

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8822 of 2015

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Dadan Singh, Son of Late Lal Chand Yadav, Resident of Khalwainer, P.S.- Koran Sarai, Dumraon , District- Buxur being Director of M/s Nirbhaya Cold Storage Pvt. Ltd. having its place of business at Khalwainer, P.S.- Koran Sarai, Dumraon, District- Buxur.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Buxur
2. The Certificate Officer-cum-Additional Collector, Buxur.
3. The Electrical Executive Engineer, Electrical Supply Division, Buxur, District- Buxur.
4. The Assistant Electrical Engineer, Electric Supply Sub-Division, Dumraon, District- Buxur.
5. South Bihar Power Distribution Co. Ltd. having its office at Vidyut Bhawan, Bailey Road, Patna through its Managing Director.

.... Respondents

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Appearance :

For the Petitioner : Mr. Alok Kumar Agrawal
For the State : Mr. Kalpana, JC to SC 19
For the SBPDCL : Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-08-2015

Heard learned counsel for the petitioner, learned Assistant Counsel to Standing Counsel No.19 and learned counsel for the respondent-South Bihar Power Distribution Company Limited.

2. The present writ petition has been filed for quashing the entire certificate proceeding in Certificate Case no. 16/2014-15, as also the notice dated 10.10.2014 issued under Section 7 of the Bihar & Orissa Public Demands Recovery Act (For short, “the Act”) by the Certificate Officer, Buxar, the notice dated 28.04.2015 issued for the purpose of attachment of the property/arrest of the petitioner, and other connected reliefs.

3. It is stated on behalf of the petitioner that the said Certificate Case No.16/2014-15 relates to certain dues amounting to Rs.46,18,007/- said to be owing from M/s Nirbhaya Cold Storage Pvt. Ltd. Dumraon, District Buxar of which the petitioner happens to be Director.

4. Learned counsel for the petitioner invites attention to the impugned notice dated 10.10.2014 issued under section 7 of the Act pursuant to a requisition dated 01.10.2014 issued by the Assistant Electrical Executive Engineer, Electric Supply Sub-Division, Buxar, both of which have been issued in the individual name of the petitioner. It is further submitted that it is well settled that an individual who is a Director of a Company cannot be proceeded against for recovery of the dues of the Company and their personal property cannot be attached nor can he be arrested for default in payment of dues by the Company.

5. Reliance is placed on the decision of a Division Bench of this Court in *Kanhaiya Lal Vs. The State of Bihar & others* [2002 (2) PLJR 553] and that of a Single Bench of this Court in *Smt. Sarla Devi Agrawala Vs. State of Bihar* [1979 BBCJ 213) and these decisions have been followed in CWJC No. 19000 of 2014 (*B.K. Nopani Vs. The State of Bihar & others*) and analogous cases.

6. Learned counsel for the respondents opposes the

writ petition, submitting that while the personal liberty of the petitioner may not be jeopardized through arrest, however, the petitioner being the Director of the Company is duty bound to ensure that the legitimate dues of the Company are duly paid.

7. This Court finds considerable force in the submissions of learned counsel for the petitioner. The observations in *Kanhaiya Lal Vs. State of Bihar* (supra) may fruitfully be noticed as follows, which squarely cover the situation obtaining in the instant case.

“5. After hearing the counsel for the parties, we are of the view that the submissions of the counsel for the appellant are well founded and they must be accepted. The law on the point is well settled that the liability of the company cannot be enforced against its officers including Director or Managing Director. Amongst the decision cited by the counsel pointed reference may be made to two of them rendered in the context of the proceedings under the Public Demands Recovery Act, namely, those of *Bejai Singh Dugar Vs. Certificate Officer, Bhagalpur* (supra) and *Damodar Prasad Nathani Vs. State of Bihar* (supra). In the former case a Division Bench of this Court after a detailed consideration of the matter observed that execution of certificate against the Managing Director of any company or for that matter any authority of the company for the dues of the company cannot be resorted to. Any debt payable by an incorporated company can be realized only by seizing the assets of the company and not by putting in prison the Managing Director or any of the officer of the company for, 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. In the latter case, a learned Single Judge of this Court following the decision in *Smt. Sarla Devi*

Agrawala Vs. State of Bihar (supra) held that the Directors of Shareholders of a company cannot be proceeded with for realization of dues against the company which can be realized only from the assets of a company which is a juristic person”.

8. In the above view of the matter, the entire certificate proceedings including the notice dated 10.10.2014 issued under section 7 of the Act as well as the distress warrant issued in Certificate Case No.16 of 2014-15 by the Certificate Officer, Buxar against the petitioner are hereby quashed. The writ petition stands allowed.

9. It is made clear that the respondents would be at liberty to take steps against the Company concerned for realization of the dues in accordance with law.

(Vikash Jain, J)

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