

(2007) 01 JH CK 0021
In the Jharkhand High Court

Prahlad Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 14, 7, 9

Citation : (2008) 1 JCR 126

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order dated 16.12.2006 passed by the Certificate Officer in Certificate Case No. 93 of 2004-05 and the follow up orders passed thereafter.

2. The grievance of the petitioner is that he was the Director of the Company, namely, Lemos Cement Limited. The petitioner has since resigned and is no more the Director of the Company. The dues of the respondent-Electricity Board is admittedly against the Company but the certificate was issued against the Company and also in the name of the petitioner as he was the Director of the Company. It has been stated that the said Company was the consumer and on behalf of the Company, the petitioner had signed the documents in the capacity of the Director of the Company and he is not personally liable for the dues.

3. It has been further stated that the petitioner resigned from the Company and he is no more Director of the Company. At any rate, the petitioner has got no personal liability and the liability, if any, is of the said Company. Without giving any opportunity of filing objection and hearing as required under Sections 7, 9 and 10 of the Bihar & Orissa Public Demand Recovery Act (hereinafter referred to as the said Act"), the respondents had earlier issued a distress warrant against the petitioner. The petitioner, thereafter, had filed a writ petition on this Court being W.P. (C) No. 3599 of 2005 and this Court by order dated 20.07.2005

passed in the said petition set aside the order giving liberty to the petitioner to file objection u/s 9 of the Act and to raise all the questions including the jurisdiction of the Certificate Officer. The petitioner had accordingly filed his detailed objection denying his liability in the terms, as stated above. The Certificate Officer without hearing and determining the said objection, has passed the impugned order has issued distress warrant against the petitioner.

4. Learned Counsel appearing on behalf of the petitioner on the said fact situation submitted that the impugned order dated 16.12.2006 is wholly arbitrary, illegal and without jurisdiction and is not sustainable in view of the provisions of Sections 9, 10 and 14 of the said Act.

5. Learned Counsel for the respondent-Electricity Board submitted that the said order has been passed after considering the facts and material on record-as the petitioner failed to satisfy the Certificate Officer by his contention. It has been submitted that the impugned order has been passed on proper appreciation of facts and petitioner's objection and there is no arbitrariness and illegality, though there is no detailed consideration of the objection filed by the petitioner. The Certificate Officer has come to the conclusion that the claim of the certificate amount appears to be valid and the said order complies with the requirement of Section 10 of the Act.

6. After hearing the parties and considering the materials on record, I find that the petitioner has filed a detailed objection petition denying his liability but the Certificate Officer without taking into consideration the points raised in the said objection petition, has passed the impugned order mechanically. He has not even touched the points raised by the petitioner denying his liability in the said petition filed u/s 9 of the Act. The provision of Section 10 of the Act is mandatory and it is imperative on the part of the Certificate Officer to consider the objection and ground of the petition and determine the liability before proceeding for execution of the certificate. Unless and until the objection petition is determined, the certificate Officer has got no jurisdiction to proceed for execution in view of mandatory provision of Sections 10 and 14 of the said Act. Considering the above, the impugned order dated 16.12.2006 and the subsequent orders intending coercive action against the petitioner for executing the certificate and realizing certificate amount from the petitioner are held to be unsustainable and are hereby quashed. This writ petition is allowed.

7. However, it is open to the Certificate Officer to determine, the objection petition filed by the petitioner and pass appropriate order in accordance with Law.