
(2007) 01 JH CK 0014
In the Jharkhand High Court

Bharat Nishad and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:

Citation : (2007) 2 JCR 74

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—In this writ application, the petitioners have prayed for quashing the order dated 26th August, 2006, whereby the Certificate Officer has illegally issued distress warrant against the petitioners without determining the objection filed by them u/s 9 of the Bihar and Orissa Public Demand Recovery Act (hereinafter to be referred as the "Act").

2. It has been stated that after receipt of notice u/s 7 of the Act served on the petitioners, they appeared and filed their objection u/s 9 of the Act. The Certificate Officer has not considered the said objection and" not passed any order.

3. Mr. Amar Kumar Sinha, learned Counsel appearing for the petitioners, submitted that the Certificate Officer cannot take any coercive action without determining the petitioners' objection and as such, the order issuing distress warrant against the petitioners is wholly illegal and arbitrary. Learned Counsel, relying upon the decisions passed by this Court in the cases of Ratna Plastic Jhumri Tilaiya, through its proprietor Bishwajit Das Gupta and Anr. v. State of Bihar and Ors. reported in 2005 (4) JLJR 123 and Roll Well Enterprises Vs. State of Jharkhand and Others, , submitted that in the counter affidavit, the respondents have not said anything about the determination of objection filed by the petitioners? rather they have said that the objection filed by the petitioners, in fact, cannot be taken as objection u/s 9 of the Act. Learned Counsel further

submitted that the Certificate Officer has not applied his mind on objection filed by the petitioners u/s 9 of the Act and has passed the order mechanically and illegally.

4. Learned JC to SC III, on the other hand, submitted that the objection filed by the petitioners, in fact, is no objection u/s 9 of the Act and the petitioners have only expressed their inability to pay the certificate amount, unless and until they are given opportunity for disposing of their vehicles. It has been submitted that since there was no denial of liability and nothing was to be determined, the Certificate Officer has passed the impugned order for executing the certificate. There is no illegality or arbitrariness in the order of the learned Certificate Officer.

5. After hearing the parties and considering the materials available on record and the circumstances of the case, I find that though the petitioners have appeared on getting notice, they have not denied the liability of the certificate amount, rather they have expressed their inability to pay the certificate amount unless and until they are given opportunity to dispose of their vehicles. Since there was no denial of the liability u/s 9 of the Act, nothing was to be determined by the Certificate Officer. There is no substance in the submission that the provision of Section 10 of the Act has not been complied with and that the impugned order has been passed illegally and arbitrarily. Since there was nothing to be determined u/s 10 of the Act, the Certificate Officer has rightly passed the impugned order for executing the certificate. I find no infirmity or illegality in the said order of the Certificate Officer. The decisions in the cases of M/s. Ratna Plastic Jhumri Tilaiya and M/s. Roll Well Enterprises, (supra) referred to and relied upon by learned Counsel for the petitioners are not applicable to the facts and circumstances of the case of the petitioner. Therefore, there is no merit in this writ application. It is, accordingly, dismissed.