

(1999) 03 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 5708 of 1990

Bishwanath Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3, 5, 7, 9
Constitution of India, 1950 — Article 226

Citation : (2000) 1 PLJR 102

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

Bench : Single Bench

Advocate : B.P. Pandey, Ms. Sangeeta Laha and Mr. Jitendra Pandey, for the Appellant; S.J. Rahman and Manoj Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Dr. J.N. Dubey, J.—Petitioner has approached this Court for issuing a writ of certiorari quashing the entire proceedings of Certificate Case No. 17 of 1986 pending before the respondent No. 3, the Sub-Divisional Officer-cum-Certificate Officer, Rohtas at Sasaram. It appears that respondent No. 4, District Forest Officer, Rohtas at Sasaram published a tender notice for settlement of Tendu Leaf's Units, in which the petitioner also participated. Since the petitioner was the highest bidder, his bid was accepted and an agreement was executed between the parties on 17.11.75. The petitioner could not fulfil the terms of the agreement and, as such, Respondent No. 4 issued a fresh tender notice and settled the deal with a third person. Since respondent No. 4 got less amount than the amount offered by the petitioners, he sent a requisition to the respondent No. 3 u/s 5 of the Bihar and Orissa Public Demand Recovery Act (hereinafter referred to as "the Act") for recovery of the amount as public demand. Respondent No. 3 issued a notice u/s 7 of the Act to the petitioner. On receipt of the notice petitioner filed objection u/s 9 of the Act claiming inter alia that the amount in question could not be recovered as a public demand. Respondent No. 3 however, rejected the objection of the petitioner on 13.6.86. Petitioner filed

appeal to the respondent No. 2, the District Magistrate, Rohtas at Sasaram, who vide his order dated 30.4.90 directed the petitioner to deposit 40% of the amount by 15.5.90, failing which the appeal would stand dismissed. Feeling aggrieved the petitioner has approached this Court under Article 226 of the Constitution.

2. Heard the learned counsel for the parties and perused the record.

3. Learned counsel for the petitioner contended that the amount sought to be recovered from the petitioner is not a public demand within the meaning of the Act and, as such, entire certificate proceedings are without jurisdiction. On the other hand, learned counsel for the respondents contended that the amount in question was a public demand and, therefore, could be legally recovered as such under the provisions of the Act. He further contended that as the petitioner did not deposit 40% of the amount under the orders of respondent No. 2, he was not entitled for any relief.

4. Having considered the argument of the learned counsel for the parties I am of the view that the amount sought to be recovered from the petitioner is not a public demand and, therefore, cannot be legally recovered by taking recourse to the provisions of the Act. Public demand has been defined in Clause(6) of Section 3 of the Act, which reads thus:?

"Public demand" means any arrears or money mentioned referred to Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under part II.

From the definition of the "Public demand" it is clear that only the arrear or money mentioned in Schedule I can be recovered as public demand under the Act. Schedule I contains 15 Clauses and before any amount can be recovered as public demand it has to be shown that it is covered by some Clause of the Schedule. According to the learned counsel the amount sought to be recovered from the petitioner is not covered by any of the 15 Clauses of the Schedule. On the other hand, according to the learned counsel for the respondents it is covered under Clause 9 of the Schedule which reads thus:

Any money payable to a servant of the Government or any local authority, in respect of which the person liable to pay the same has agreed by a written instrument, that it shall be recoverable as a public demand.

In order to resolve the controversy between the parties clause "Jha" of the agreement entered into between the parties is quoted below :

Yadi Kreta Athwa Uska Koi Pradhikarit Wayakti Karar Be Kisi Bhi Sarto Ka Ulanghan Karta Hai Aur Yadi Ayese Ulanghan Ke Karan Karar Ko Samapt Karne Ka Prastawan Ho To Prabhagiye Wan Padadhihari Pratek Ayese Ulanghan Ke Liya Kreta Par Arth Dand Adhiropit Kar Sakega. Is Arth Dand KI Rashi Ka Bhugtan Kreta Dwara Mang KI Notice Ke 15 Dino Ke Bhitar Kiya Jayega. Yadi is Awadhi Me Is Rashi Ka Bhugtan Nahi Kiya Jata Hai To Ise Kreta Ki Pratibhuti Jama Se Aur/

Athwa Bhurajaswa Ke Bakaya Ke Rup Main Wasual Ki Jayegi.

5. The petitioner entered into an agreement that in case he fails to pay the penalty imposed on him for breach of terms of agreement within the specified period the same may be recovered as arrears of land revenue, but no amount was specified in the agreement. Under Clause 9, only a specified amount with respect to which a person enters into an agreement can be recovered as public demand. My this view finds support from a Division Bench decision of this Court in Budha Singh Vs. The State of Bihar and Others, , which reads as under :

On a perusal of Item No. 9 of Sch.I of the Act, it is clear that if a party agrees by written instrument to pay a certain amount to the Govt. or to the local authority, then in that case it shall be recoverable as a public demand. On a perusal of Annexure 1, it is clear that the amount of damages is not at all mentioned in Annexure 1. In absence of any specified amount such money cannot be recovered under item No. 9. The word "money" mentioned in Item No. 9 means, the money specified in the agreement of the parties. In view of the fact that the amount of damages is not mentioned in Annexure 1 as such, amount of damages cannot be recovered by the Forest Department. Neither the agreement nor the Act or the Rules made thereunder provided any Machinery to ascertain the damages incurred by the Forest Department. When any money is realised as public demand or arrear of revenue or arrear as land revenue then in all these cases specified amounts are mentioned by the authorities concerned. If the amount of damage is not mentioned then it can be ascertained only by the civil court and not by the Forest Department itself.

Like the aforesaid case, in the present case also, no amount has been specified in the agreement and, therefore, it does not come under Clause 9 of Schedule I.

6. In my view, entire certificate proceedings initiated on the basis of requisition sent by respondent No. 4 to respondent No. 3 including the impugned orders are wholly without jurisdiction and liable to be quashed. In the result the writ petition succeeds and is allowed and entire certificate proceedings including the impugned orders are quashed. In view of the success of the writ the petitioner will be entitled for refund of the amount, if any, deposited by him before the Certificate Officer in pursuance of the interim order of this Court.

No order as to costs.