

(1999) 01 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 4332 of 1995

Akhaury Bijoy Kumar Sinha	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3, 3(6), 9
Constitution of India, 1950 — Article 226

Citation : (1999) 2 PLJR 131

Hon'ble Judges : J.N. Dubey, J

Bench : Single Bench

Advocate : I.K. Saran, Binoy Kumar, Manoj Madhav and Shashi Shankar, for the Appellant; Chandra Shekhar and Mithilesh Kumar Singh for Zila Parishad, for the Respondent

Final Decision : Allowed

Judgement

J.N. Dubey J.

1. This writ petition is directed against the order, dated 26.6.95 of the Respondent No. 3, Deputy Collector Land Reforms-cum-Certificate Officer, Bikramganj, Rohtas rejecting the objection of the Petitioner u/s 9 of the Bihar and Orissa Public Demand Recovery Act (hereinafter referred to as "the Act").

2. It appears that the Petitioners, when he was working as Junior Engineer it. Zila Parishad, Rohtas was advanced some money for execution of certain construction work.

Certificate Case No. 1 of 1993-94 was instituted against the Petitioner for recovery of the said amount at the instance of Respondent No. 2, Deputy Development Commissioner-cum-Chief Executive officer, Rohtas Zila Parishad, Sasaram. On receipt of notice from the Respondent No. 3, Petitioner filed objection u/s 9 of the Act claiming that the amount in question was not a public demand within the meaning of the Act and, as such, it could not be legally

recovered in these proceedings. Respondent No. 3 rejected the objection of the Petitioner on 26.6.95 holding that the amount in question was recoverable as a public demand. Feeling aggrieved the Petitioner has approached this Court under Article 226 of the Constitution.

3. Heard the learned Counsel for the parties and perused the record.

4. Learned Counsel for the Petitioner contended that even assuming that some money was due against the Petitioner it could not be recovered under the certificate proceedings as the amount was not a public demand within the meaning of the Act.

5. I find substance in the argument of the learned Counsel. The money advanced by Rohtas Zila Parishad to the Petitioner for execution of certain construction work, while he was working as Junior Engineer, is not a public demand within the meaning of the Act. Public demand has been defined in Sub-section (6) of Section 3 of the Act as under:

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 upon the date on which a certificate is signed under Part II.

Schedule I, which runs into 15 Clauses contains various types of dues, which can be recovered as a public demand under the Act. Thus, in order to bring the case within a public demand it has to be shown that the amount sought to be recovered from the Petitioner is covered by some Clause of Schedule I. Learned Counsel for the Respondents has failed to show that the amount sought to be recovered from the Petitioner is covered by any of the Clauses of Schedule I. Since the amount in question is not a public demand, it cannot be legally recovered under the provisions of the Act.

6. The impugned order of Respondent No. 3 rejecting the objection of the Petitioner, that the amount in question could not be legally recovered as public demand, suffers from an error apparent on the face of the record and is, therefore, liable to be quashed.

7. In the result the writ petition is allowed and the entire proceedings of Certificate Case No. 1 of 1993-94 including the impugned order dated 26.6.95 of the Respondent No. 3 is quashed. Quashing of the certificate proceedings will not preclude the Respondent No. 2 from recovering the amount, if any, due from the Petitioner by any other mode available to him under law.

No order as to costs.