

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7501 of 2015

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Sheshnath Kumar Dubey Son of Late Bachcha Dubey Resident of village - Andar
Horai, P.S. Andar, District - Siwan

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise Department, Bihar, Patna
2. The Excise Commissioner, Govt. of Bihar, Patna
3. The District Magistrate, Siwan
4. The Excise Superintendent, District - Siwan
5. The District Certificate officer, District - Siwan

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kumar, Advocate
For the State : Mr. H.S.Roy, AC to PAAG

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 18-05-2015

Heard learned counsel for the petitioner and the State.

Through this writ application the petitioner seeks quashing of the notice issued under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 (hereinafter referred to as 'the Act') in Certificate Case No. 12 of 2012-13 for recovery of an amount of Rs. 4,80,000/-. Petitioner also seeks quashing of the entire certificate proceeding including the order dated 28.1.2015 / 15.4.2015 by which the distress warrant has been issued against the petitioner.

However, at the time of hearing, learned counsel for the petitioner raises a short question that the distress warrant has been



issued in violation of the provisions contained in Section 9 of the Act. It is contended that notices were issued on 6.12.2012 whereas it appears to have been served upon the petitioner on 23.12.2014 but distress warrant has been issued on 28.01.2015, i.e. within thirty days period, which is required to be given for filing objection. However, it is not apparent from the order dated 28.1.2015 as to whether on the aforesaid date, i.e., 23.12.2014 the date of service of notice or date of report was available or not.

Be that as it may, since the petitioner has not been able to file his objection under Section 9 of the Act, this Court would be inclined to grant him an opportunity. Let him file the objection under Section 9 of the Act within a period of eight weeks from today. In such case that should be considered and decided within the stipulated time by the certificate officer concerned till a decision is taken in the matter.

Let no coercive action for recovery be made in the concerned certificate case till the objection filed by the petitioner is considered and a decision is taken by the certificate officer. Thereafter, he would be required to proceed in accordance with law and in terms of his decision whereas the petitioner would also be at liberty to assail the order in accordance with law.

However, if the petitioner fails to file any objection

within the aforesaid period then the Certificate Officer would be required to proceed further in accordance with law.

With the aforesaid observation and direction this writ application stands disposed of.

(Dr. Ravi Ranjan, J)

Spd/-

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