

(2020) 02 PAT CK 0259

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16269 Of 2014

Onkar Mukhiya

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0259

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Vinay Kumar Mishra, Aditya Narayan Singh, R.R. K Pandey, Sarvesh Kumar Singh, Shakib Ayaz, Shailendra Kumar Singh, Rajeev Ranja

Final Decision : Disposed Of

Judgement

Heard Mr. Aditya Narayan Singh for the petitioner and Mr. Sahilendra Kumar Singh for the Bihar State Food and Civil Supplies Corporation. Mr. Ajay Kumar Thakur was appeared on behalf of respondent No. 6.

The petitioner has filed this application for a direction to the respondents to make payment of the procurement price of 200 quintals and 50 kilograms of wheat in the procurement year 2012-13.

It transpires that the petitioner, in his capacity as Chairman of Kyotahar PACS had procured 200 and odd quintals of wheat at the rate of 1285/- per quintal and had deposited the same with the Bihar State Food Corporation godown. It is the case of the petitioner that the same was received by the private respondent No. 6, who was on deputation as In-charge of the godown.

It further appears from the records that later it transpired that the entire wheat of the procurement year 2012-13 was embezzled. An FIR was lodged against aforesaid Ramanand Mandal, In-charge of the godown and a certificate proceeding also has been initiated against him for recovery of the amount of procured food grains which was embezzled by aforesaid Ramanand Mandal. When this matter was heard in the first instance in the year 2015, this Court was

of the view that the admission of Bihar State Food and Civil Supplies Corporation that the procured foodgrains was embezzled by one of its employees is no defence and justification for the corporation not to pay for the procurement made by the petitioner.

However, on several dates, this Court tried to know as to what action was taken against aforesaid Ramanand Mandal and whether such action has resulted in any recovery of price of such food grains. But for the lodging of the FIR against Ramanand Mandal, the details of which investigation has neither been provided by the petitioner or the counsel for the BSFC, and initiation of a proceeding under the Bihar and Orissa Public Payment Recovery Act, 1914, nothing tangible appears to have been done.

During one of such hearings of this writ petition, it appears that a statement was made on behalf of the petitioner that he shall produce for the inspection of the court additional documents in support of the claim that 200 quintals and 50 kilograms of wheat was deposited in the godown of BSFC.

A statement also was made that the farmers from whom procurement had been made were paid. Surprisingly, there is no averment in the writ petition with respect to the details regarding procurement of wheat from farmers, viz. the name of farmers who had given the wheat to the PACS or whether they were paid or such procurement was only in anticipation of the farmers being paid by the PACS after getting money from the Bihar State Food and Civil Supply Corporation. In the absence of any such supporting documents regarding the claim of the petitioner no order has been passed by this Court for making payment of the amount which is claimed by the petitioner till date.

Mr. Aditya Narayan Singh, learned advocate for the petitioner submits that there is no averment in the writ petition regarding the PACS having made payment to the farmers for procurement of wheat for the procurement year 2012-13. The consistent case of the petitioner has been that the wheat was procured from the farmers on the assurance to them that they shall be paid for the same as and when the PACS would be made available the money towards such procurement by the BSFC.

The BSFC has an absolutely different story to narrate viz. that the In-charge of the godown played truant and embezzled the entire foodgrains.

Neither the claim made by the petitioner nor the story propounded by the BSFC appear to be genuine. It does not appear to be probable that the entire procured foodgrains which would include the food grains deposited by the petitioner would stand embezzled and the BSFC would be a mute spectator to such embezzlement. If this were true and this Court were to take notice of those facts; then it would have been necessary that some direction was given for taking action against all such officials who were responsible for procurement and for payment to the farmers at the relevant time. That not having been done and the defence of the BSFC of having lodged FIR against the defaulting/errant

godown in-charge and simultaneously initiating a certificate proceeding for recovery of such embezzled amount, appears to be only an eye wash.

What is the amount which is sought to be recovered from aforesaid Ramanad mandal is also not known. The writ petition lacks in material particulars and so is the counter affidavit by the BSFC which is equally deficient in providing necessary inputs to the Court to come to any conclusion.

It is highly regretful that this petition is pending since 2011 and till date neither the petitioner has been able to bring forth any additional material in support of the claim nor any specific reply with respect to claim of the petitioner has been made by the BSFC. The BSFC has only relied upon the fact that the document which has been brought forward as proof of deposit of the procured wheat does not appear to be genuine for the reasons that there are several interpolations in the aforesaid document and the supporting details have not been provided. To some extent, this objection may not be completely out of place but it appears that the embezzlement cannot be the handywork of one person and there has to be many more key players in the aforesaid act of embezzlement. These aspects must be brought to the notice of the investigator of Singhiya P.S. Case No. 11 of 2015 for carrying out the investigation in the case in a holistic manner, sparing no guilty person.

Mr. Shailendra Kumar Singh for the BSFC is directed to furnish a copy of this order to the investigator of the Singhiya P.S. Case No. 11 of 2015.

It is the contention of the BSFC that no supporting document in support of the claim of having deposited the wheat has till date been furnished by the petitioner.

Mr. Aditya Narayan Singh has tried to impress upon this Court that the factum of deposit of procured wheat has not been disputed in the first instance and only when it was discerned that there was no way out, then only such plea has been taken.

Mr. Aditya Narayan Singh may be right to some extent but in the event of his not coming forward with definite supporting material, the objection cannot be taken seriously.

However, since the petitioner is not an accused in the aforesaid FIR and no certificate proceeding is pending against him and he makes a claim that he has the supporting documents with respect to the claim of having deposited for 200 quintals and 50 kilograms of wheat which was procured from the farmers, it would be open for

him to pursue the matter in a different proceeding viz. suit for recovery of the amount due to him.

With the aforesaid direction/observation, the writ petition stands disposed of.