
(2012) 07 JH CK 0052
In the Jharkhand High Court
Case No : WP (C) No. 2805 of 2012

Smt. Asha Jha

APPELLANT

Vs

J.S.E.B. and Others

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 11, 14, 7, 9

Citation : (2012) 4 JCR 659 : (2012) 4 JLJR 48

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : P.D. Agrawal, S.L. Agrawal, for the Appellant; Ajit Kumar, for the Respondent

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order dated 24.3.2012 passed by the Certificate Officer (Electricity), Seraikella in Certificate Case No. 49 (Electricity) 2002-03, whereby distress warrant has been issued against the petitioner. It has been stated that certificate proceeding was initiated against the petitioner in 2003 for realization of a sum of Rs. 3,25,407/- as arrears of bill of consumption of electricity. Notice u/s 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the "Act") was issued and the petitioner had appeared and filed objection denying her liability. Since, thereafter there was no hearing on the objection of the petitioner. After lapse of about nine years, the respondents got a general notice published giving list of several persons, including the petitioner (at serial no. 18) and asking them to treat the advertisement as notice u/s 7 of the Act and file appeal.

2. Learned counsel for the petitioner submitted that the petitioner is not a subscriber of the newspaper, namely, Hindustan (Hindi Edition) and she could not know about the said notice. Otherwise also it was an absurd notice so far as the petitioner is concerned. Notice to the petitioner u/s 7 of the Act was served long back in the year 2003 and she had filed objection denying liability. Thereafter,

there was no hearing of objection and liability of the petitioner has not been determined u/s 10 of the Act.

3. Learned counsel submitted that on the basis of the said advertisement in the newspaper, the said Certificate Officer has issued distress warrant dated 24.3.2012 against the petitioner on the ground that in spite of publication of notice in the newspaper, she had not appeared. Learned counsel submitted that the order dated 24.3.2012 is wholly arbitrary, illegal and perverse and the said order has been passed casually and without verifying the record by the Certificate Officer. He further submitted that there was no question of recovery of amount by issuing distress warrant as the amount payable by the petitioner has not been determined by the Certificate Officer after filing the petitioner's objection denying liability by the petitioner.

4. The respondents have contested the petitioner's prayer. In the counter affidavit filed by the respondents, it has been stated, inter alia, that in spite of notices sent to the petitioner, she did not appear in the proceeding and there was no alternative before the Certificate Officer than to serve notice by advertisement in the newspaper. It has been submitted that there is dues of more than three but the petitioner has not paid anything. Distress warrant has been issued under that circumstance.

5. I have heard learned counsel for the parties and perused the facts and materials on record.

6. It is not in dispute that in response to the notice u/s 7 of the Act, the petitioner had appeared and filed objection denying her liability as far back as on 8.8.2003. It is also not in dispute that after filing objection of the petitioner denying liability, there was no hearing and determination of liability against her, as required u/s 10 of the Act. In the said admitted position, it apparent on the face that the impugned order of issuance of distress warrant is wholly illegal and unjustified. The process of execution comes into play only after determination of liability against the certificate-debtor. When there was no hearing and determination of liability and no compliance of the requirement of Section 10 of the Act, there was no question of invoking the provision for execution contained in Section 14 of the Act.

7. Section 14 of the Act reads as follows:--

14. When certificate may be executed--No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by Sections 7 and 11, or when a petition has been duly filed u/s 9, until such petition has been heard and determined:

Provided that, if the Certificate Officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as is liable to attachment under this Act, and that the realization of the amount of the certificate would in

consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable property.

8. On plain reading of the said provisions, it is clear that the process of execution of certificate cannot be issued before the lapse of 30 days from the date of hearing and determination of liability u/s 10 of the Act.

9. In view of the above, the impugned order issuing distress warrant dated 24.3.2012 is wholly illegal and unsustainable. Accordingly, this writ petition is allowed. The order dated 24.3.2012 is quashed. The matter is remitted to the Certificate Officer (Electricity), Seraikella-respondent no. 6 for hearing and disposal of the case afresh.