(2015) 10 PAT CK 0027

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 4625, 4195, 4196, 4197, 4626, 4747, 4857, 4858 and 4859 of 2009

Vishnu Sugar Mills Ltd. and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 4, 5, 6, 9
Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 49, 49(1)(3), 49(1)(a), 49(1)(b), 49(3)
Reserve Bank of India Act, 1934 — Section 49

Citation : (2015) 10 PAT CK 0027

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Y.V. Giri, Raghib Ahsan, Senior Advs., Ashish Giri, Pravan Kumar, Atif Inam and S.M. Shabbir Alam, for the Appellant; P.K. Verma, Sr. Adv., Anjani Kumar Jha, AC to AAG4, S.R. Sharan, AC to AAG5, Prasoon Sinha, GA2 and Prashant Pratap, GP6, Advocates for t

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J—All these cases having identical relief by way of seeking quashing of the certificate proceeding against the petitioners under the Bihar Public Demand Recovery Act, 1914 (hereinafter referred to as ''the Act'') as well as under the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as ''the Cane Act'') have been heard together and are being disposed of by this common judgment.

2. At the outset this Court would like to indicate that such certificate proceedings against the petitioners Sugar Mills have been initiated for realization of tax on purchase of sugarcane from the petitioner Sugar Mills, details whereof are as follows:

3. The facts giving rise to the certificate proceedings in all these nine writ

applications lie in a narrow compass, inasmuch as on a requisition filed under section 5 of the Cane Act by the Cane Officer, the Certificate Officer had drawn the certificate and issued notices under section 7 of the Act, whereafter the petitioners had filed their objection under section 9 of the Act and the Certificate Officer had rejected such objection by passing a reasoned order in terms of section 10 of the Act. The dates of filing requisition or issuance of certificate followed by the notice under section 7 of the Act and filing of objection by the petitioners under section 9 of the Act being separate in each of the proceeding will have little bearing, inasmuch as in all these nine cases the Certificate Officer, Gopalganj has passed his orders on the same day i.e. 3.3.2009 and it is these separate orders dated 3.3.2009 passed by the District Certificate Officer, Gopalganj which have been assailed by the petitioners with a further prayer of quashing the entire proceeding of the certificate case.

4. Mr. Y.V. Giri, learned Senior counsel appearing on behalf of M/s. Vishnu Sugar Mills and M/s. Bharat Sugar Mills and Mr. Raghib Ahsan, learned Senior counsel appearing on behalf of M/s. Sasamusa Sugar Works Ltd., have assailed the entire certificate proceedings including the order passed under section 10 of the Act by the District Certificate Officer, Gopalganj on 3.3.2009 on the following grounds:

"(i) The requisition for certificate was filed by the Cane Officer without recording due satisfaction.

(ii) The amount involved in the certificate proceeding being only interest on the cane tax cannot be held to be public demand.

(iii) There being no enquiry and no investigation the provision of Rule 1 of the Bihar and Orissa Public Demand Recovery Rules (hereinafter referred to as ''the Rules'') in Form II was not complied.

(iv) The satisfaction of the Certificate Officer in terms of section 6 of the Act is also lacking.

(v) There is a total non-application of mind by the District Certificate Officer in rejecting the objection filed by the petitioners."

5. Learned counsel for the petitioners in this regard have basically placed reliance on an unreported judgment of this Court dated 2.5.2014 in the case of M/s. Vishnu Sugar Mills Ltd. v. the State of Bihar & ors. and its analogous cases (C.W.J.C. No. 13121/2006 and its analogous cases) which according to them squarely covers the present cases of the petitioners.

6. Per contra, Mr. P.K. Verma, learned Addl. Advocate General, appearing on behalf of the State, while defending the impugned certificate proceedings including the order dated 3.3.2009 passed by the District Certificate Officer, Gopalganj rejecting the objections of the petitioners has submitted that the petitioners being liable to pay tax on purchase of sugarcane at the rate of Rs. 1.75 per quintal with effect from 9.11.2000 within a period of 15 days in terms of Rule 36 having failed to pay such tax had become liable to pay interest at the

rate of 11% per annum in terms of Section 51 of the Cane Act. He has sought to explain that such amount being recoverable as public demand in view of clear stipulation under section 49(3) of the Cane Act. He has also sought to distinguish the unreported judgment in the case of M/s. Vishnu Sugar Mills Ltd. (supra) on facts which shall be discussed in the subsequent paragraphs of this judgment.

7. The first and foremost question would be as to whether the certificate proceeding would be maintainable for recovery of interest due to delayed payment cane tax, inasmuch as the main thrust of the submission of Mr. Giri, learned Senior counsel appearing on behalf of the petitioners, is that while the cane tax in terms of section 49 can be realized by way of certificate proceeding but the interest on such tax cannot be recovered by way of certificate proceedings.

8. In this regard Mr. Giri also relies on the provision of Rule 39 of the Bihar Sugarcane (Regulation of Supply and Purchase) Rules, 1978 (hereinafter referred to as ''the Cane Rules'') by specifically pointing out that only the amount recoverable as public demand under sections 4, 34, 44, 47 and 48 could be recoverable as public demand payable to the Cane Officer of the area, whereas the interest being claimed in the certificate proceeding on the cane tax is under section 49 which is not included in the Cane Rules.

9. This Court, therefore, will initially examine the provision of the Cane Act and especially those incorporated in Chapter V under the heading "Payment of Price of Cane and Other matters". Section 42 empowers the State Government to determine minimum price of cane supplied to a sugar mill by the owners of the unit to the cane-growers for cane supplied to them. Section 43 provides for payment of price of cane by the occupier of the sugar factory to the suppliers. Section 44 prohibits the occupier of the factory from making any deduction of the price of cane except on account of loan advanced. Section 46 lays down the mechanism of resolution of dispute regarding the price of cane supplied to the occupier of the factory. Section 47 provides for enforcement of the final order passed under section 46 of the Act. Section 48 lays down the power of the State Government to determine the amount of commission payable by the occupier of the factory on purchase of sugarcane. Then comes Section 49 which has a direct bearing on the result of this case.

Section 49 of the Cane Act reads as follows:

"49. Tax on Sugarcane.--(1) The State Government may, by notification in the Official Gazette, impose-

(a) a tax not exceeding one rupee and seventy five paise per quintal on entry of sugarcane into a local area specified in such notification, for consumption or use of, or sale to a factory situated therein;

(b) a tax not exceeding one rupee and seventy five paise per quintal on the purchase of sugarcane by or on behalf of the occupier of a factory;

Provided that the tax under clause (b) shall not be payable by the occupier of a factory in respect of sugarcane for which a tax imposed under clause (a) is payable by him. (2) Notwithstanding anything contained in sub-section (1) the State Government may, by notification in the Official Gazette-

(a) reduce or remit, in whole or in part, such tax in respect of cane used in any such factory for the purposes of research, seed-distribution, crushing of diseased cane or intake of excessive crop;

(b) exempt for prescribed period from such tax any new factory or a factory unable to run without State aid.

(3) The tax payable under sub-section (1) shall be paid by the occupier of the factory to the Collector of the district concerned in such manner as may be prescribed and the amount of arrears of such tax shall bear interest at the rate specified in Section 51 and shall together with interest be recoverable as a public demand or as an arrear of land revenue.

(4) There shall be levied and collected in such manner as may be prescribed, a tax on the purchase of sugarcane by the owner of a unit at such rate not exceeding one rupee and seventy five paise per quintal of sugarcane, as may be notified in the Official Gazette;

Provided that the tax under this sub-section shall be payable on the quantity of sugarcane actually purchase or, at the option of the owner of the unit, on the quantity of sugarcane assumed in the manner prescribed but in no case less than rupees five thousand per annum.

(5) The owner of the unit shall make payment of the tax payable under sub-section (4) to the Collector in the prescribed manner and interest at the rate of 7 1/2 per centum per annum shall be charged on the amount of arrears. The amount of arrears shall be realizable together with interest as a public demand.

(6) Subject to the claim of the Central Government in respect of any tax or duty of excise, the claim of the State Government in respect of the tax imposed under sub-section (1) shall be the first charge on the sugar produced in the crushing year concerned.

(7) Until the tax imposed under sub-section (1) is paid at the rate per quintal of sugar, notified in the Official Gazette, by the State Government and the certificate of payment is obtained from the Cane Officer concerned, the occupier of any factory or any person acting on his behalf or any other person shall not remove sugar from the factory.

(8) There shall be paid to the Board and the Council as grant, in the manner prescribed, such proportions of the amount realized under sub-sections (3) and (5) in respect of every crushing year as the State Government may, from time to time, determine in this behalf to enable the Board and the Council to meet the cost of such schemes of development as may be undertaken by them with the

approval of the State Government.

Provided that one-fifth of the amount payable under this sub-section shall be paid to the Board and the rest to the Council in proportions to the quantities of the cane crushed by the factories concerned."

10. The provision of Section 49 of the Cane Act thus not only empowers the State Government to impose tax on sugarcane but also casts an obligation of payment of tax by the occupier of the factory to the Collector of the District and the amount of arrear of such tax to be payable with interest at the rate specified in section 51 and both the amount of tax as well as interest being recoverable as a public demand or as a arrear of land revenue.

11. Section 50 deals with Advance of loan by occupier of factory and then what is important for the purposes of these cases is the provision of Section 51 which lays down the rate of interest in respect of the amount realizable from the occupier of the factory either under section 43 or under section 44 or under section 48 or under section 49 at the rate of 11% per annum. Section 51, therefore, is also quoted hereinbelow:

"51. Rate of interest in respect of certain dues.--(1) The rate of interest realizable from the occupier of a factory under section 43, 44, 48 or 49or from any other person under section 44 shall be eleven per centum per annum;

Provided that the rate of interest specified in this sub-section shall be deemed to have been increased or decreased by the margin of increase or decrease in the existing bank rate (standard rate) referred to in section 49 of the Reserve Bank of India Act, 1934 (2 of 1934).

(2) The rate of interest payable to the occupier of a factory under section 50 shall be the rate of interest paid by such occupier to any bank for advances on the pledge of sugar or otherwise;

Provided that where the occupier of a factory is paying interest to one or more banks at different rates, the rate payable to him under this sub-section shall be the lowest of such rates.

(3) Where the State Government is satisfied that the occupier of a factory is spending the funds of the factory for a purpose other than the purpose of the factory, it may, by notification in the Official Gazette and after giving an opportunity of being heard to such occupier, enhance the rate of interest payable, by the occupier of the factory, under sub-section (1)."

12. It has to be kept in mind that Section 65 empowers the State Government to frame Rules on as many as 33 matters and what is relevant for the purposes of these cases is that Section 65(xxvi) lays down that the Rule could be framed by the State Government in the manner of collection of tax payable under section 49 of Cane Act.

13. The Cane Rules, 1978 prescribes the Requisitioning authority for amounts

recoverable as public demand and a lot of emphasis has been given on this Rule that the since provision of Section 49 is not included therein, the requisitions filed by the Cane Officer for initiating certificate proceeding will itself be bad. In order to test this part of the submission of Mr. Giri, learned Senior counsel, it would be also relevant to quote Rule 39 of the Cane Rules, which reads as follows:

"39. Requisitioning authority for amounts recoverable as public demand.--The amounts recoverable as public demand under sections 4, 34, 44, 47 and 48 shall be recoverable as public demand payable to the Cane Officer of the area who shall send a written requisition to the Certificate Officer concerned under section 5 of the Bihar and Orissa Public Demand Recovery Act, 1914 for recovery of such amounts under the said Act.

Provided that the amount recovered under section 4 shall be immediately paid into the account of the Board."

14. Having thus a broad spectrum of both Cane Act and Cane Rules it can be safely said that every sugar mill owner is liable to pay tax on sugarcane at the rate of Rs. 1.75 paise per quintal. Section 49(3) of the Cane Act in fact is a clear answer to the submission of Mr. Giri that the tax payable on sugarcane by the occupier of the factory to the Collector of the District has to be in terms of Rule 36 of the Cane Rules is to be paid within a period of 15 days as would be more clear from reading of Rule 36 which is quoted hereinbelow:

"36. Payment of entry-tax or purchase tax.--(1) The occupier of every factory shall maintain separately a correct daily account in Form XXVIII of-

(a) the cane entering the local area, in which the factory is situated, for consumption or use of or sale to the factory; and

(b) the cane purchased by him or on his behalf, otherwise than after entry into the local area referred to in clause (a)

(2) Within a fortnight of the close of each month, the occupier shall pay into the treasury, under the head "XXIX-a- Industries- Industries Cess and Purchase-tax on sugarcane" the amount due as tax, under the provisions of Section 35 of the Ordinance, on the quantity of sugarcane which entered the local area concerned or was purchased by or on behalf of the occupier during the month preceding and shall similarly pay the amount due on account of any increase in the tax concerned, notified by the State Government from time to time, within a fortnight of such notification:

Provided that the tax dues in respect of the tax imposed under the Ordinance for the period up to may, 1968 in the crushing year 1967-68 may be paid by the 30th June, 1068.

(3) Within a fortnight of the close of each month or within a fortnight of the notification of any increase in the tax, referred to in sub-rule (2), the occupier

shall submit to the Collector a return in Form XXIX or XXX, as the case may be, showing-

(a) the quantity of sugarcane that entered the local area or was purchased otherwise than after entry into the local area during the month preceding or up to the date of the notification referred to in this sub-rule; and

(b) the amount paid by him into the treasury on account of the enter-tax or purchase tax, as the case may be;

Duplicate treasury challans or receipt in respect of the tax paid into the treasury under sub-rule (2) shall, also be submitted also with the return and copies of the return shall also be sent to the Inspector and the Assistant Cane Commissioner of the area concerned and to the Cane Commissioner.

(4) The Collector shall, on receipt of the return in Form XXIX or XXX verify that the amount of the tax has been correctly calculated and that the amount shown as paid has actually been paid.

(5) Notwithstanding anything contained in sub-rule (2) where the State Government is satisfied, on giving due consideration to an application made in this behalf by the occupier of a unit, that the occupier is unable for reasons beyond his control to make payments in the manner laid down therein, it may be order in writing direct that only half the amount due shall be so paid and the total of the balance amount due, as on the 31st day of May, shall be paid in five equal monthly instalments, by the 15th day of each of the successive five months;

Provided that where the occupier of a unit fails to pay such amount in the manner specified, he shall pay in addition to the principal amount and interest due, penalties at the following rates:--

(i) 1 per cent per annum of the principal due for each of the first and second months of default;

(ii) 4 per cent per annum of the principal due for each of the third and forth months of default;

(iii) 6 per cent per annum of the principal due for each of the fifth and sixth months of default; and

(iv) such higher percentage per annum of the principal due as may be imposed by the State Government for default of more than six months."

15. A bare perusal of Rule 36 would go to show that it lays down the manner of payment of both entry tax or purchase tax being two parts of Section 49 of the Cane Act. It must be kept in mind that under section 49(1)(a) tax is payable on the entry of the sugarcane while under section 49(1)(b) tax is payable on the purchase of sugarcane. In either case it is the mandate to Rule 36 that the sugar mill owner shall not only maintain separately the correct daily account of cane

entry in the sugar factory for consumption or use of or sale to the factory but also cane purchased by the sugar mill otherwise than entry and Section 36 mandates payment of tad within a fortnight in the Treasury.

16. Judged in this background the use of the expression ''arrears'' in section 49(3) on the sugarcane tax has to necessarily mean any tax which was not paid by the sugar mill within a period of 15 days. Thus, if the sugar mill owner has not paid the tax within a period of 15 days in terms of Rule 36(2) of the Cane Rules it becomes liable to pay interest @ 11 per cent per annum as prescribed under section 51 of the Act which can be recovered as a public demand or as an arrear of land revenue.

17. It is here that the fallacy in the submission of Mr. Giri becomes apparent because firstly he was of the view that since no period having been prescribed for payment of interest on the tax on sugarcane, the same cannot be made part of the certificate proceeding but then, as noted above, once there is a clear provision under Rule 36(2) of the Cane Rules of making payment of tax within a fortnight, it automatically follows that if such tax is not paid within a fortnight, the same becomes arrear which has to be paid alongwith interest @ 11 per cent per annum in terms of Section 49(3) of the Act.

18. The over-emphasized submission with regard to maintainability of the certificate proceedings on the ground that the requisition was filed by the Cane Officer, who was not authorized under Rule 39 to file a requisition and therefore, such requisition had to be filed only by the Collector of the District to whom tax alongwith arrears and interest was payable has to be also only noted for its being rejected. First of all Section 49(3) talks of realization of the arrears of tax alongwith interest at the rate prescribed under section 51 not only by way of public demand but also by way of arrears of land revenue. Thus, even if the Cane Officer has not been authorized to file a requisition for realization of the dues in terms of Section 49(3) of the Act under Rule 39 of the Cane Rules, he could still file a requisition for initiating a certificate proceeding under the Act by way of realization as an arrear of land revenue. Thus, the omission of the Cane Officer in Rule 39 as with regard to his being authorized to file requisition in no view of the matter could affect maintainability of the certificate proceeding.

19. It is here that the provision of the Act i.e. Bihar Public Demand Recovery Act shall come into play, inasmuch as Schedule I Entry No. 3 of the Act makes a clear distinction between an arrear of land revenue and the public demand. Public demand in fact under the Act itself has been defined to mean any arrear or money mentioned or referred to in Schedule 1, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II. Thus, all the 15 entries under Schedule I are public demand whereas Entry No. 3 of the Act is clearly referable to arrears of land revenue, an expression clearly used under section 49(3) of the Cane Act. It has also to be kept in mind that under the Act there is no restriction in filing of the requisition by the Cane Officer, inasmuch as whereas Section 4 of the Act authorizes a

Certificate Officer to initiate a certificate proceeding on his own after being satisfied that any public demand is payable to the Collector, Section 5 of the Act prescribes that when any public demand is payable to any person other than the Collector, such person may send to the Certificate Officer a written requisition in the prescribed form. Here in the present case the submission of requisition by the Cane Officer will have no meaning, inasmuch as the amount under section 49(3) read with Rule 36(2) is payable to the Collector and therefore, the Certificate Officer on his own in terms of Section 4 on being satisfied can and infact has drawn a certificate proceeding.

20. Judged in this background this Court will have no difficulty in holding that when a Cane Officer had brought to the notice of the Certificate Officer regarding liability of the petitioners, the Certificate Officer had drawn up the proceeding in terms of Section 4 of the Act. Once this vital difference between Sections 4 and 5 of the Act becomes clear there would be little left for this Court to hold that the certificate proceeding shall not be vitiated on account of either the requisition being not filled up or the Cane Officer being not authorized in terms of Rule 39 of the Cane Rules to file requisition or the requisition itself being not filed by the Collector. Section 4 of the Act in fact does not require filing of any requisition, where the amount is payable to the Collector and admittedly in the present case the tax alongwith arrears and interest is payable to the Collector.

21. The next submission of Mr. Giri that the column of the certificate is blank which would go to show lack of satisfaction of the certificate officer is also not correct. Let it be kept in mind that under section 4 it is the Certificate Officer who has to draw the certificate and therefore, whatever entries have been made in such certificate will be deemed to have been made by the Certificate Officer. Therefore, when the column of Form I at page-37 in C.W.J.C. No. 4625/2009 is closely perused, it would be found that each and every column has been typed and bears the signature of the District Certificate Officer. In Column No. 3 of Form No. I at page-37 there is a name of the certificate debtors, namely, Vishnu Sugar Mills Ltd. and in column No. 4 under the heading ''amount of public demand including interest'' for which certificate is signed and the period for which such demand is due, there is a specific entry to the following effect:

22. The amount having been mentioned above, the period also being specified, this Court would not find any flaw in the certificate in the case of the petitioners duly signed by the District Certificate Officer. Filling up of the column of the certificate in case of requisition made for realization of any amount payable to a person other than the Collector may affect validity of the certificate proceeding but where the Certificate Officer himself in exercise of power under section 4 draws the certificate, the same shall not be vitiated only because the amount has not been filled up, inasmuch as mention of such amount payable to the Collector by M/s. Vishnu Sugar Mills is already mentioned in the certificate.

23. It is this aspect of the matter which has been decided by the Division Bench of this Court in the case of Madhu Sudan Sharma Vs. State of Bihar and Others,

(1996) 2 BLJR 1097 : (1996) 2 PLJR 276 , wherein it was held as follows:

"18. The Certificate Officer while dealing with the instant question held that in fact requisition in this case was made through a letter dated 14.10.1992, which fulfilled all the requirements as set out in Form II. The Certificate Officer further held that provisions of rule 60 of Rules under the Bihar and Orissa Public Demands Recovery Act gives full liberty to use the Form set forth in the Appendix with such variations as circumstances may require in appropriate cases.

19. The ratio laid down in the case of Hari Prasad Agarwalla v. State of Bihar & others (supra) in my view, is not applicable to the facts of the present case. In that case, the Certificate was signed by a Divisional Forest Officer in Form prescribed under sections 4 and 5 of the Act. The concerned authority was neither authorized by the Collector to submit requisition under Sections 4 or 6 of the Act nor he had verified the requisition. Therefore, having regard to all such defects, the Court held that Certificate proceeding started against the petitioner at the instance of the Divisional Forest Officer was without jurisdiction.

20. In the case of Vishnu Sugar Mills (supra) their Lordships held that two expressions as used in clause (6) of Section 43 of the Sugarcane Act permits recovery of the arrears of sugarcane price as public demand or arrears of land revenue. If it is a simple public demand, the Certificate holder will either be a cane grower or may be officer of the Cane Department of the Government. But if arrears of price of cane are sought to be recovered as arrears of land revenue, then surely they are sought to be recovered as public demand payable to the Collector.

21. The only distinction between the two modes of recovery of a public demand simpliciter, not payable to the Collector and arrears of land revenue is the different modes of filing the certificate. One is under section 4 and the other in accordance with sections 5 and 6 of the Act. Therefore, having regard to the provisions of sub-section (6) of Section 43 of the Act, in my view, the requisition submitted either under section 4 or section 5 of the Act for recovery of arrears in question will make no difference."

24. The reliance placed by Mr. Giri on the judgment of the learned Single Judge in the case of M/s. Vishnu Sugar Mills Ltd. (supra) is clearly distinguishable on fact, inasmuch as in that case there was no certificate by the Certificate Officer stating that the demand is due. As a matter of fact once this Court has found that the certificate contains all the material particulars and also contains the signature of the Certificate Officer, the same in no way would be vitiated only on account of signature of the Cane Officer. That signature may be superfluous because once it has been found that the certificate were duly signed by the Certificate Officer recording his satisfaction either with regard to the amount or with regard to the certificate holder or with regard to the certificate debtor, that cannot be held to be bad only because in certain column amount and detail was not again filled in. It has to be at the cost of repetition, stated here that Section

4 of the Act does not require filling up the certificate by anyone else and in fact it is the duty of the Certificate Officer to prepare and sign the certificate.

25. It is this aspect of the matter which has been also gone into by the Certificate Officer in the impugned order while rejecting the objection of the petitioners. The principal objection of the petitioners under section 9 was confined on filing of the requisition by the Cane Officer and not a word was said that the certificate drawn by the Certificate Officer had not recorded his satisfaction or that the certificate of the public demand in Form I was in any way inherently defective.

26. It is only in order to highlight this aspect that this Court would reproduce the objection filed by the petitioner M/s. Vishnu Sugar Mills Ltd. under section 9 which is identical in all cases and reads as follows:

"In

The Court of the District Certificate Officer, Gopalganj

Certificate Case No. 4/06-07

The Cane Officer Gopalganj .... Certificate debtor Versus M/s. Vishnu Sugar Mills Ltd., Harakhua... Certificate Debtor

The humble objection under section 9 of the Bihar and Orissa Public Demand Recovery Act, 1914, on behalf of the Certificate Debtor above named Most respectfully prayeth as follows:--

1. That the present certificate proceeding has been initiated on the basis of the requisition filed by the cane officer under section 4 and 6 of Bihar and Orissa Public Demand Recovery Act 1914 for recovery of interest on late, payment of purchase tax to the tune of Rs. 7,24,928/- in relation to the crushing season 1002-03 under the provisions of section 49(1)(3) of the Bihar Sugar Cane (Supply and Purchase) Act, 1981.

2. That certificate debtor denies its liability to pay the said sum of Rs. 7,24,928/- for the reason assigned hereinafter in the objection petition.

3. That the requisition filed by the Cane Officer suffers from non application of mind and without jurisdiction. The demand raised is in the teeth of the provision of section 49(1)(3), of the Cane Act and section 3(6) of the P.D.R. Act and also is not in proper form in as such as no details has been provided in the requisition justifying the raising of the demand and as which and the proceeding initiated on such a requisition which is patently illegal is fit to be dropped.

4. That it may be stated here that the requisition has been filed by the cane officer under section 49(1)(3) of the Cane Act run as follows:--

That the tax payable under sub-section (1) shall be paid by the occupier of the factory to the Collector of the District concern in such manner as may be prescribed and the amount of arrears of such tax shall bear interest at the rate specified in section 51 and shall together with interest be recoverable as a public demand or as on arrear of land revenue."

5. That Rule 36(2) of the Rules framed under the 1978 ordinance which has been saved under the provision of section 66(3) of the Cane Act inter alia provides that within a fortnight of close of each month, the occupier shall pay into the treasury under the head XXIX-A-Industries-Industries cess and purchase tax on sugar cane. The amount due as tax on the quantity of sugarcane purchased by or on behalf of the occupier during the month proceeding.

Rule 36(3) provides that within a fortnight of the close of each month or within a fortnight of the notification of any increase in tax, the occupier shall submit to the collector a return in form XXIX or XXX on the case may be showing the amount paid by way of entry tax or purchase tax in the treasury.

- That Rule 39 relates to requisitioning authority for amounts recoverable as public demand under section 4, 34, 44, 47 and 48 shall be recoverable as public demand payable the cane officer who shall sent a requisition under section 5 of the P.D.R. Act to the certificate officer for recovery of the said amounts.

- That from the aforementioned provisions the following important features became evident which are very relevant for the issue involved in the present case.

A. The purchase tax under section 49(1)(3) is payable to the collector of the District in the manner prescribed and not the cane officer.

b) The amount of arrears of tax shall bear interest at the rate specified in section 51.

c) The arrear of purchase tax shall together with interest he recoverable as public demand or arrear of land revenue.

d) The purchase tax becomes payable and has to be deposited within fortnight of the close of the each month in relation to the purchase of sugarcane made in the proceeding month.

e) The cane officer has been made the requisitioning authority only in relations to the amounts recoverable under section 4, 34, 44, 47 and 48 as public demand. The cane officer has not been empowered in relation to the amount payable under section 49.

- That on other important aspect of the matter is that section 3(6) of the P.D.R. Act defines public demand and means any arrears or money mentioned or referred to in schedule I and includes any interest which may be low he chargeable thereon upto date on which a certificate is signed under part II.

- That thus a plain reading of the provisions as contained in section 49(1)(3) of the Cane Act read with section 3(6) of the P.D.R. Act evidently stipulates that it is only such principle dues which is found payable as on the date of signing the certificate, which together with interest is recoverable as public demand or arrear of land revenue. There is no provision either in the Cane Act the P.D.R. Act which empowers the authority to raise demand for recovery of interest only especially where it is on admitted position that the principal amount has already been paid as on the date of raising the demand and signing the certificate by the certificate Officer.

- That thus the principal amount has already been paid as in the present case the attempt on the part of the cane officer to file requisition for recovery of only interest not public demand is wholly without jurisdiction and unsustainable in law.

-That further in view of the provisions as contained in section 4 of the P.D.R. Act and section 49 of the Cane Act and Rule 39 of the Rules, the Cane Officer has got no legal authority to file requisition under the P.D.R. Act against the certificate debtor for recovery of dues on account of interest when admittedly by purchase of at has been deposited in relation to the period in question and the admitted position is that as on the date of signing the certificate there are no dues for which the requisition for recovery of interest has been filed.

-That to the knowledge of the certificate debtor the cane officer has not authorized to file requisition in relation to amounts due by way of purchase tax payable to the collector.

-That the demand is also time barred by the law of limitation.

-That the court fee not paid by the certificate holder for the recovery of the amount in question.

-That the requisition is also not in proper form in as much as no details has been provided in relation to the dues in question. The requisition should contain the details of the manner in which the interest has been calculated.

-That it is also not clear from the requisition that what is the rate of interest.

-That it is settled position in law that the provision of the P.D.R. Act has to be rightly followed and complied and any infirmities would vitiate the proceeding.

It is, therefore, prayed that your honour be pleased to accept the submission made in this objection petition and may further be pleased to drop the present proceeding.

And as such, the certificate debtor shall ever pray."

27. The Certificate Officer by his order dated 3.3.2009 while rejecting the aforesaid objection by the impugned order had held as follows:

"The learned lawyer of the certificate debtor was heard in detail from the perusal of the objection filed by the certificate debtor and rejoinder filed by the certificate holder as well as arguments advanced by the certificate debtor it is apparent that the instant proceeding has been challenged on procedural grounds only, it cannot be denied that the state Govt. has right to impose a tax on the entry of sugar cane. It has also been made clear in the Act that the arrears of such tax shall bear interest at the rate specified. The certificate debtor has paid the cane tax but is not willing to pay interest. The arguments advanced by them for non payment of interest does not carry meaning as the payment of interest is statutory on delayed payment of cane tax.

I, therefore, disallow the objection by the certificate debtor and direct them to deposit a sum of Rupees 7,24,928.00 by the next date on 20.3.2009 so that the court is not compelled to adopt coercive measures for the realization of dues pending since long.

Sd/-Illegible 3.3.2009 District Certificate officer, Gopalganj."

28. Such an order passed under section 10 being appealable in nature under section 60 of the Act, the writ petition itself is not maintainable in view of the law laid down by the Division Bench of this Court in the case of Sawar Mal Choudhary and Others Vs. State Bank of India and Others, AIR 1988 Patna 185 : (1987) 165 ITR 467 : (1986) PLJR 660 , wherein it was held as follows:

"35. In the light of the aforesaid authoritative enunciations the submission on behalf of the petitioners must be rejected and it has to be held that the right of appeal and revision conferred by Sections 60 and 62 of the Act are adequate and effective statutory remedies provided by the Legislature."

29. In fact even on earlier occasion this Court in the case of Madhu Sudan Sharma (supra) had held that for resolution of the dispute regarding actual dues or liability of the factory owner or filing of the requisition by the Cane Officer the petitioner ought to have availed remedy and in this regard it had held as follows:

"22. Mr. Giri lastly contended that in absence of a proper adjudication about actual dues or liability of the factory owner, it was not proper for the Cane Officer to submit requisition for realization of the dues in question. In my view, this is not the stage to raise such question particularly when the principle amount was already paid without any objection. That apart, adjudication of such disputed facts depend upon verification of relevant materials and evidence of the parties which in my view is not possible for this Court while exercising a writ jurisdiction. The petitioner, therefore, for such adjudication should have availed the remedy of appeal or revision etc. which was already available to him."

30. Thus, for the reasons indicated above, this Court does not find any merit in these writ applications and they are, accordingly, dismissed.

31. As the further proceedings of these certificate cases of the petitioners were stayed, this Court would now direct the Certificate Officer to proceed ahead for realization of the amount involved in the certificate proceedings.

