

(2019) 11 PAT CK 0118

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21549 Of 2019

Mahendra Kumar Mandal

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Bihar And Orissa Public Demand Recovery Act, 1914 — Section 7, 9, 10

Citation : (2019) 11 PAT CK 0118

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajendra Narayan, Anju Kumari, Upendra Kumar Singh, Shailendra Kumar Singh

Final Decision : Disposed Of

Judgement

Let the defect be ignored.

Learned Senior Counsel for the petitioner submits that in the facts of the present case, no certificate proceeding may be initiated against the petitioner. It is stated that the petitioner while posted as Labour Enforcement Officer at Shambhuganj in Banka District was Incharge of Procurement Center. Apart from the petitioner, two others were also deputed there and in two godowns the paddy were stored.

It is the case of the petitioner that vide Order No. 44 Dated 30.06.2012 a general transfer order was issued in which the petitioner was transferred from Shambhuganj, Banka to Munger Sadar. The petitioner was, however, asked to continue at Banka itself. Ultimately, after much persuasion from the different level, the petitioner was relieved on 16.06.2013. He jointed at Munger on 18.06.2013.

Some facts have been brought in the writ application stating that the handing over the charge had not taken place and even though the petitioner made several attempts to hand over the charge and for this purpose he was again sent on deputation in Banka District, the charge could not be handed over. It is his

case that after two and half years vide letter dated 26.09.2016 the petitioner was informed that the paddy of 2012-13 procurement year was on auction sale in which after lifting, it was found that the quantity was short by 1370.41 quintals, therefore, the petitioner was called upon to show cause as to why action be not taken against him.

Thereafter, no proceeding was initiated against the petitioner but a certificate proceeding giving rise to present Certificate Case No. 05 of 2016-17 has been initiated for recovery of money. A criminal case was also lodged giving rise to Shambhuganj P.S. Case No. 76 of 2017 in which the petitioner has been granted anticipatory bail.

In the certificate case, a warrant of arrest has been issued against the petitioner and it is the grievance of the petitioner that in the notice issued under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as the 'Recovery Act, 1914'), as issued on 23.03.2017 neither any date of appearance nor any further required details were given. A copy of the notice has been brought on record as Annexure '18' to the writ application and a perusal thereof shows that the statement of the petitioner that no date was fixed in the notice is correct. The notice, however states that the petitioner has to submit his show cause / objection within a period of 30 days from the date of receipt of the notice. It is the grievance of the petitioner that a warrant of arrest has been issued against him because of which he is unable to put his appearance and file his objection before the Certificate Officer.

Learned Senior Counsel for the petitioner has submitted that if an opportunity is given to the petitioner to appear and file his objection, the petitioner would be ready to appear before the Certificate Officer on any date which may be fixed by this Court and take appropriate steps in the certificate proceeding.

Learned counsel representing the Bihar State Food and Civil Supplied Corporation Ltd. (hereinafter referred to as the 'Corporation') submits that since the petitioner has not appeared in the certificate proceeding, the Certificate Officer has issued a warrant of arrest against him and no fault may be found on this step taken by the Certificate Officer.

Having heard learned Senior Counsel for the petitioner and learned counsel for the Corporation, this Court is of the considered opinion that in the interest of justice an opportunity is required to be given to the petitioner to appear before the Certificate Officer and file his detail objection under Section '9' of the Recovery Act, 1914. In his objection petition he can take all such plea and cite all judicial pronouncements on the subject which may be advised to the petitioner.

This Court grants liberty to the petitioner to appear before the Certificate Officer within a period of four weeks from today and file his detail objection in the certificate proceeding initiated against him. If the petitioner appears and file his objection under Section 9 of the Recovery Act, 1914, the Certificate Officer shall consider the same and would pass an appropriate order under Section 10 of the

Recovery Act, 1914 after giving appropriate opportunity of hearing to the petitioner.

The warrant of arrest issued against the petitioner is hereby stayed for a period of four weeks from today. If the petitioner appears and files his objection as stated above within the stipulated period, the Certificate Officer shall take steps to recall the warrant of arrest and till adjudication of the determination under Section 10 of the Recovery Act, 1914, no coercive action shall be taken against the petitioner.

Let it be recorded that this Court has not gone into the merit of the contention of the petitioner.

This application stands disposed of accordingly.