

(1994) 11 PAT CK 0002

In the Patna High Court

Case No : C.W.J.C. No's. 5067 with 5068 of 1994

Jai Prakash Dwivedi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-11-1994

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 5(2), 6

Citation : (1994) 2 PLJR 498

Hon'ble Judges : S.N. Jha, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These writ petitions have been heard together and are disposed of by this common order as the facts and point involved are the same. The validity of the certificate proceedings has been challenged on the ground that the certificates, which are the basis of the proceedings have not been signed by the Certificate Officer. In order to decide the point counsel for the State was earlier directed to produce the original records. Mr. K. P. Yadav, the State counsel on the basis of records stated that the certificates in question have not been signed by the Certificate Officer.

2. Mr. Kamendra Kumar, counsel for the respondent Bank, however, submitted that omission to sign the certificate does not go to the root of the matter. It is at best a mere irregularity which can be cured. Reliance was placed on Dwarika Ram Jagatranka abas Dwarika Prasad Jagatranka vs. State of Bihar 1963 BLJR 655. We have examined the said decision. The facts of that case were quite distinguishable. The point at issue is fully covered by the language of section 6 of the Bihar Public Demands Recovery Act itself. The said section read as hereunder:

6. Filing of certificate on requisition.?On receipt of any such requisition, the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery is not barred by law, may sign a certificate, in the prescribed form,

stating that the demand is due and shall include in the certificate the fee if any paid u/s 5, subsection (2) and shall cause the certificate to be filed in his office".

From bare perusal of the above provision it would appear that the Certificate Officer may sign the certificate on receipt of the requisition but only on being satisfied that the "demand" is recoverable and that its recovery is not barred by any law. The certificate officer is thus expected to apply his mind and then sign the certificate. In that view of the matter, we are satisfied to hold that the omission to put the signature on the certificate is not an empty formality but goes to the root of the matter. It can not be said that the certificate officer was satisfied about the recoverability of the public demand. The certificate in question will be deemed to be no certificate in the eye of law.

The impugned proceedings are, accordingly, quashed and the writ petitions allowed. It will be open to the requisitioning authority and/or the certificate officer to proceed afresh in the matter in accordance with law.