

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19000 of 2014

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B.K. Nopani S/o Late M.L. Nopani Chairman of M/s Eastern Sugar and Industries Ltd. (Sri Hanuman Sugar Industries Ltd.) Commonly known as Motihari Chini Udyog (Bihar), having its head office at 12 Government Place East, 2nd Floor, Kolkata.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Sugarcane Department, Government of Bihar.
2. The Cane Commissioner, Bihar.
3. The Cane Officer, Motihari.
4. The District Magistrate, East Champaran, Motihari.
5. The District Certificate Officer, Motihari, at P.O. AND P.S. Motihari, District East Champaran.

.... Respondenta

with

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Civil Writ Jurisdiction Case No. 19018 of 2014

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B.K. Nopani S/o Late M. L. Nopani Chairman of M/s Eastern Sugar and Industries Ltd. (Sri Hanuman Sugar Industries Ltd.) Commonly known as Motihari Chini Udyog (Bihar), having its head office at 12 Government Place East, 2nd Floor, Kalkata.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Sugarcane Department, Government of Bihar.
2. The Cane Commissioner, Bihar.
3. The Cane Officer, Motihari.
4. The District Magistrate, East Champaran, Motihari.
5. The District Certificate Officer, Motihari, At, P.O. AND P.S. Motihari, District East Champaran.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19039 of 2014

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B.K. Nopani S/o Late M.L. Nopani Chairman of M/s Eastern Sugar and Industries Ltd. (Sri Hanuman Sugar Industries Ltd.) Commonly known as Motihari Chini Udyog (Bihar), having its head office at 12 Government Place East, 2nd Floor, Kalkata.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Sugarcane Department, Government of Bihar.
2. The Cane Commissioner, Bihar.
3. The Cane Officer, Motihari.
4. The District Magistrate, East Champaran, Motihari.
5. The District Certificate Officer, Motihari, at P.O. AND P.S. Motihari, District East Champaran.

.... Respondents

with

Civil Writ Jurisdiction Case No. 19088 of 2014

1. B.K. Nopani S/o Late M.L. Nopani Chairman of M/s Eastern Sugar and Industries Ltd. (Sri Hanuman Sugar Industries Ltd.) Commonly known as Motihari Chini Udyog (Bihar), having its head office at 12 Government Place East, 2nd Floor, Kolkata.
2. B.K. Nopani S/o Late M.L. Nopani Chairman of M/s Eastern Sugar and Industries Ltd. (Sri Hanuman Sugar Industries Ltd.) Commonly known as Motihari Chini Udyog (Bihar), having its head office at 12 Government Place East, 2nd Floor, Kolkata.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Sugarcane Department, Government of Bihar.
2. The State of Bihar through the Principal Secretary, Sugarcane Department, Government of Bihar.
3. The Cane Commissioner, Bihar.
4. The Cane Commissioner, Bihar.
5. The Cane Officer, Motihari.
6. The Cane Officer, Motihari.
7. The District Magistrate, East Champaran, Motihari.
8. The District Magistrate, East Champaran, Motihari.
9. The District Certificate Office, Motihari, At, P.O. AND P.S. Motihari, District East Champaran.
10. The District Certificate Office, Motihari, At, P.O. AND P.S. Motihari, District East Champaran.

.... Respondents

Appearance :

(In CWJC No. 19000 of 2014)

For the Petitioner/s : M/s Y.V.Giri, Sr. Advocate &
Vikas Ratan Bharti, Advocate

For the State : M/s ARBIND KUMAR NO. II, SC 17
Ajay Kumar AC to SC 17

(In CWJC No. 19018 of 2014)

For the Petitioner/s : M/s Y.V.Giri, Sr. Advocate &
Vikas Ratan Bharti, Advocate

For the State : Mr. ABBAS HAIDAR, SC 16
(In CWJC No. 19039 of 2014)

For the Petitioner/s : M/s Y.V.Giri, Sr. Advocate &
Vikas Ratan Bharti, Advocate

For the State : Mr. N. HODA KHAN, SC 18 &
Md. Irshad, AC to SC 18

(In CWJC No. 19088 of 2014)

For the Petitioner/s : M/s Y.V.Giri, Sr. Advocate &
Vikas Ratan Bharti, Advocate

For the State : Mr. AJIT PRATAP SINGH, SC 15

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 13-02-2015

I have heard the parties.

Since identical issues are involved in all the matters they have been considered together and are being disposed of by a common order.

The only distinction between the cases is the nature of arrears as the same are of ZDC Commission in terms of Section 48(3) of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as “the Cane Act”) in C.W.J.C. Nos. 19000 of 2014 and 19088 of 2014, whereas, in other matters, the arrears are due to the non payment of cane price which is required under Section 43 of the Cane Act. In C.W.J.C. No. 19000 of 2014 the Certificate Case in issue is Certificate Case No. 01/ZDC Commission /11-12, in C.W.J.C. No. 19018 of 2014 that is Certificate Case No. 01/Cane Price /11-12, in C.W.J.C. No. 19039 of 2014 the Certificate Case No. 01/Cane Price /13-14 whereas, in

C.W.J.C. No. 19088 of 2014 the certificate case in issue is Certificate Case No. 02/ZDC Commission /12-13 in which distress warrants have been issued against the petitioner after issuance of notice under Section 7 of the Bihar & Orissa Public Demand Recovery Act.

Common question which falls for consideration in these cases is as to whether the petitioner, being the Chairman and Managing Director of M/s Eastern Sugar and Industries Ltd. (Sri Hanuman Sugar Udyog) can be fastened with personal liability for payment of arrears or dues standing against the company concerned and as such whether such recovery can be made from him under Bihar & Orissa Public Demands Recovery Act, 1914.

However, the issue is no longer *res integra* inasmuch as it stands considered and decided already by a Division Bench of this Court in **Kanhaiya Lal v. State of Bihar [2002(2) PLJR 553]**. The Division Bench has held in clear terms that the liability of a Company cannot be enforced against its officers including Director or Managing Director. It has also dealt with the issue of execution of a certificate against such executives of the Company and has held, after placing reliance upon earlier decision **Smt. Sarla Devi Agrawala vs. State of Bihar [1979 BBCJ 213]**, that no individual associated with an incorporated company can be held liable for the

dues of the company which is a legal person having its own rights and liabilities.

Learned counsel for the petitioner has placed reliance upon another decision of a Single Bench of this Court disposing of **C.W.J.C. No. 9672 of 2010 (Binod Kumar Nopani Vs. The State of Bihar & ors.)** and another analogous matters in which the petitioner of this case was the sole petitioner. The learned Single Judge, placing reliance upon the decisions rendered in **Smt. Sarla Devi Agrawala (supra) and Kanhaiya Lal (supra)**, has held in clear terms that the Directors of the shareholder of Company would not be liable for any legal liability incurred by such company and the amount can only be realized by taking steps against the company and assets thereof wherever it is situated.

This Court is in respectful agreement with all the aforesaid decisions and, thus, it is held that initiation of certificate cases and issuance of distress warrants against the petitioner would be illegal and fit to be quashed and set aside for the reason that, in all certificate cases, the petitioner has been impleaded in person specially when the company itself has been shown as a certificate debtor along with other persons.

Accordingly these writ applications succeed. The entire certificate proceedings including distress warrants issued as against

this petitioner, who has been shown as Sl. No. 2 as the Chairman and Managing Director of the Company, stands quashed.

However, the respondents would be at liberty to proceed against the company concerned and for that purpose they would also be at liberty to make necessary correction for proper identification.

(Dr. Ravi Ranjan, J)

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