
(2019) 07 JH CK 0040

In the Jharkhand High Court

Case No : Writ Pition (c) No. 2062 Of 2018

Central Coalfields Limited

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Bihar & Orissa Public Demand Recovery Act, 1914 — Section 7, 9
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0040

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : A.K. Das, Chanchal Jain

Final Decision : Disposed Off

Judgement

1. This writ petition is under Article 226 of the Constitution of India, whereby and whereunder the order dated 22.02.2018 passed by the Certificate Officer in Certificate Case No.03 of 2014-15 is under challenge, mainly on two grounds:

(i) Gross illegality has been committed by the Certificate Officer in conducting the proceeding on account of the fact that the petitioner after being noticed appeared before the Certificate Officer and he has regularly appeared before the Certificate Officer till 27.11.2017, the date on which the next date was fixed on 11.12.2017 but prior that the hearing in the matter was conducted on 30.11.2017 and on that date also the date was fixed 14.12.2017 but again no hearing was conducted on 14.12.2017 rather record was placed on 22.12.2017. In consequence thereof the petitioner being failed to put his appearance on subsequent dates and therefore, gross irregularity has been conducted in conducting the aforesaid proceeding.

(ii) Even accepting that the petitioner has not appeared on the date fixed but when the petitioner has filed objection as contemplated to be filed under Section 9 of the Bihar & Orissa Public Demand Recovery Act, 1914, it was incumbent

upon the authority to decide the said objection on its merit but the authority has not done so and rejected the said objection only on the ground that the petitioner had not appeared, therefore, it has been presumed that the petitioner is nothing to say and therefore, the objection as has been rejected which according to the petitioner is gross irregularity and without considering the objection the certificate proceeding has been conclude by holding that the petitioner is certificate debtor and therefore, entire proceed is vitiated in the eye of law.

2. Mr. Chanchal Jain, learned A.C to A.G has submitted by questioning the maintainability of the writ petition on the ground of availability of alternative remedy of appeal to be filed before the concerned Deputy Commissioner, wherein according to him each and every point, the petitioner has taken in the instant writ petition could have been taken, but having not done so this writ petition is not fit to be entertained.

So far as issue which has been raised by the petitioner, it is the argument of the learned State counsel that even accepting that the date has been preponed but it should have been taken care by the petitioner by getting information from the concerned authority about the next date fixed but he in order to take this point at the appropriate stage, has intentionally not appeared, therefore, he is not entitled to get any advantage to that effect.

His further submission is that the Certificate Officer, while rejecting the objection, has taken these aspect of the matter by coming to the finding that the petitioner has got no interest in contesting the case, therefore, he has rightly not passed order on merit.

3. Having heard learned counsel for the parties and after appreciating their rival submissions, factually it is not in dispute that the certificate proceeding has been initiated against the petitioner by issuing notice under Section 7 of the Bihar & Orissa Public Demand Recovery Act, 1914. The petitioner thereafter appeared and put his objection as contemplated under Section 9 of the Bihar & Orissa Public Demand Recovery Act, 1914.

It is evident from the entire order sheet that the petitioner has put his appearance till 27.11.2017, the date on which the next date was fixed 11.12.2017, but as appears from the order sheet that there was no proceeding as has been recorded said to have been conducted on 11.12.2017 and the next date was fixed 30.11.2017, on which date the next date for further proceeding was fixed on 14.12.2017 but again no hearing was conducted on 14.12.2017 rather record was placed on 22.12.2017 and on that date the next date fixed was 04.01.2018 and thereafter the proceeding has proceeded but the petitioner has taken the ground that since on 27.11.2017 the date was fixed 11.12.2017, therefore, the said date should not have been preponed on 30.11.2017 which led the petitioner in putting no appearance in the proceeding of the case which ultimately has taken as a ground of rejection of the objection.

There is no dispute about the fact that if in any proceeding either judicial or quasi-judicial, the order sheet is to be maintained properly in order to adopt fair and transparent process since the order sheet reflects the day today proceeding, and when the order has been passed by any judicial or quasi-judicial forum the same is to be passed in presence of the party or their representative so that after putting appearance they may know about next date fixed.

But, simultaneously if any irregularity has been conducted by the judicial or quasi-judicial forum and when a party has put his appearance then it is also incumbent upon the said party to verify the date and if there is any discrepancy, make application to that effect in bringing notice to the concerned authority but the petitioner has not chosen to do so, therefore, this Court is of the view that the Certificate Officer has followed irregular process to conduct certificate proceeding which he should not have done and that to without explaining any reason as would appear from the content of the different order sheet as has been annexed in the writ petition.

But, simultaneously the conduct of the petitioner can also not be appreciated as because when the petitioner has appeared till 27.11.2017 and if there is any discrepancy in the date he has waited till 22.02.2018.

4. This cause suspicion and therefore, this Court is constrained to hold that the petitioner with ulterior motive has adopted the said tactics but simultaneously even accepting that the petitioner has not put his appearance but the conduct of the Certificate Officer as would appear from the order dated 22.02.2018 that on the ground of non-appearance of the petitioner for several dates, for the reason as stated hereinabove, the objection has been rejected, treating the non-appearance of the petitioner as he has nothing to say but the question herein is that when the petitioner has filed objection disputing the claim and for that purpose provision is there under Section 7 of the Act, 1914 by which objection is invited, which is to be submitted by the proposed Certificate debtor as required to be filed under Section 9 of the Act, 1914 and in terms thereof the petitioner has filed objection, therefore, it was the duty and onus upon the Certificate Officer to decide the said objection on its own merit rather than rejecting it merely on assumption that the petitioner is nothing to say.

5. In view thereof, it appears that the respondent authority has failed to discharge his statutory duty in dealing with the objection filed under Section 9 of the Act, 1914, therefore, rejection of the objection filed under Section 9 of the Act, 1914, the order dated 22.02.2018 does not stand in the eye of law, accordingly quashed.

6. In the result the matter is remitted to the Certificate Officer to decide the objection within a period of four weeks from the date receipt of copy of the order. The petitioner is directed to co-operate with the proceeding.

It is made clear that if the petitioner will not cooperate with the certificate proceeding, the authority concerned will proceed in the matter in accordance

with law.

7. Accordingly, the writ petition stands disposed of.