(2003) 03 PAT CK 0053

In the Patna High Court

Case No : C.W.J.C. No. 13575 of 2002

Lakshmi Paswan APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:
Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 9
Public Accountants Defaults Act, 1850 — Section 1, 2, 3, 4, 5

Citation : (2003) 2 PLJR 343

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : S.S. Asghar Hussain and Ratan Kumar Sinha, for the Appellant; S.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Heard Mr. S.S. Asghar Hussain, Senior Advocate.

2. This writ petition arises from a certificate proceeding and the Petitioner seeks to challenge an order dated 30.8.2002 passed by the Certificate Officer, Vaishali, Hajipur in Misc. Case No. 9/2001-2002. The impugned order is passed u/s 10 of the Public Demands Recovery Act, 1914 and by this order the Certificate Officer rejected the Petitioner''s objection filed u/s 9 of the Act holding him liable to pay the requisition amount of Rs. 13, 20, 242.29 paise.

3. The Petitioner worked as Nazir and according to the Respondent authorities in that capacity he defalcated the aforesaid sum for the recovery of which a requisition was issued. The Petitioner filed his objections, primarily taking the stand that the amount in question was not defalcated, but was given as advances. On the Petitioner''s objection the Certificate Officer called for the comments from the requisitioning authority and after hearing the parties and on considering the materials on record came to find and hold that the amount in question was in reality defalcated by the Petitioner. He, accordingly, rejected the Petitioner''s objections by the impugned order.

4. Challenging the order passed by the Certificate Officer, this writ petition was filed directly before this Court.

5. On earlier occasions when this case was heard it was contended on behalf of the Petitioner that the certificate proceeding was not maintainable because no proceeding under the Act would lie for recovery of an amount allegedly defalcated by the Certificate debtor. Mr. Ratan Kumar Sinha who earlier appeared on behalf of the Petitioner submitted that the recovery of defalcated amount was not covered by any of the entries tinder Schedule-I of the Act and in support of his submission he relied upon a bench decision of this Court in Indradeo Prasad Sinha v. The State of Bihar and Ors. 1992 BBCJ 162. In Indradeo Prasad Sinha a certificate proceeding was initiated for recovery of the value of some humepipes allegedly misappropriated by the certificate debtor. In that decision it was held that the money sought to be recovered was not a public demand and the issuance of the notices was, therefore, not premissible under the Act.

6. In my view the decision in Indradeo Prasad Sinha is of no help to the Petitioner in this case. First, the attention of the division bench was not drawn to an old Act, namely, the Public Accountants Default Act, 1850. Section 3 of this Act defines "Public accountant" as follows:

3. For the purposes of Sections 1 and 2 of the Act, the expression "public accountant" means any person who as Official Assignee or Trustee, or as sarbarahkar, is entrusted with the receipt, custody or control of any moneys or securities for moneys or the management of any lands belonging to any other person or persons, and for the purposes of Sections 4 and 5 of this Act the expression shall also include any person who, by reason of any office held by him in the service of the Central Government or the Government or the Government of a State, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to such Government.

7. Section 4 of the Act provides as follows:

4. Prosecution of accountants and sureties. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation In his accounts, as if the amount thereof were an arrear of land-revenue due to Government." (emphasis added)

8. Any arrear of land revenue figures at the first entry in Schedule I to the Public Demand Recovery Act and thus a certificate proceeding is directly attracted for recovery of any amount defalcated by a public accountant. It is noted above that the Petitioner was a Nazir and he was thus clearly covered by the definition of Public Accountant under the Public Accounts Default Act, 1850

9. As noted above, the Public Accountants Default Act, 1850 was not noticed in the division bench decision in Indradeo Prasad Sinha. Moreover, whether or not

the certificate debtor in that case was a public accountant is not clear from the brief order passed by the Division Bench and, therefore, it cannot be said definitely whether or not the Public Accounts Default Act would have had any application in that case.

10. Mr. S.S. Asghar Hussain, Senior Advocate appearing today on behalf of the Petitioner submitted that the finding recorded by the Certificate Officer that the money under requisition was in reality defalcated by the Petitioner was not correct and it was arrived at without taking into consideration the case of the Petitioner.

11. Learned Counsel submitted that according to the Auditor''s report the missing amount was actually advances made by the Petitioner and it was not a case of defalcation

12. In my view this is no ground for this Court to interfere in this matter and I am unable to accept Mr. Hussain''s submissions for more reasons than one. First, for the purpose of the certificate proceeding, the Certificate Officer undoubtedly had the authority and the power to decide the issue whether or not the money under requisition was defalcated by the Petitioner. Secondly, it cannot be said that he did not consider the. auditor''s report relied upon by the Petitioner, actually he examined the auditor''s report but did not accept it and relied upon other materials to conclude that the money was not given as advances but was defalcated by the Petitioner. Thirdly, and most importantly the point raised by Mr. Hussain can be more appropriately canvassed in appeal rather than in a writ proceeding.

13. An appeal is provided u/s 60 of the Act but the proviso to the section makes it obligatory for the Certificate debtor to pay 40% of the amount determined by the Certificate Officer and in order to circumvent this condition it is common for the Certificate debtors to come directly to this Court seeking to challenge the proceeding before the Certificate Officer and any orders passed by him.

14. In this case atleast this Court is unable to look kindly to the Petitioner''s attempt to circumvent the provision of appeal and to come to this Court directly trying to agitate issues based on facts and on consideration of evidences. No relief can, therefore, be granted to the Petitioner by this Court. This writ petition is dismissed.