

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.24770 of 2013**

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Vinod Kumar Singh, S/O Late Jai Narayan Singh, resident of village, Po +  
PS- Guthani, District - Siwan

.... .... Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Mines and Minerals, Bihar, Patna
2. The District Magistrate cum Collector, Siwan
3. The District Mining Officer Siwan
4. The Inspector of Mines cum Competent Authority, Siwan

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Chandra Kant, Advocate.

For the Respondent/s : Mr. Atal Bihari Pandey, AC to GP 22

For the Mines : Mr. D.K.Sinha, Sr. Advocate.  
Mr. Rajendra Prasad, Spl. PP.

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**  
**ORAL JUDGMENT**

3 22-01-2015

Heard learned counsel for the parties.

2. When this writ application was filed on 11.12.2013,

the prayer of the petitioner had read as follows:

*"1(I). For setting aside the order dt. 14-6-2013 (Annexure-8) passed by Collector Siwan in Misc. Case No. 157/2012-13, by which petitioner was directed to pay 3,34,800/- as mining dues.*

*(II) For quashing of Annexure-5 and 6, issued by the District Mining Officer, Siwan and has demanded Rs. 3,34,800/- as mining dues from petitioner.*

3. Let it be noted that the impugned order passed by the Collector, Siwan was capable of being assailed in revision before the Mines Commissioner which in fact is statutory remedy in terms of Rule 45 of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'the Rules'). Thus, filing of this writ application was itself misconceived.



4. When this case has been taken up today, learned counsel for the petitioner having filed I.A. No. 8643/2014 assailing the subsequent resultant events in a certificate proceeding for realization of the amount determined by the Collector in his impugned order dated 14.06.2013 has submitted that now the grievance of the petitioner stands changed on account of launching of certificate proceedings and, therefore, he may be permitted to assail the entire certificate proceedings including the order passed by the certificate officer on 24.09.2014/17.10.2014 directing issuance of warrant against the petitioner for his arrest. In this regard, he has submitted that from a bare perusal of the order sheet of the certificate case, it would be apparent that the certificate officer has passed the aforementioned punitive order even without ensuring the service of notice under Section 7 of the Bihar Public Demand Recovery Act (hereinafter referred to as 'the Act').

5. Learned counsel for the State has submitted that such order of the certificate officer is again appellable in terms of Section 60 of the Act before the Collector of the district.

6. Considering the facts that the writ application, against the impugned order on the basis of which certificate proceedings has now been launched, was pending before this Court, the prayer made in the interlocutory application for

assailing the certificate proceedings is allowed.

7. There will be, however, no question of quashing the entire certificate proceedings because such certificate proceedings for non-payment of its dues under the Rules is definitely maintainable.

8. The grievance of the petitioner, however, against the impugned order passed by the certificate officer dated 24.09.2014/17.10.2014, seems to be justified. From the order sheet of the certificate proceedings, it would transpire that requisition for instituting a certificate proceeding was received on 17.10.2013 and thereafter, the certificate proceeding was taken up on that very date by signing the certificate and notice was issued under Section 7 of the Act giving time to the petitioner to appear and file his objection in terms of Section 9 of the Act on 18.11.2013. The subsequent order sheet, however, of the date of 18.11.2013, will go to show that no order was passed on that day and, in fact, for next eight months nothing was done and only on 15.07.2014, when the certificate officer woke up from his slumber, he has passed an order recording non-receipt of the service report of the notice under Section 7 of the Act fixing next date on 20.08.2014. Though there was no report showing service of notice on the petitioner, the reminder was sent to the officer-in-charge of Guthani Police Station.



9. This Court fails to understand as to how the officer-in-charge will come into picture of certificate proceedings at this stage when even the notice under Section 7 was not served on the petitioner. There is no mechanism under the certificate proceedings by which the officer-in-charge is required to serve notice or get the appearance of the certificate debtor ensured before the certificate officer in the certificate proceedings.

10. Unfortunately even then on the next date in the certificate proceedings i.e. on 03.09.2014, a similar order was passed by Certificate Officer recording that the notices were not served on the petitioner and, therefore, in absence of service report the case was directed to be placed on 24.09.2014. Curiously when Certificate case was again taken up on 24.09.2014 and again on 17.10.2014 there was no proof of service of the notice under Section 7 on the petitioner and even when all of a sudden the certificate officer became very wise and wrote in his ordersheet that though the report of service of notice under Section 7 of the Act on the petitioner had not been received, warrant of arrest should be issued against the certificate debtor i.e. the petitioner.

11. This Court is therefore absolutely amazed with such draconian approach of the certificate officer. If the certificate officer was not even sure of service of notice and for which he had passed a number of orders awaiting the receipt of service report,

he had no jurisdiction to pass an order for issuance of warrant of arrest. Such punitive order dated 17.10.2014 being not in terms of the provisions of the Act and the Rules framed therein, must be held to be bad and is hereby quashed.

12. The petitioner now, having however been made aware of the certificate proceedings, is hereby directed to appear before the certificate officer on or before 28th February 2015 and also file his objection, if any, under section 9 of the Act within a period of two weeks of his appearance before the certificate officer after looking into/obtaining the relevant records of the case whereafter the Certificate Officer will pass necessary order and take appropriate action for recovery of admitted amount of dues being the subject matter of pending Certificate case in accordance with law.

13. With the aforementioned observation and direction, this writ application is disposed of.

**(Mihir Kumar Jha, J)**

Sujit/-

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