

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11690 of 2015

Abinash Kumar son of Umesh Prasad, resident of Village - Sarai, Nagar Panchayat,
P.S. - Maner, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, District - Patna.
2. The Bihar State Food and Civil Supplies Corporation Limited through its M.D., Bihar at Patna.
3. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Patna, District - Patna.
4. The District Certificate Officer, Paliganj, District - Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sumeet Kumar Singh, Adv.
For the BSFC : Mr. Shailendra Kumar Singh, Adv.
For the Respondent/s : Mr. Mani Kant Mishra, GP-25
Mr. Rajesh Kumar Sinha, AC to GP-25

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date: 11-08-2015

Heard learned counsel for the petitioner, learned Assistant Counsel to GP 25 and learned counsel for the respondent-Corporation.

2. This writ petition has been filed for quashing the entire certificate proceeding initiated against the petitioner in Certificate Case No. 215 of 2014-15 and connected reliefs.

3. It is submitted on behalf of the petitioner that the notice under Section 7 issued in Form No. 3 of Schedule II of the Bihar & Orissa Public Demands Recovery Act (For short, "the Act") does not meet with the statutory requirements as the requisite time of 30 days for filing objections has not been

granted thereunder.

4. The provisions of Section 7 stipulates that the notice thereunder should be in the prescribed form to be served upon the certificate debtor in the prescribed manner alongwith a copy of the certificate. The prescribed form of such notice is Form No. 3, which, *inter alia*, contemplates grant of a 30-day period to the certificate debtor after service of the notice to file his objection petition denying his liability.

5. A perusal of the notice dated 16.12.2014 issued in the present case discloses that the matter has been fixed on 24.12.2014 for filing objections, thereby granting a period less than the 30 days prescribed for the purpose. On this ground alone, apart from the fact that the notice so issued is not strictly in the form prescribed, this Court is satisfied that the said notice does not meet with the statutory requirements and cannot clothe the Certificate Officer with the requisite jurisdiction for purposes of recovery of dues.

6. Learned counsel for the respondent-Corporation on the other hand submits that in any event, the petitioner did not appear on 24.12.2014 being the date fixed, rather he was permitted to file his objections as late as on 30.01.2015 and thus effectively the statutory time of 30 days was duly granted to him.

7. The submissions of the respondents cannot be accepted. The validity of the notice under Section 7 of the Act

has to be tested on the terms of the notice itself and not with reference to subsequent events. If the prescribed notice requires 30 days' time to be granted to the petitioner, the same must specifically emanate from the notice itself so that the certificate debtor is made aware of his right to file his objections within that time.

8. The notice issued under Section 7 of the Act, therefore, does not meet with statutory requirements inasmuch as the mandatory requirement of granting 30 days' time for filing objections has not been afforded thereunder.

9. In the above view of the matter, the impugned notice dated 16.12.2014 purporting to have been issued under Section 7 of the Act is hereby set aside. The matter is remitted to the Certificate Officer, Paliganj for issuance of a fresh notice under Section 7 of the Act and proceed in the matter in accordance with law.

10. The writ petition stands allowed *pro tanto*.

(Vikash Jain, J)

Md. Ibrarul/-

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