

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1046 of 2012

IN

Civil Writ Jurisdiction Case No. 7907 of 2006

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Sri Niwas Choubey, S/o Late Ramcheej Choubey, Managing Director of M/s Sundeep Pipe Chemical Enterprises Pvt. Ltd., Industrial Area, Buxar, R/O Civil Line, Buxar, P.S.- Buxar (T), Distt.- Buxar. Petitioner/Appellant.

Versus

1. The State of Bihar.
 2. The District Certificate Officer, Buxar.
 3. The Bihar State Electricity Board, Patna through the Executive Engineer Electric Department, Bhojpur (Ara). Respondents/ Respondents.
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Appearance :

For the Appellant : Mr. Surendra Kr. Singh and Tulika Singh, Advocates.

For the Respondent : Mr. Vinay Kirti Singh and Akhileshwar Pd. Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 09-02-2015

Heard Mr. Surendra Kumar Singh, learned counsel for the appellant, Mr. Vinay Kirti Singh, learned counsel for the erstwhile Bihar State Electricity Board and learned counsel for the State.

2. Even though there are neither factual disputes nor any dispute as to proposition of law still the

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learned Single Judge relegated the writ petitioner/appellant to avail remedy by way of appeal under the provisions of Bihar and Orissa Public Demand Recovery Act, 1914. This is a classic example of :

Justice delayed is Justice denied.

Justice hurried is justice buried.

3. M/s Sundeeep Pipe Chemical Enterprises Private Limited (hereinafter referred to as the Company), a company incorporated under the provisions of the Indian Companies Act, 1956, applied for and was granted an electric connection by the erstwhile Bihar State Electricity Board (hereinafter referred to as the Board). An agreement was entered into between the Company and the Board. There were some dues. For recovery of the dues, the Board instituted a certificate proceeding against the writ petitioner/appellant, who was the Managing Director of the Company. A show cause was filed on behalf of petitioner/appellant contending that he was not a consumer and no certificate proceeding could at all be maintained against him. This was on basis of a Division Bench judgment of this Court in the case of **Kanhaiya Lal versus the State of Bihar and others** since reported in **2002 (2) PLJR 553** wherein this exact issue was decided by the Court clearly

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holding that such a certificate proceeding is not maintainable. Notwithstanding the aforesaid, the District Certificate Officer dismissed the show cause of the writ petitioner by a non-speaking order. The writ petitioner/ appellant then filed a writ application, being C.W.J.C. No.7907 of 2006, challenging the certificate proceeding on basis of the said Division Bench judgment in the case of **Kanhaiya Lal (supra)**. The learned Single Judge by his judgment and order dated 21.12.2011, notwithstanding the aforesaid Division Bench judgment, relegated the writ petitioner to seek alternative remedy of appeal without even noticing the effect of the aforesaid Division Bench judgment, which was binding on him, which also decided the question of alternative remedy. It is unfortunate. The binding precedent of Division Bench cannot be ignored by a learned Single Judge.

4. At the cost of repetition, the Division Bench of this Court in the case of **Kanhaiya Lal (supra)** had clearly held that certificate proceeding as against the Managing Director at the behest of the Board for the dues of the Company is not maintainable. It also decided that where the proceedings were without jurisdiction there was no question of preferring an appeal, especially when to prefer appeal substantial money has

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to be deposited. I may only state that preferment of alternative remedy before entertaining the writ petition has three well known exceptions. First, where the proceedings are taken wholly without jurisdiction, the persons cannot be forced to face the proceedings, first, prefer appeal and then come to the Court. This, apart from catena of decisions on this line, as also been held in the case of **Rajendra Prasad Keshari versus State of Bihar and others** since reported in **1969 PLJR 275**. The second exception is where there is violation of principles of natural justice which renders the order void and the third exception is where the proceedings are taken under statute, which is *ultra vires* the Constitution. In none of these cases a person can be asked to avail alternative remedy before approaching a Writ Court. Thus, both on the issue of law with regard to liability of the writ petitioner as well as the issue of availing alternative remedy, we have to hold in favour of the writ petitioner/appellant before us and as against the Board. The entire proceeding is wholly without jurisdiction. There was no question of preferring any appeal.

5. We have no option but to set aside the judgment and order dated 21.12.2011 passed in C.W.J.C. No.7907 of 2006 by the learned Single Judge. **Accordingly,**

this appeal is allowed setting aside the certificate proceeding, being Certificate Case No.06 of 1995-96, as pending before the District Certificate Officer, Buxar as being wholly without jurisdiction.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/AFR

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