
(2006) 09 PAT CK 0072
In the Patna High Court
Case No : CWJC No. 3614 of 2006

Nawal Kishore Prasad Singh and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 9

Citation : (2006) 4 PLJR 203

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ram Suresh Roy, Ramesh Jha, Binod Bihari Singh, A.K. Roy and A.K. Bhaskar, for the Appellant; Devendra Prasad Singh for Respondent No. 3 and Mr. Ajay Kumar Sharma for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The petitioners were Chairman and Secretary of Nawada Motor Transport Cooperative Society, a duly incorporated body under the provisions of the Cooperative Societies Act. They have moved against the certificate proceedings as instituted against them including the order by which their objections filed u/s 9 of the Bihar and Orissa Public Demands Recovery Act (hereinafter referred to as "the Act") has been rejected by the Certificate Officer. Counter affidavit and reply thereto have been filed. The State is represented and the requisitioning authority being the Nawada Central Cooperative Bank has appeared and have also filed their counter affidavits. Heard Shri Ram Suresh Roy, learned Senior Counsel in support of the application, learned counsel for the State and Cooperative Bank.

2. On behalf of petitioners, it is submitted that the loan was taken by the Transport Cooperative Society of which at that relevant time, petitioners were office bearers. They were subsequently removed. The Society was superseded. Subsequently, there has been fresh election. The Society having taken loan had procured two buses. The loans were not repaid to the Central Cooperative Bank.

The Central Cooperative Bank, as such, filed a requisition before the Certificate Officer under the provisions of the Act. Requisition was filed not only against the Transport Cooperative Society but as against the two petitioners as well. It is this to which the petitioners object. Petitioners submit that merely because they were office bearers at one point of time, they cannot be made personally liable for the loan taken by the Transport Cooperative Society. It is submitted that the said Society was a corporate entity and a juristic entity. The liability could not be fastened on the petitioners in their personal capacity, the two capacities being different and distinct. On the other hand, on behalf of the Central Cooperative Bank, it is submitted that it is correct that the petitioners are being proceeded in their official capacity but, however, they were the office bearers when the loan was taken and, as such, they would be bound in their personal capacity as well. For this, reference has been drawn to the so-called agreement executed by the petitioners which has been annexed to the counter affidavit. A reference to the said agreement would show that the petitioners have signed not as individual but in their official capacity. What is most curious is that agreements which are by law required to be a bilateral document is not executed on behalf of the Bank. In law, it is not an agreement at all. However, in view of the fact that the said purported agreement, which has been executed, has been executed by the petitioners in their official capacity, there cannot be any dispute that they cannot be proceeded in their individual capacity. Loan was granted by the Central Cooperative Bank to the Transport Cooperative Society. Both are juristic entities. It was not a loan personally granted to the petitioners nor was any such loan personally guaranteed by the petitioners nor the petitioners stood surety for the said loan. I hold accordingly. I may mention that in coming to my decision, I am fortified by a judgment of Division Bench of this Court in the case of *Kanhaiya Lal Vs. The State of Bihar and Others* which has examined a similar matter and held that the certificate proceedings against the Directors of a Company incorporated under the provisions of Companies Act could not lie as the Company has an independent juristic corporate entity. Their Lordships have examined the case law in this case starting from *Harihar Prasad Vs. Bansi Missir and Others*, .

3. In that view of the matter, the entire certificate proceedings as against the petitioners in their individual capacity is wholly without jurisdiction and is liable to be quashed. The order passed u/s 10 of the Act rejecting the petitioners' petition u/s 9 of the Act denying liability is erroneous on the face of it. It has no legal sanctity. The same is liable to be quashed and is quashed in so far as it relates to the petitioners in their personal capacity is concerned. It will be open to the Central Cooperative Bank to substitute the names by names of the present office bearers who again, it is made clear, would not be liable in their personal capacity. It is elementary that a corporate entity cannot by itself stand up in Court proceedings. It has to act through a person. It is only for that limited purpose, the names of office bearers would be there in the certificate proceedings. With these directions, this writ application is allowed. The impugned order and the proceedings as against the petitioners are quashed.