,34,436.70 is not payable by it. It is further submitted by the learned counsel for the petitioner that an F.I.R. being Seraikella P.S. Case No. 34 of 2018 corresponding to G.R. No. 288 of 2018 was also registered against the Director of the petitioner (Binod Kumar Goyal) for the offences alleged to have been committed under Sections 409, 420, 467, 468, 471 and 34 of the I.P.C. Binod Kumar Goyal filed an application for anticipatory bail before this Court being A.B.A. No. 813 of 2019 and vide order dated 25.02.2019, the anticipatory bail was granted to him on the condition of showing the proof of deposit of Rs. 1,27,34,436/- with the respondent no. 3 less the

amount if any payable by the said authority to him. Thereafter, the petitioner filed two petitions before the respondent no. 3 for determining the outstanding amount and to accept the balance amount from it. When the respondent no. 3 did not take any action in this regard, the Binod Kumar Goyal (Director of the company) filed Cr.M.P. no. 1799 of 2019 for modification of the order dated 25.02.2019. The said Cr.M.P. was however dismissed for non-compliance of the peremptory order. Though the said Cr.M.P. was dismissed for non-compliance of the peremptory order, yet the fact remains that the respondent authorities have not yet come up with any exact amount to be paid by the petitioner. It is also submitted that similar agreement for milling of paddy was also entered with the petitioner by the District Administration, Seraikella-Kharsawan keeping in view the present emergent situation of lockdown prevailing due to Corona (Covid-19) pandemic, however the said agreement has been suspended by the respondent no. 3 only because of the fact that alleged due towards certificate proceeding has not been paid. It is further submitted that the said action of respondent no. 3 is against national interest and contrary to letter and spirit of various orders issued by the State Government as well as the Central Government because the rice is one of the most essential commodities and the petitioner's mill is the only nearest mill situated near the districts of Seraikella-Kharsawan and West Singhbum.

6. Mr. Atanu Banerjee, learned Sr. Standing Counsel-III appearing on behalf of the respondents, submits that though the petitioner has raised various grounds showing infirmity in the impugned notice dated 17.04.2020, yet in view of the aforesaid facts stated by the learned counsel for the petitioner, it would be evident that the petitioner has accepted the alleged demand made by the respondent authorities. The only claim of the petitioner is that the respondent authorities have failed to determine the exact liability of the petitioner after adjusting the amount already paid by it as well as the amount, the petitioner was supposed to receive towards milling, handling, transportation and other charges from the respondents for the concerned Kharif marketing season. It is also submitted that on perusal of order dated 25.10.2019 passed by a Bench of this Court in Cr.M.P. No. 1799 of 2019, it would appear that learned counsel for the petitioner had undertaken before this Court that the petitioner would deposit a demand draft of Rs. 1,27,34,436/- with the respondent no. 3, however the petitioner did not comply the said order. It is thus evident that the petitioner has not deposited the admitted dues with the respondent no. 3 in pursuance of order dated 25.02.2019 passed in A.B.A. No. 813 of 2019 and order dated 25.10.2019 passed in Cr.M.P. No. 1799 of 2019. It is wrong to contend that the undertaking given by the learned counsel for the petitioner in Cr.M.P. no. 1799 of 2019 could not be fulfilled as the respondent no. 3 did not pay the dues of the petitioner particularly in view of the fact that the petitioner has failed to establish before this Court that the amount so claimed by it under various heads has ever been admitted by the respondent authorities. In fact, the petitioner is evading the payment of certificate amount and it has not approached this Court with clean

hands. Hence, the petitioner is not entitled for any interim protection.

7. Having heard the learned counsel for the parties and on prima facie consideration of the issue, I am of the view that the petitioner has failed to make out any case for interim protection. Hence, I am not inclined to pass any interim order as prayed by the petitioner.

8. Learned Sr.S.C.-III appearing on behalf of the respondents prays for three weeks' time to seek instruction and file counter affidavit.

9. In view of the said prayer, put up this case after three weeks under the appropriate heading.