
(2019) 07 JH CK 0006

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6343 Of 2018

Vivek Pratap Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-07-2019

Acts Referred:

Bihar And Orissa Public Recovery Demands Act, 1914 — Section 6, 7, 9
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0006

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : P.A.S. Pati, Rupesh Singh, Amrendra Pradhan, Prabhat Singh

Final Decision : Disposed Off

Judgement

1. This writ petition has been filed under Article 226 of the Constitution of India whereby and whereunder the order dated 17.02.2015 passed in

Certificate Case No. 120/B/2014-15 has been sought to be quashed since according to the petitioner the said certificate has been issued without any

application of mind as would be appearing from the certificate issued by the Certificate Officer, which bears no signature of the Certificate Officer.

2. According to the petitioner as per the requirement stipulated under Section 6 of the Bihar & Orissa Public Recovery Demands Act, 1914 (herein

after referred to as "the Act, 1914"), the Certificate Officer is able to apply its mind before issuing certificate and the application of mind can only

appreciated if the Certificate Officer would put his signature in the said certificate.

3. Mr. P.A.S. Pati, learned counsel appearing for the petitioner has submitted that since notice under Section 7 of the Act, 2014 has been issued

without any application of mind by the Certificate Officer, as required and

stipulated under the provisions of Section 6 of the Act, 1914, therefore, the subsequent action of the Certificate Officer is said to be null and void on the basis of principle that if the foundation is illegal the consequences will be allowed to proceed.

4. Mr. Prabhat Singh, learned counsel appearing for the respondent no. 2- Jharkhand Bijali Vitran Nigam Limited, Ranchi as also Mr. Amrendra

Pradhan, A.C to learned G.P. V appearing for the respondent-State of Jharkhand has jointly submitted that in the instant case, the procedure as

stipulated under Section 7 of the Act, 1914 has been resorted to and in terms of the said notice the petitioner has put his appearance before the

Certificate Officer but has not filed any objection petition as required to be filed under the provisions of Section 9 of the Act, 1914 and when Warrant

of Arrest has been issued then only the instant writ petition has been filed taking into plea therein with respect to jurisdictional issue and taking into

consideration the fact situation that the public money is involved.

5. Learned counsel for the petitioner, in response, has relied upon a judgment rendered by Division Bench of Hon'ble Patna High Court in the case of

Jai Prakash Dwivedi Vs. The State of Bihar & Ors [C.W.J.C Nos. 5067 with 5068 of 1994] and also judgment rendered by Co-ordinate Bench of this

Court in the case of Niwaran Mandal & Ors Vs. The State of Jharkhand & Ors [W.P. (C) No. 6175 of 2007], wherein similar issue has been dealt

with and on the said very ground the proceeding has been found to be vitiated in the eye of law.

6. Learned counsel for the respondents submitted that the decision referred herein above has been rendered on different facts and circumstances and

herein the petitioner even after appearance under the provisions of Section 7 of the Act, 1914, chose not to file objection petition as required under

Section 7 of the Act, 1914 and, therefore, having not done so, after lapse of three years, the writ petition is not fit to be entertained.

7. Upon this, learned counsel for the petitioner submitted that he is ready to make appropriate objection before the concerned authority within the

jurisdictional issue as well as the issue on fact but since Warrant of Arrest has been issued, the petitioner at this moment is not in a position to defend

his case before the concerned authority.

8. He further submits that if the petitioner would be protected then only he can

bring the fact into notice of the concerned authority.

9. Learned counsel for the respondents has in all fairness has submitted that appropriate order may be passed since they are not interested in taking the petitioner in custody rather they are interested in getting the public money deposited.

10. Upon such submission of learned counsel for the parties and looking to the spirit of the Act, 1914 which is to be availed by the Certificate Debtor

as required under Section 9 of the Act, 1914, this Court is of the view that since the petitioner is ready to make objection as required to be objected

under Section 9 of the Act, 1914, therefore, it would be just and proper to dispose of the writ petition by directing the petitioner to submit appropriate objection in order to defend his case.

11. If such application would be filed within a period of 10 days from the date of receipt of copy of this order, the Certificate Officer will adjudicate

the same by providing opportunity of hearing by passing speaking order within a period of three weeks from the date of receipt of such application.

12. The Warrant of Arrest, issued in connection with Certificate Case No. 120/B/2014-15 shall remain kept in abeyance for a period of three weeks.

13. The said three weeks shall be counted from the date of receipt of such application, excluding the ten days' time period granted to the petitioner for filing such application.

14. With the aforesaid direction, the writ petition stands disposed of.