(2017) 01 PAT CK 0065

In the Patna High Court

Case No : 8054 of 2006

Pushkar Cement Pvt & Ors APPELLANT

Vs

The State of Bihar & Anr RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Constitution of India, Article 43, Article 227, Article 254(2), Article 45, Article 13, Article 11A, <a href=39

Citation : (2017) 01 PAT CK 0065

Hon'ble Judges : Jyoti Saran

Bench : SINGLE BENCH

Advocate : Arbind Kr.Jha, Mujtabaul Haque, Kumari Amrita, Partha Sarthy Raju Giri, Shakib Ayaz, Vikas Ratna Bharti, Ashish Giri, Arbind Kumar Jha, Raj Ballabh Prasad Yadav, Jitendra Kumar, Gautam Bose

Judgement

1. The petitioner in C.W.J.C. No. 8054 of 2006 has prayed for issuance of writ in the nature of certiorari for quashing the notice issued under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as ''the P.D.R Act'') in Certificate Case No. 1 of 2005-06 initiated against the petitioner at the instance of the respondent No.2, the Managing Director- cum-Specified Authority, Bihar State Financial Corporation, Fraser Road, Patna, appointed by the Government of Bihar under Section 32G of the State Financial Corporation Act (hereinafter referred to as ''the S.F.C. Act''), a copy of the notice is impugned at Annexure-5 to the writ petition.

2. The petitioner in C.W.J.C.No.20374 of 2013 in a similar manner also questions a notice issued under Section 7 of ''the P.D.R. Act'' in Certificate Case No. 1 of 2005-06 and Certificate Case No. 2 of 2013-14 initiated against the petitioner by the Managing Director- cum-Specified Authority under Section 32 G of ''the S.F.C. Act'', a copy of the notice is impugned at Annexure-5 to the writ petition.

3. Since both the writ petitions raise common issues of facts and law hence they have been heard analogous and are being disposed of by a common judgment.

4. For the sake of convenience I shall be referring to the pleading made in the C.W.J.C.No.8054 of 2006 unless clarified with specific reference to the other writ petition.

5. Mr. Arbind Kumar Jha, learned counsel has appeared for the petitioner in the two writ petitions while the State is represented by the respective State Counsel and the Bihar State Financial Corporation (hereinafter referred to as ''the Corporation'') is represented by Mr. Ashish Giri.

6. The petitioner in each of the two writ petitions is a Company incorporated under the Companies Act, 1956 and a loanee with ''the Corporation''. It is on default of loan by these petitioners to ''the Corporation'' which has led to initiation of the proceedings and feeling aggrieved, the two petitioners are before this Court.

7. Both the writ petitions are admitted for hearing vide order passed on 10.7.2014. According to Mr. Jha learned counsel appearing for the petitioner in the two writ petitions, in view of the overriding provisions underlying Sections 18 and 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as ''the D.R.T. Act'') the proceedings initiated by the respondent-Corporation under ''the S.F.C. Act'' read alongside the provisions of ''the PDR Act'' is without jurisdiction and has no sanction of law. Learned counsel has referred to the provisions of Section 2(c) of ''the D.R.T. Act'' to submit that the appointed day in so far as the State of Bihar is concerned, was 24.1.1996 when ''the Act'' was enforced in the State. He next refers to Section 17 of the said Act to submit that the jurisdiction of the Tribunal so constituted under ''the DRT Act'' has been discussed and would cover all cases in which a loan advanced by Banks and Financial institutions yet remained outstanding for payment. With reference to Section 18 of ''the DRT Act'', he submits that the overriding effect of ''the Act'' is manifest from the said provision which ousts the jurisdiction of all Courts and authorities, to exercise jurisdiction over matters covered under ''the D.R.T. Act''. Learned counsel has placed reliance on a notification issued under Section 4A of the Companies Act, 1956, on 13.5.1978, to submit that the Bihar State Financial Corporation has been notified under the said Act. Learned counsel has explained the procedure described in Chapter 4 of ''the D.R.T. Act'' and the overriding effect of ''the DRT Act'' over other enactments as present at Section 34 of the said Act. He submits that while Sub-Section (1) of Section 34 has an overriding effect on other enactments, Sub Section (2) of Section 34 explains that the provisions of ''the D.R.T. Act'' would be in addition to the provisions present in the enactments listed at Sub Section (2) which includes ''the S.F.C. Act''. According to Mr. Jha since ''the D.R.T. Act'' puts a cap of Rs. 10 lacs for any proceedings to be regulated under the said Act, the provisions of Section 34(2) read along side the provisions of Section 1(4) of the said Act would mean that even though the choice for selecting a forum for

recovery of dues would lie with the Bank and the financial institutions concerned but the moment the loan amount would exceed Rs. 10 lacs, then it sails into the jurisdiction of ''the D.R.T Act''. It is thus the argument of Mr. Jha that since the debt amount which is the subject matter of the two writ petitions, is more than Rs. 10 lacs, hence the only option available with the corporation is by taking recourse to the procedure provided under ''the D.R.T. Act''.

8. Learned counsel in support of his submission has referred to the judgment of the Supreme Court reported in (2003) 2 SCC 455 (Unique Butyle Industries (P) Ltd. versus U.P. Financial Corporation and others). He submits that the question which fell for consideration before the Supreme Court was, whether the recovery initiated by the U.P. Financial Corporation under the U.P. Public Moneys (Recovery of Dues) Act (hereinafter referred to as ''the U.P. Act'') was maintainable in view of the provisions of Section 34(2) of ''the D.R.T. Act''. Learned counsel in reference to the discussion present at paragraphs 7 to 9 and 15 of the judgment has submitted that the Supreme Court has clearly held that ''the U.P. Act'' would have to give way to ''the D.R.T. Act'' and the proceedings so initiated by the Uttar Pradesh Financial Corporation under ''the U.P. Act'' was quashed. Liberty however was given to the Corporation to initiate fresh proceeding either under ''the D.R.T. Act'' or under ''the S.F.C. Act''.

9. Learned counsel has next referred to an order of the Division Bench of this Court passed in L.P.A. Case No. 593 of 2010 (M/s Raja Continental Vs. Bihar State Financial Corporation & Ors.) to submit that the Division Bench after considering the same very issue has held that ''the P.D.R. Act'' has no applicability. Learned counsel has also again referred to an order of the Bench passed in C.W.J.C.No.13650 of 2010 (Allahabad Bank Vs. Union of India) in support of his contentions. He submits that in the said matter, a certificate case was initiated by the Bank for recovery of the dues and which was transferred to the Tribunal under Section 31 of ''the D.R.T. Act''. The Tribunal, however, returned the Bank papers received from the certificate officer consigning the case to the record room. It is this action of the Tribunal which was questioned by the Bank before the Bench and when the order of the Tribunal to remit the matter back to the Certificate Officer was quashed and the Tribunal was directed to proceed with the matter for its disposal in accordance with law.

10. In sum and substance, it is the argument of Mr. Jha that in view of the statutory provisions underlying Section 1(4) read along side Sections 17, 18 and 34 of ''the D.R.T. Act'', there is no jurisdiction in the Certificate Officer to entertain a requisition by the respondent- Corporation and to draw a certificate proceedings under ''the P.D.R. Act'', which is wholly without jurisdiction.

11. While learned State counsel defends the proceedings initiated under ''the P.D.R. Act'', the arguments of Mr.Jha is contested by Mr. Ashish Giri learned counsel appearing for the Corporation in the two writ petitions. While agreeing to the overriding effect of the provisions underlying Section 34 of ''the D.R.T. Act'', it is submitted that Sub Section (1) of Section 34 is not to be read in isolation

rather it is to be considered alongside Sub section (2) which clearly stipulates that the provisions of ''the DRT Act'' is in addition to the Industrial Finance Corporation Act, 1948, the State Financial Corporation Act, 1951 and other enactments mentioned in the provision. He submits that it is only where there is inconsistency, that the provisions of ''the D.R.T. Act'' would come into play.

12. Learned counsel with reference to the definition of Public Demand as occurring in Section 3(6) of ''the P.D.R. Act'' has also referred to Entry 3 and 15 of Schedule 1 attached to the said Act which lists the public demand, to submit that as per Item 3, any money which is declared by law for the time being in force to be recoverable or realisable as arrears of land revenue or by the process authorised for the recovery of arrears of revenue or of the public revenue or of Government Revenue, would come within the preview of a public demand. Learned counsel has also referred to Item No. 15 of the Schedule to submit that any money payable to the State Bank of India and other Banks mentioned therein; the Corporation or statutory body including a registered society carrying on financial transactions owned by or in which the Government has majority of shares or the Electricity Board, in respect of which the person liable to pay the same, has agreed by a written instrument, shall be recoverable as public demand.

13. Learned counsel has next referred to Section 32G of ''the S.F.C. Act'' to submit that the provision is in many parts namely:- (a) An application to is to be made to the State Government for recovery of the amount due to the Financial Corporation.

(b) The State Government either by itself or through any authority authorized by it, if satisfied, shall issue a certificate to the Collector for recovery of the amount due; and

(c) The Collector shall proceed to recover the amount due, as arrears of land revenue.

14. Mr. Giri while admitting to the legal position that ''the D.R.T. Act'' would cover not only the debts due to the Bank but also the financial institutions and which would cover the State Financial Corporation as well submits, that the provisions of Section 34 of ''the D.R.T. Act'' is to be tested in the background of the statutory provisions underlying Section 32G of ''the S.F.C. Act'' and the definition of a Public Demand present in Section 3(6) read alongside Item 3 and 15 of Schedule 1 to ''the P.D.R. Act''. According to Mr. Giri, there is no bar to a financial institution in taking recourse to the provision of ''the P.D.R. Act'' for recovery of its dues. Learned counsel has referred to a judgment of the Supreme Court reported in (2015)4 SCC 371 (Om Agrawal Vs. Haryana Financial Corporation & Ors.) to submit that a similar issue fell for consideration before the Supreme Court in connection with the Haryana Public Moneys (Recovery of Dues) Act, 1979 and the Supreme Court upheld the judgment of the trial Court as upheld by the Appellate Court(s), whereby the application of the Financial Corporation under Order 7 Rule 11 of the Code of Civil Procedure was allowed and the suit

instituted by the debtor was held, not maintainable. With reference to paragraph 23 of the judgment, he submits that the judgment takes notice of the judgment passed in the case of Unique Butyle (supra) and the distinctive nature of the statutory provisions underlying ''the U.P. Act'' which was the subject matter of consideration in Unique Butyle case and ''the Haryana Act''. He submits that the judgment of the Supreme Court in Unique Butyle case (supra) is not conclusive on the issue rather the Supreme Court was considering the overriding effect of ''the D.R.T. Act'' as against the statutory provision of the U.P. Public Moneys (Recovery of Dues) Act, 1972.

15. Responding to the judgments of this Court rendered in the case of M/s Raja Continental(supra), it is the argument of Mr. Giri that if the State legislature has competence to enact a law on an issue then its applicability cannot be ousted by a judicial pronouncement. According to Mr. Giri even if the Bihar State Financial Corporation has been notified under Section 2h(ii) of ''the D.R.T. Act'', the option would yet remain with the Corporation, as to the choice of forum for recovery of its dues.

16. Learned counsel has also referred to a judgment of the Supreme Court reported in (1994) 5 SCC 324 (Harish Tara Refectories P. Ltd. vs. Certificate Officer, Sader Ranchi) to submit that the legislative power of the State to enact ''the P.D.R. Act'' for regulating the recovery of dues due, to the Banks has been upheld by the Supreme Court in reference to Article 254(2), Entry 45 List I and Entry 11A, 13 and 43 of List 3 of the Constitution of India. Learned counsel has also advanced arguments on legislation by incorporation but since the vires of ''the PDR Act'' is not put to question nor, is an issue of contest herein, I do not see the necessity of delving into the issues so raised.

17. I have heard learned counsel for the parties and I have perused the records.

18. Although exhaustive arguments has been advanced by Mr. Jha as well as Mr. Giri to support their contentions but in my opinion the issue raised, lies in a very narrow compass, i.e. whether the notice issued under Section 7 of ''the PDR Act'' including the certificate proceeding initiated against these petitioner giving rise to Certificate Case No. 1 of 2005-06 pending before the District Certificate Officer, Siwan in so far as the petitioner in C.W.J.C.No.8054 of 2006 is concerned and Certificate Case No.1 of 2005-06/ 2 of 2013-14 pending before the District Certificate Officer, Patna in so far as the petitioner in the second writ petition is concerned, is valid and in tune with legal prescriptions.

19. For the sake of convenience it would be appropriate to refer to the relevant provisions of the enactment(s) which fall for consideration in these two writ petitions:- (a) State Financial Corporation Act "32G. Recovery of amount due to the Financial Corporation as an arrear of land revenue- Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorized by it in writing in this behalf may without prejudice to any other mode of recovery

make an application to the State Government or such authority, as that government may specify in this behalf is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for the amount to Collector and the Collector shall proceed to recover that amount in the same manner as the arrear of land revenue."

(b) Bihar State Financial Corporation (Recovery of Dues) Regulation 2002 framed by the Board of Directors with the previous sanction of the State Government, published in the Gazette Extraordinary on 26.9.2002. These regulation has been framed in exercise of powers conferred under Section 48 of ''the S.F.C. Act'' for prescribing the procedure to recover the amount due to the Corporation as an arrear of Land Revenue under Section 32 G of ''the S.F.C. Act''.

"3 Application by Corporation.- (1) The Corporation, or any person authorized by it in writing in this behalf, may make an application the State Government, or where the State Government, has specified any Authority in this behalf, to that specified Authority for the recovery of the amount due to it from any Industrial concern along with interest and other charges in respect of the loan advanced by the Corporation.

(2) The State Government or the specified authority shall determine the amount due after giving the Industrial concern and the Corporation a reasonable opportunity of being heard and adducing such evidence as they may like.

(3) The order passed by the State Government, or the specified Authority under sub regulation (2) shall be final, and no appeal shall lie against it.

(4)(1) State Government or, the specified authority, as the case may be, shall after determining the amount due to the Corporation under regulation 3, issue a certificate of that amount to the Collector.

(2) The certificate shall be issued in form No..2, Schedule II of the Bihar and Orissa Public Demand Recovery Act, 1914 (Bihar and Orissa Act, IV of 1914)"

(c) Section3(6) of ''the P.D.R. Act'':

"3. Definitions.- In this Act, unless there is anything repugnant in the subject or context:-

(6) "Public Demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II; and ...." Entry 3 and Entry 15 of Schedule I of the Bihar and Orissa Public Demand Recovery Act, 1914.

"3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.

15. Any money payable to-

(i) State Bank of India constituted under the State Bank of India Act, 1955 (No.23 of 1955); or

(ii) A Bank specified in column (2) of the first schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Act V of 1970); or

(iii) A company or a corporation or a statutory body, including a registered society carrying on financial transactions, owned by or in which, Government has a majority of shares or which is managed by an authority appointed under any law for the time being in force; or

(iv) The Bihar State Electricity Board, in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as public demand."

(d) Debt Recovery Tribunal Act "17. Jurisdiction, power and Authority of the Tribunal-(1) A Tribunal shall exercise on and from the appointed day, the jurisdiction, power and authority to entertain and decide application from banks and financial institutions for recovery of debts due to such banks and financial institution.

(2) An Appellate Tribunal shall exercise on and from the appointed day the jurisdiction, power and authority to entertain appeals against any orders made or deemed to have been made by a Tribunal under the Act.

18. Bar of Jurisdiction - On and from the appointed day, as court or other authority shall have, or be entitled to exercise any jurisdiction, power or authority (except the Supreme Court and a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to matter specified in Section -17"

....

34. Act to have overriding effect.- (1) save as provided under sub-section (2) the provisions of this Court shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act, or the rules made thereunder shall be in addition to and not in derogation of the Industrial Finance Corporation Act 1948 (15 of 1948) the State Financial Corporation Act, 1951(63 of 1951), the unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the small Industrial Development Bank of India Act 1989 (39 of 1989)."

20. It is the argument of Mr. Jha that since after the enforcement of ''the D.R.T. Act'' and the constitution of the Tribunal in the State of Bihar in the year 1996,

all matters relating to repayment of dues to Banks and financial institutions which are above Rs. 10 lacs, even if pending before any Civil Court or authority, shall stand transferred to the Tribunal and the fresh cases have to be filed in the Tribunal itself. According to Mr. Jha since admittedly, the dues in the two writ petitions exceeds Rs. 10 lacs hence the appropriate forum would be the Tribunal constituted under ''the D.R.T. Act'' and not the Certificate Officer under ''the PDR Act''.

21. 18 of ''the D.R.T. Act'' puts a bar on any court or authority to exercise jurisdiction in relation to matters specified in Section 17 i.e in respect of recovery of dues due to Banks and financial Institution except the Supreme Court and High Court exercising jurisdiction under of the Constitution of India, Section 34 (1) while conferring overriding powers to the enactment over other laws in force, in case of inconsistency, in its Sub Section (2) clarifies the position in reference to the Industrial Financial Corporation Act, 1948, the State Financial Corporation Act, 1951, the Unit Trust of India Act, 1963, the Industrial Reconstruction Bank of India Act, 1984 and the Small Industrial Development Bank of India Act, 1989, when it provides that the provisions of ''the D.R.T. Act'' would be in addition to and not in derogation of the enactments listed in Sub Section (2) of Section 34.

22. The legislative intent of the Parliament present in ''the D.R.T. Act'' is self eloquent and the applicability of the said act on the enactments listed in Sub section (2) of Section 34 in so far as they provide for recovery of debts, is concerned, has not been diluted rather the recovery provisions of ''the D.R.T. Act'' has been made in addition to the statutory provisions of recovery as present in those enactments. A plain reading of Section 34(2) of ''the DRT Act'' would manifest that neither the recovery procedure provided under ''the S.F.C. Act'' has been interfered with nor the powers of the Corporation to take recourse thereto, has been restricted by the enforcement of ''the D.R.T. Act'' rather the powers reserved with the authority concerned, is saved.

23. Mr. Giri is absolutely correct in his submissions that the choice lies with the Corporation to either opt for the recovery procedure provided under ''the S.F.C. Act'' or to take recourse to the recovery procedure provided under ''the D.R.T. Act'' and his submissions finds support from the statutory provision underlying Section 34(2) of ''the DRT Act''. While choosing to exercise the recovery procedure provided under Section 32G of ''the S.F.C. Act'', the respondent-Corporation has followed the provisions of the ''P.D.R. Act'' and forwarded the certificate to the Collector for recovery of the debt, as arrears of Land Revenue.

24. A harmonious reading of the provisions of Section 34(2) of ''the D.R.T Act'', Section 32G of ''the S.F.C. Act'' and the Bihar State Financial Corporation (Recovery of Dues) Regulation, 2002 (hereinafter referred to as ''the Regulations''), makes it clear that the certificate issued by the State Government or the Specified authority to the Collector for Recovery of the due amount mentioned therein, shall be issued in Form 2 Schedule II of ''the P.D.R. Act''.

25. The judgment of the Supreme Court rendered in the case of Unique Butyle (supra) is not an authority on the issue that falls for consideration in the present set of matters. In fact the Supreme Court in the Unique Butyle case was considering the overriding effect of ''the D.R.T Act'' in context with ''the U.P. Act'' and since ''the U.P. Act'' was not saved under Sub Section (2) of Section 34 of ''the DRT Act'' that the opinion was recorded in favour of ''the D.R.T. Act''. In fact the opinion of the Court recorded in paragraph 9 of the judgment would be relevant for the present purpose where his lordships of the Supreme Court have upheld the modes of recovery permissible under ''the SFC Act'' and is being reproduced hereinbelow:- "9. Section 34 of the Act consists of two parts. Sub-section (1) deals with the overriding effect of the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. Sub-section (1) itself makes an exception as regards matters covered by sub- section (2). The U.P. Act is not mentioned therein. The mode of recovery of debt under the U.P. Act is not saved under the said provision i.e. sub-section (2) which is of considerable importance so far as the present case is concerned. Even a bare reading therein makes it clear that it is intended to be in addition to and not in derogation of certain statutes; one of which is the Financial Act. In other words, a Bank or financial institution has the option or choice to proceed either under the Act or under the modes of recovery permissible under the Financial Act. To that extent, the High Court''s conclusions quoted above were correct. Where the High Court went wrong is by holding that proceedings under the U.P. Act were permissible. U.P. Act deals with separate modes of recovery and such proceedings are not relatable to proceedings under the Financial Act."

The judgment of the Supreme Court in the Unique Butyle case, in my opinion, in no manner lends strength to the arguments advanced by Mr. Jha. On the contrary the proposition advanced by Mr. Giri finds support from legal position settled in paragraph 9 of the judgment.

26. The issue raised herein is, whether the respondent Corporation is within its rights to take recourse to the recovery procedure provided under ''the P.D.R. Act'' in execution of the Certificate issued under Section 32G of ''the SFC Act'' and the recovery of Dues Regulation, 2002. This issue stands answered by the Division Bench of this court in the judgment reported in 2006(1) PLJR 212 (Bihar State Credit and Investment Corporation Ltd. vs. Rajani Ranjan Sahau) and paragraphs 71, 72 and 74 of the judgment is quoted hereinbelow for ready reference: "71. On a plain reading of the provision, it would appear that Section 32G of the Financial Corporation Act combines into one, the provisions of Sections 5 and 6 of the P.D.R. Act. Section 32G of the Act provides that on an application in writing made by the Financial Corporation or any person authorized by it, the State Government or the Managing Director of the Corporation himself (being the specified authority by the Government) after following such procedure as may be prescribed can issue a certificate for the recoverable amount to the Collector and the Collector shall then proceed to recover that amount in the same manner as

an arrear of land revenue.

72. It is, thus, to be seen that once the certificate is signed and issued by the Managing Director of the Corporation, his role is over and the certificate has to go to the Collector from the stage of Section 7 of the P.D.R. Act i.e. issuance of notice to the certificate debtor. The certificate debtor may then file his objections before the Collector which would be disposed of by him under Section 10 of the P.D.R. Act and the proceeding shall then enter the stage of execution of the certificate by the Collector. Thus, all the objections raised on behalf the writ petitioner-respondents in the cases in hand do not arise under that arrangement where the power and function of the Managing Director of the Corporation is limited to the stage of issuance of the Certificate.

....

74. There is yet another basic difference in the case of Delhi Financial Corporation and the cases in hand. In Delhi Financial Corporation, on a comparison of Section 32G of the Financial Corporation Act with Section 33C of the Industrial Disputes Act, the decision found and held as follows; "Undoubtedly the provision is in the nature of an execution proceeding but it is not a recovery proceeding pursuant to a decree of a Court. It is a recovery proceeding on the amount being found to be due by a simple verification by the State Government or the authority appointed by it.......

27. Thus, by Section 32G one more remedy of recovery is given to a Financial Corporation. Merely for execution of a decree of a Court, no such provision is required. Once, a decree is passed, it can be executed in the normal manner. That Section 32G is not for execution of a decree of a Court is also clear from the fact that it does not use the word ''decree''. All that Section 32G contemplates is that where an amount is due, an officer will make an application to the State Government, the State Government or an authority appointed by them would, after following procedure as may be prescribed, issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount as arrears of land revenue." The comprehensive analysis of the arguments as advanced by learned counsel appearing for the respective parties in the background of the statutory provisions and the judgment of this Court in the case of Bihar State Credit and Investment Corporation (supra), would reflect the following position: (a) The choice is with the State Financial Corporation either to adopt the procedure provided under Section 32G of ''the SFC Act'' read along side the Recovery of Dues Regulations, 2002 or to take recourse of the provisions of ''the D.R.T. Act'' where the quantum of the dues exceed Rs. 10 lacs.

(b) In case the State Financial Corporation decides to take recourse to the procedure provided under Section 32G of ''the S.F.C. Act'' then in view of the statutory provisions underlying Section 32G read with the Recovery of Dues Regulation, 2002, the Corporation or person authorized has to file an application before the State Government or the specified authority appointed in this behalf, for recovery of the amount due from any industrial concern along with interest and other charges found admissible.

(c) On filing of such application by the Corporation or any person authorized by it, the State Government or the specified authority shall determine the amount due after giving the industry concern and the Corporation, reasonable opportunity of being heard and of adducing such evidence as they would rely upon.

(d) The order passed by the State Government or the specified authority as the case may be, is final and no appeal lies against the said order.

(e) Once the amount is determined, the State Government or the specified authority shall issue a certificate of that amount to the Collector in Form 2 Schedule II of ''the P.D.R. Act'' and any court fee payable thereon would be realised as a first charge from the amount realised in full or in part, in execution of the certificate by the Certificate Officer. In so far as the present two writ petitions are concerned, although the application of the State Financial Corporation to the State Government or the specified authority, for recovery of the amount due, is not on record but Annexure-4 to each of the two writ petitions, is the certificate of recovery issued by the specified authority appointed by the Government of Bihar under Section 32G of ''the S.F.C. Act'' dated 21.2.2006 and 10.1.2006 respectively. The certificate so issued by the specified authority very clearly mentions a hearing conducted by him, as also the determination of the dues found recoverable.

28. It is on issuance of the certificate under Regulation 3 of ''the Regulations'' to the Collector in Form II of Schedule II of ''the PDR Act'' that the impugned proceedings have been initiated with issuance of notice under Section 7 of ''the P.D.R. Act''.

29. I would have concluded my discussions in the light of the position so discussed above but for the order passed by another Division Bench in the case of M/s Raja Continental (supra) arising from L.P.A.No.593 of 2010. In the said case, while the writ Court refused to interfere with the certificate proceedings so initiated under ''the P.D.R. Act'', leaving it open for the certificate debtor to file his objections before the Certificate Officer, the Division Bench while considering the appeal of the certificate debtor has held as such: "5. In our considered view, Section 32G does not adopt the procedure prescribed in the Bihar & Orissa Public Demand Recovery Act. Same is the position in the Rule of 1996 framed by the State Government and in the Regulations called as ''Bihar State Financial Corporation Recovery of Dues Regulation, 2002 framed by the Bihar State Financial Corporation and published in the Gazette on 26th September, 2002. In fact Regulation 3 makes it clear that the State Government or the Specified Authority shall determine the amount due after giving the Industrial concern and the Corporation reasonable opportunity of being heard and of adducing such evidence as they may like. There is further stipulation that the order passed by

the State Government or the Specified Authority shall be final and no appeal shall lie against it. Thus the provisions to the aforesaid effect in the Rules and Regulations clearly rule out any further hearing by the Certificate Officer under the Bihar & Orissa Public Demand Recovery Act.

6. In view of the aforesaid discussions, it has to be held that the writ Court is required to consider the case of the writ petitioner/appellant and his objections to the decision of the Specified Authority on merits in accordance with law. There is no remedy for the writ petitioner to get a further adjudication from the Certificate Officer under the Bihar & Orissa Public Demand Recovery Act because once the Specified Authority determines the dues, the Collector has only to execute the certificate. The legal authority to determine the dues under section 32 G vests only in the State Government or the Specified Authority. This legal position is clear from the observations of the Supreme Court in Para-25 of the judgment in the case of Delhi Financial Corporation Vs. Rajiv Anand, (2004)11 SCC 625. The writ court noticed only Para-21 of that judgment but Para-25 clarifies that there is no provision in the act barring the jurisdiction of Civil Court. Hence a suit can be filed or resort can always be had to the High Court under Article 226 or 227 of the Constitution of India.

....

" The opinion expressed by the Division Bench in the case of M/s Raja Continental (supra) is at cross roads with the opinion expressed by another Division Bench in the case of Bihar State Credit and Investment Corporation Ltd. (supra). Although the attention of the Division Bench in the case of M/s Raja Continental was not drawn by learned counsel for the contesting parties to the earlier judgment rendered in the case of Bihar Credit and Investment Corporation Ltd.(supra) but the legal position as it stands is that the opinion expressed by the two Division Bench is at a contest. While the Division Bench in the case of Bihar State Credit and Investment Corporation Ltd.(supra) upholds the procedure provided under ''the P.D.R. Act'' for execution of a certificate issued under Section 32G of ''the S.F.C. Act'', this plea raised by the Corporation before a subsequent Division Bench in the case of M/s Raja Continental (supra) has been repelled by the Division Bench to conclude otherwise.

30. In the circumstances existing where the two Division Bench noticed above give divergent opinions as to the adoption of the procedure provided under ''the P.D.R. Act'' in execution of a certificate issued under Section 32G of ''the S.F.C. Act'', I deem it fit and proper to refer this matter for consideration of the issue by a larger Bench and for the purpose, let the records of the present proceedings be placed before Hon''ble the Chief Justice for its placement before an appropriate bench for an authoritative pronouncement on the issue.

