

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13295 of 2015

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Bijay Prasad Sharma, son of Late Ram Janam Singh, vill Chanda, P.S. Mehendiya,
Dist.Arwal.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Department of Mining, Govt. of Bihar, New Secretariat, Patna.
2. The Secretary, Department of Mining, Govt. of Bihar, New Secretariat, Patna.
3. The Deputy Director, Mines-cum-Certificate Officer, Magadh Anchal, Gaya
4. The District Mining Officer, Arwal
5. The Mining Inspector, Arwal

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prakritita Sharma, Advocate

For the Respondent/s : Mr. -D.K. SINHA, AAG2

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-08-2015

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for
quashing the entire Certificate proceedings in Certificate Case No.
187 of 2010-11 pending before the Certificate Officer, Magadh
Anchal, Gaya and for connected reliefs.

3. The immediate concern of petitioner in this case is
that a warrant of arrest has been issued against him in connection
with the dues amounting to Rs. 81,260/- recoverable in terms of
the notice dated 26.02.2011 issued by the Certificate Officer,
Magadh Anchal, Gaya in Certificate Case No. 187 of 2010-11.



4. It is submitted neither on behalf of the petitioner that the entire Certificate proceeding is without jurisdiction, based as it is on the Certificate dated 26.02.2011 which has been filed without however, recording thereon the amount to be recovered nor with the requisite satisfaction of the Certificate Officer. It has also been stated that the certificate has been issued without there being a prior requisition under Section 5 of the Bihar and Orissa Public Demands Recovery Act (for short, "the Act"), which was a pre-requisite.

5. A division Bench of this Court in Nageshwar Prasad Singh Vs. Rai Bahadur Kashinath Singh (1958 BLJR 820) considered the effect of a defective certificate on the validity of the proceedings and observed as follows :-

"The Certificate-Officer must meticulously apply his mind to filing the certificate and filing in the columns and blanks correctly and in appending his certificate in the form prescribed, and that the filling in of the forms is a matter of substance and is imperative, to give the certificate the force of a decree of court of law, and if it is found that the Certificate-Officer had not applied his mind at all and that some of the blank spaces were not filled up, or were incorrectly filled up, the document so prepared and filed is not a certificate under the Public Demands Recovery Act. The certificate proceedings are wholly invalid and the officer concerned acts without jurisdiction".

6. In the above facts and circumstances and with the consent of the parties, the present writ petition is disposed of setting aside the Certificate dated 26.02.2011, granting liberty to the Certificate Officer to draw up a certificate afresh, if there be a valid requisition for the same from the certificate holder, in accordance with law.

7. It is made clear that until a fresh certificate is filed, the Certificate Officer, Magadh Anchal, Gaya shall not resort to any coercive action for recovery of the dues against the petitioner in Certificate Case No. 187 of 2010-11.

8. The writ petition stands disposed of.

(Vikash Jain, J)

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