
(2004) 03 PAT CK 0107
In the Patna High Court
Case No : C.W.J.C. No. 5391 of 2002

Ambika Cold Storage

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 11, 17, 7

Citation : (2004) 2 PLJR 619

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Manoj Kumar Ambastha and Rakesh Bihari Sharan, for the Appellant; Vinay Kirti Singh, for B.S.E.B. and Arun Kumar Tiwari, for State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—Heard learned Counsel for the Petitioner and Mr. Vinay Kirti Singh, learned Counsel appearing for the Respondent-Board.

2. In this writ petition, prayer is for quashing letter No. 294 dated 11.4.2002 issued by the Certificate Officer, Sonpure in Certificate case No. 2/93-94/189/95-96 by which the Petitioner has been directed to deposit Rs. 5,14,909/- as interest pendente lite by 16th April, 2002.

3. In short, the relevant facts are that in the year 1993-94 said certificate case was filed against the Petitioner by the Respondent-Bihar State Electricity Board for payment of Rs. 7,80,885.95 against the electricity dues. According to the Petitioner, after family partition cold storage came under the proprietorship of Paras Nath Singh (Petitioner) as his share whereupon he learnt about the certificate case. On 20th May, 1997 the Petitioner appeared in certificate case and filed objection against the demand and also agreed to deposit the money in instalments. On 3.6.1994 the Petitioner deposited a sum of Rs. 1,50,000/- as first instalment and agreed to pay the rest in monthly instalment of Rs.

1,50,000/-. By 10.10.1998 the Petitioner deposited a total sum of Rs. 3,50,000/- and again filed objection petition against the certificate amount, whereupon the Certificate Officer asked the requisitioning authority to give specific and clear report upon the said objection. It is stated that the requisitioning authority filed no report for over two years and in the mean time the Petitioner kept on depositing the instalments. On 4.5.2000 the Electrical Executive Engineer found that a sum of Rs. 1,55,036.54 has been charged from the Petitioner in excess and, hence, he wrote to the General Manager, Tirhut Area Electricity Board to make suitable rectification in the account of the Petitioner and to intimate the Certificate Officer to recover only Rs. 6,25,849.41 (i.e. Rs. 7,80,885.95 - Rs. 1,55,036.54 = Rs. 6,25,849.41). The Superintending Engineer, Chapra vide letter dated 24.6. 2000 intimated the Certificate Officer vide Annexure-4 to reduce Rs. 1,55,036.54 from the original certificate amount and recover the balance amount from the Petitioner. On 4.11.2000 admittedly the Petitioner deposited the entire amount of Rs. 6,25,849.41 to the Certificate Officer and persuaded them to issue no dues certificate. However, after about one and half year the impugned order was issued by the Certificate Officer with which the Petitioner is aggrieved.

4. Learned Counsel for the Petitioner submitted that the amended requisition issued on 24.6.2000 vide Annexure-4 is to be considered fresh requisition in view of the provision contained in proviso to Section 11 of Bihar & Orissa Public Demand Recovery Act, hereinafter referred to as "the Act", which provides that when any such amendment is made fresh notice are to be issued as provided u/s 7 of the Act. As such, according to the learned Counsel the impugned demand along with interest pendente lite for the period prior to 24th June, 2000 is not tenable in view of the decision of the Apex Court in the case of Jogendra Lal Saha v. State of Bihar and Ors. reported in 1991(2) PLJR 45(SC). Moreover, when undisputedly the Certificate Officer pursuant to the requisition did not make any amendment in the certificate as provided in Section 11 of the Act.

5. Mr. Singh, learned Counsel appearing for the Respondent-Board has submitted that the decision of the Apex Court in the case of Jogendra Lal Saha (supra) is not relevant in the present case where the requisition for the certificate amount has not been enhanced rather reduced.

6. I am unable to appreciate the said submission of the learned Counsel for the Respondent-Board. In the case of Jogendra Lal Saha also the requisition was modified as the instalment relating to 3rd year was not due when the requisition was sent or the certificate was signed. The Apex Court considering the observation of the Privy Council in Baijnath Sahai v. Ramgut Singh (1895-96) 23 Ind. App 45, where it had been pointed out that the certificate proceeding is of an extraordinary nature and compliance of the requirements of the statute should be meticulously done and also the provision contained in Form No. 1 prescribed under the Act held that in view of the fact that the third instalment had not fallen due by the date, the question of including that amount in the certificate did not arise. Therefore, the proceeding as taken was non est in law,

in terms of the decision referred to above. The Supreme court, thus, directed that ".... The Certificate Officer before proceeding further shall apply his mind to the facts and if necessary hear the certificate debtor, ascertain the exact due, make an appropriate amendment in the certificate as required u/s 11 of the Act and proceed to recover the amount that he finds is still recoverable under law. "The Apex Court further directed that "The Appellant shall not be burdened with any claim of interest or other charges until the Certificate Officer modifies the certificate and liability for interest. Section 17 would run only from that date provided any amount has remained unpaid."

7. In the present case, on receipt of the requisition on 24th June, 2000 seeking amendment in the original requisition the certificate officer has not amended the certificate so far and without making any amendment issued the impugned demand. Even though the Petitioner on his own deposited the entire amount as per the amended requisition on 4.11.2000 i.e. much prior to the impugned demand was issued. Section 17 of the Act provides that interest upon public demand to which the certificate relates @ 12% per annum from the date of signing of the certificate up to the date of realisation is to be charged. As I have already noted above, undisputedly after the amended requisition was sent the certificate officer never amended the certificate issued earlier and signed the certificate as, per the fresh requisition. Under such circumstances, this Court finds substance in the submission of the learned Counsel for the Petitioner that the impugned demand is bad in law and is fit to be set aside.

8. Writ application is, thus, allowed. The impugned demand, contained in Annexure-1 is quashed.