

(2008) 04 PAT CK 0053
In the Patna High Court
Case No : CWJC No. 6742 of 2006

Arun Kr. Chourasia

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Citation : (2008) 3 PLJR 22

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—Petitioner had done certain works for Gaya Zila Parishad. In course of executing those works, payments were made to him after due scrutiny by various officers at" different level. Subsequently, respondents formed an opinion that the petitioner had been wrongly overpaid. Petitioner seriously disputes the same. Instead of the respondents getting the dispute settled/ resolved by resort to lawful means to Civil Court or arbitration proceeding, by the impugned letter they have threatened the petitioner to refund the said excess amount or face recovery proceeding under the Public Demands Recovery Act. This is what brought the petitioner to this Court. The imminent threats to force proceeding under the Public Demands Recovery Act was challenged. Counter affidavit and supplementary counter affidavit have been filed.

2. Heard the parties and with their consent this writ application is being disposed of at this stage itself.

3. In my view, proceeding to recover any amount of money under the provisions of the Public Demands Recovery Act can only be in relation to a public demand as defined therein. Here under a contractual obligation certain money were paid to the petitioner for work alleged to be done. Now, authorities think that the money was paid in excess, a matter which is seriously disputed by the petitioner, instead of resolving the dispute first in lawfully manner, in my view, the provision of Public Demands Recovery Act cannot be resorted to. It is not a public demand and it is a matter which is in serious dispute and has not been lawfully quantified

it is the ex parte self assessment of respondent. In my view, reference can be made to Board's Instruction No. 10 issued with reference to Public Demands Recovery Act, which clearly stipulates that in case where the liability is in serious dispute, such matter cannot be taken for recovery under Public Demands Recovery Act. This is on the basis that proceedings under the said Act are virtually executing proceeding of a decree ex parte. If all the various heads of public demand are referred to, it would be seen that the demands are raised in respect of which amounts are quantified by statutory authority in statutory manner under various statutory provisions, which itself provide for mode of challenge to the assessment made. Here, payments were on account of contractual obligation and the amount sought to be recovered being in dispute, first the amount has to be ascertained in lawful manner which certainly the Certificate Officer is incompetent to do. Thus, no certificate proceeding can at all be resorted to for recovery of the said disputed amount. First the dispute has to be resolved in lawful manner and then appropriate proceeding for recovery thereof be initiated. Thus, in my view, the writ petition is to be allowed on this short ground itself and the impugned letter making demand and threatening recovery is thus wholly without jurisdiction and cannot be sustained and is quashed accordingly.

4. This does not end the matter.

5. Once the respondents have taken a stand that petitioner had received the payments wrongly part in excess of the work done then the respondents cannot escape from pursuing its own officer to the logical conclusion in respect of wrong payment allegedly made by them. What was sought to be done was to single out the petitioner leaving the officer, which is not permissible. It is not the case of the respondents that the petitioner stole the amount out of the coffer of the respondents. Petitioner was duly paid the money after full enquiry. If the enquiry was incorrect then it was the officer who should be prosecuted and proceeded against departmentally. They cannot be left to go free and the petitioner cannot be held up.

6. In this regard a supplementary counter affidavit has been filed wherein DDC-cum-Chief Executive Officer, Zila Parishad Gaya has written to the Director Panchayati Raj for taking appropriate action against the concerned engineer. He has also written similar letter to the Joint Secretary, Rural Development Department but has conveniently forgotten to communicate to the Personnel & Administrative Reforms, Bihar, Patna.

7. Let respondents report about progress of the matter to this Court in respect of this limited issue within three weeks from today. For this limited purpose, list this case under the heading "For Orders" after three weeks. Let a copy of this order be given to learned AAG 1.