

**(2006) 04 PAT CK 0024**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 4062 of 2006

Shobha Coir Foam Pvt. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 18-04-2006

**Acts Referred:**

**Citation :** (2006) 04 PAT CK 0024

**Final Decision :** Allowed

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## **Judgement**

Aftab Alam, J.—This writ petition was filed initially on behalf of a company under the name & style of M/s Shobha Coir Foam Pvt. Ltd. which is incorporated under the Indian Companies Act. The company was represented by its Managing Director Shri Ajit Kumar Sinha. Later, a supplementary affidavit was filed stating that the writ petition sought to challenge a proceeding initiated against Ajit Kumar Sinha in his personal capacity and hence, the petition should have been filed on his behalf and not at the instance of the company. A prayer was made to substitute Ajit Kumar Sinha personally in place of the company.

2. In the facts and circumstances of the case, the prayer is allowed and Ajit Kumar Sinha is taken as the petitioner in this case.

3. The company M/s Shobha Coir Foam Pvt. Ltd. was a borrower from the Bihar State Credit & Investment Corporation Limited (BICICO for short). The petitioner, as the Managing Director of the company, was one of the guarantors for repayment of the loan taken from the BICICO. The lonee defaulted in payment of the loan and the BICICO had a claim of Rs. 129.09 lakhs against it. For recovery of its dues, the BICICO got a proceedings under the Public Demands Recovery Act instituted against the petitioner, Ajit Kumar Sinha.

4. This writ petition has been filed challenging the certificate proceeding held against the petitioner. The challenge is based on two grounds: (i) In the Deed of Agreement, there was no clause providing that the dues would be recoverable as public demand and (ii) the requisition was made, the certificate was issued and

further proceedings on the basis of the certificate were held by one Shri O.P. Singh, Assistant Law Officer in the BICICO, who was appointed as the Certificate Officer. In regard to the first point, it was contended that in terms of Entry 15 under Schedule 1 of the Bihar Public Demands Recovery Act, any money payable to a company, corporation or a statutory body would be deemed as a public demand only in case it was agreed by a written agreement that it would be recoverable as such. In the absence of any clause in the Deed of Agreement, the loan of the BICICO will not come within the definition of public demand and no certificate proceeding would, therefore, be maintainable for its recovery. In support of the submission, reliance is placed on a decision of this Court in Janardan Prasad Singh and Another Vs. Bihar State Credit and Investment Corporation Limited and Others .

5. As regards the second point, it was contended on behalf of the petitioner that the Assistant Law Officer of the BICICO being an employee of the Corporation could not be appointed as a Certificate Officer within the meaning of Section 2(3) of the Act. In support of the submission, learned Counsel relied on a Bench decision of this Court in Babul Smokeless Fuel Industries (P) Ltd. Vs. State of Bihar and Others .

6. Taking up the second point first, Mr. Jitendra Singh, Counsel appearing for the BICICO submitted that though the requisition u/s 5 of the Act was indeed made by Shri O.P. Singh and it was he who issued the certificate and conducted the proceedings on the basis of the certificate up to a certain stage, later on, he ceased to act as the Certificate Officer and the proceeding was now pending before a person whose appointment as Certificate Officer was unquestioned. He submitted that since the proceeding was now pending before a Certificate Officer whose appointment was beyond challenge, its validity can not be questioned on the ground that the certificate was issued by an incompetent person. He submitted that further proceedings in the certificate case will be saved by what he called the "doctrine of de facto". He tried to support his submissions on the basis of a decision of the Supreme Court in Gokaraju Rangaraju Vs. State of Andhra Pradesh, . He also cited two other decisions rendered by the Supreme Court, following the decision in Gokaraju Ranga Raju These are Commissioner, Sales Tax, U.P. Vs. Agra Belting Works, Agra, and B.R. Kapur v. State of T.N. and Anr. : AIR2001SC3435 .

7. I am unable to see the application of the de facto doctrine to justify the continuance of the proceedings on the basis of a void certificate and in my view the decisions relied upon by Mr. Singh have a very limited application to the facts of the case, as we shall see presently. In the case of The Bihar State Credit and Investment Corporation Ltd. Vs. Rajani Ranjan Sahau and Others, it was held that the appointment of the Assistant Law Officer of the BICICO as Certificate Officer was completely illegal and any certificate issued by him, therefore, was not only illegal and without jurisdiction but void-ab-initio and no valid proceeding can be held on the basis of a certificate that was void at its inception. Any

argument up-holding the validity of the proceedings by introducing a competent Certificate Officer in the middle of the proceedings would amount to trying to revive a dead child by giving it in the hands of a different nurse. I am, therefore, satisfied that the Certificate case that was illegal and invalid at its inception can not be allowed to proceed simply by the introduction of a new Certificate Officer.

8. The de facto doctrine, as observed earlier would have very limited application to the facts of the case, that is to the extent certain issues were concluded in the proceedings. It is an admitted position that in course of the proceeding the petitioner was arrested and in order to obtain his freedom, he paid Rs. 50,000/- towards repayment of the loan. The petitioner can not be heard to say that since his detention was illegal, he is entitled to the refund of Rs. 50,000/- paid by him and further to payment of damages for his illegal detention. That is a concluded issue and that would undoubtedly attract the de facto principle.

9. So far as the pending proceeding is concerned, that must be set aside, it is accordingly set aside.

10. If the matter were to end here, the Court would have given liberty to the BICICO to initiate a fresh certificate case against the petitioner by making another requisition and getting a fresh certificate issued against him. But as seen above, the matter does not end here. According to the petitioner, the loan against the company can not be recovered from the petitioner under a certificate case because there was no specific agreement between the company and the guarantor (i.e., the petitioner) in that regard as required under Entry 15 in Schedule 1 of the Act. The averment to this effect is made in paragraph 19 of the writ petition which is not controverted by BICICO.

11. In the counter affidavit filed on behalf of the BICICO, it is simply said that the petitioner executed a Deed of Guarantee but there is no mention that the Deed of Guarantee contained a clause that the loan money would be recoverable as public demand. In the aforesaid facts and circumstances, the petitioner's contention is fully supported by the decision of this Court in Sunil Kumar Mehrotra (supra) .

12. Mr. Jitendra Singh submitted that against the decision in Sunil Kumar Mehrotra, a Letters Patent Appeal was pending, though no stay was granted against the judgment and order of the Single Judge. That being the legal position as it stands today, the BICICO is precluded from initiating a certificate proceeding against the petitioner. In the event, the legal position gets modified by the decision of the Division Bench in the Letters Patent Appeal, it will be open to the BICICO to initiate a fresh certificate case against the petitioner, in accordance with law, even though it might not prefer a separate appeal against this particular order. It goes without saying that even while the matter remains pending in Letters Patent Appeal, the BICICO may take steps to recover its dues against the company by taking such other actions against the company and/or the petitioner as may be provided in law.

13. In the result, this writ petition is allowed subject to the observations made above.