
(1999) 02 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 5870 of 1991

Rakesh Bihari Sharan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Citation : (1999) 1 BLJR 654 : (2000) 1 PLJR 894

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this Writ Petition the petitioner has assailed the validity of the very initiation of the proceeding in Certificate Case No. 447-of 1990-91 against him for realisation of Rs. 18,786.50 paise being difference for non-supply of feeds of animals for two groups between 1.8.1989 to 31.7.1990. It appears that while issuing notice on 8.5.92 the Division Bench of this Court formulated the questions involved in the present case. It is stated in the said order that one of the questions raised in this application is as to whether the Director, Sanjay Gandhi Biological Park, Patna, could have signed the certificate which is contained in Annexure-3. In the supplementary affidavit filed on behalf of the petitioner a photostat copy of the requisition for a certificate in Form No. II and the Certificate of Public Demands in Form No. I have been annexed as Annexures 2 and 3 respectively. In para 5 of the said supplementary affidavit it is stated that in pursuance of the aforesaid requisition a certificate under Form No. 1 was drawn against the petitioner but the same was not signed by the Certificate Officer, rather it was signed by the Director, Sanjay Gandhi Biological Park, Patna, treating himself as a Certificate Officer though he is not assigned as a Certificate Officer under the Act. It is also stated that the certificate proceeding was initiated without being satisfied by the Certificate Officer about the legality and justifiability of the requisition amount. In para 7 of the said supplementary affidavit it is stated that the said proceeding was initiated without satisfaction of

the Certificate Officer and hence initiation of the certificate proceeding against the petitioner is itself void and nullity and the impugned order passed, in the said certificate proceeding also become void and nullity. In para 8 of the supplementary affidavit it is specifically stated that the Director of Sanjay Gandhi Biological Park has not been defined as certificate officer under the Act. Hence his satisfaction in filing of the certificate under his signature is not a certificate on which a proceeding under Public Demands Recovery Act can be initiated.

2. A counter affidavit has been filed on behalf of the Director, Sanjay Gandhi Biological Park, Patna respondent No. 2, in which the aforementioned averments have not been denied. In para 32 of the said counter affidavit it is however stated that the Certificate Officer has verified the correctness of the claim and he was made clear from the facts of the case in detail by the respondent No. 2.

3. Bare perusal of the photo copy of the Certificate of Public Demands Annexure-3 shows that the same has been signed by the Director, Sanjay Gandhi Biological Park, Patna and not by the Certificate Officer.

4. The learned State Counsel has ventured to submit that since in Annexure-3 Certificate Officer is also mentioned under the signature of the Director, Sanjay Gandhi Biological Park, Patna, the presumption is that he was vested with the power of certificate officer and as such issued the certificate of Public Demands Annexure-3. According to him there is no illegality in the initiation of the certificate proceeding against the petitioner.

5. I am unable to accept the said submission of the learned State Counsel. In the absence of the denial of the aforementioned specific averment in the supplementary affidavit filed on behalf of the petitioner that the Director, Sanjay Gandhi Biological Park, Patna signed the certificate, Annexure-3, treating himself as a Certificate Officer though he has not been defined as the Certificate Officer under the Act, it is not possible for this Court to hold that respondent No. 2 was vested with the power of the Certificate Officer. The respondents have not even pleaded that the respondent No. 2 was vested any such power under any notification duly issued nor have annexed the copy of the such notification. Accordingly, in my opinion, the entire certificate proceeding initiated against the petitioner pursuant to the certificate of Public Demands Annexure-3 is wholly without jurisdiction and bad in law.

6. Accordingly, the Writ Petition is allowed and the Certificate Case No. 447 of 1990-91 is hereby quashed. This Judgment/order will, however, not come in the way of the respondents from taking any fresh step in the master in accordance with law. The petitioner will also be at liberty to raise his claim before any appropriate forum.