

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2311 of 2014

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1. M/s Vishal Rolling Mills Pvt. Ltd., a Company incorporated under the Indian Companies Act, 1956, having its Factory at Patuaha, Saharsa, through its Managing Director Sri Kartik Kumar S/O Sri Chandra Bhushan Singh , Resident Of Purab Bazar, Saharsa, P.S. & District – Saharsa

2. Kartik Singh @ Kartik Kumar S/O Sri Chandra Bhushan Singh Resident of Purab Bazar, Saharsa, P.S. & District - Saharsa

..... Petitioners

Versus

1. The Bihar State Power (Holding) Company Limited, a Company incorporated under the Indian Companies Act, 1956, having its Head Office at Vidhyut Bhawan, Beiley Road, Patna through its Chairman - Cum - Managing Director

2. The Managing Director, North Bihar Power Distribution Company Limited at Vidhyut Bhawan, Beiley Road, Patna

3. The General Manager-Cum-Chief Engineer, Koshi Area Electricity Board, Saharsa

4. The Electrical Executive Engineer-Cum-Certificate Officer, Koshi Area Electricity Board, Saharsa

5. The State of Bihar, Through the District Certificate Officer, Saharsa, District - Saharsa

6. The Certificate Officer, Saharsa Sadar, Saharsa, District - Saharsa

7. The Secretary, Department of Energy, Govt. of Bihar, Patna

..... Respondents

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Appearance :

For the Petitioners : Mr. Rajeev Kumar Verma, Sr.
Advocate

Mr. Rajkishore Prasad, Advocate

For the Resp. NBPDCCL : Mr. Vinay Kirti Singh, Advocate

Mr. Akhileshwar Singh, Advocate

For the State : Mr. Ranjay Kumar Singh,
AC to SC 16

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-04-2016

Heard learned counsel for the petitioners, learned
counsel for the respondent Power Company and for the State.

I.A. No. 537 of 2015

2. This Interlocutory Application has been filed for

amendment in the prayer portion of the writ petition by incorporating prayer Nos. (iv) and (v) as enumerated. At the time of hearing, however, learned counsel for the petitioner does not press the proposed prayer No. (iv) and seeks permission to delete the same, which is granted. It is further prayed that prayer No. (v) be permitted to be incorporated in the writ petition, reading as follows :-

“(v) To issue an appropriate writ(s)/order(s)/direction(s) in the nature of writ of Mandamus directing the respondents to grant an opportunity to file a detailed objection under Section 9 of the Bihar and Orissa Public Demands Recovery Act, 1914 (“PDR Act” hereinafter) and till the final adjudication of the objection so filed by the petitioners, the warrant of arrest directed to be issued against the petitioner no. 2 may be kept in abeyance.”

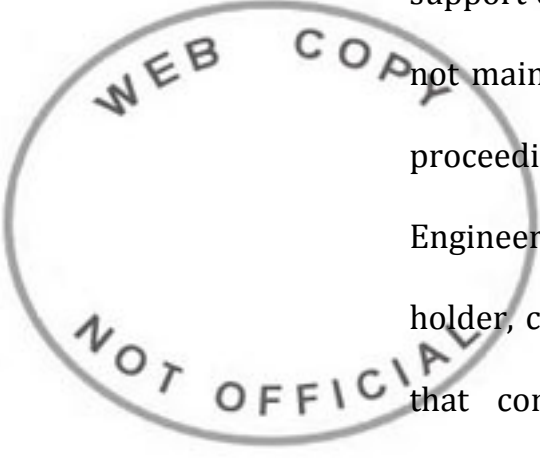
3. Having regard to the nature of prayer, the same is allowed.

4. I.A. No. 537 of 2014 stands disposed of.

CWJC No. 2311 of 2014

The present writ petition has been filed for quashing the entire certificate proceeding arising out of Certificate Case No. 59 of 2001-02 pending before the respondent Certificate Officer; and for connected reliefs.

2. Learned counsel for the petitioner raises several issues in



the present writ petition and has made detailed submissions in support of his contention that the entire certificate proceedings are not maintainable. He has, inter alia, contended that the impugned proceedings are illegal on the ground that the Electrical Executive Engineer (Rev.), Electrical Circle, Saharsa, being the certificate holder, could not himself have acted as the Certificate Officer, and that consequently, the subsequent resumption of the same certificate proceedings by the District Certificate Officer, Saharsa after a lapse of several years is unsustainable. Having heard learned counsel for the petitioner, however, this Court is of the view that the writ petition can be disposed of on the foundational question relating to the validity of the requisition issued under Section 5 of the PDR Act by the Electrical Executive Engineer (Rev), and the merits of the remaining contentions of the petitioner need not be entered into.

3. It is submitted that a bare perusal of the said requisition makes it obvious that the same has been issued in the name of Sri Kartik Kumar, the petitioner no. 2 herein, who happens to be the Managing Director of M/s Vishal Rolling Mills Pvt. Ltd., the petitioner no. 1. By the said requisition, a certificate proceeding is sought to be initiated for recovery of the dues relating to the said petitioner company. Learned counsel for the petitioner relies on a decision of this Court in *Kanhaiya Lal vs. The State of Bihar and*

others [2002 (2) PLJR 553], in view of which it is submitted that dues owing by a company cannot be recovered from its Director.

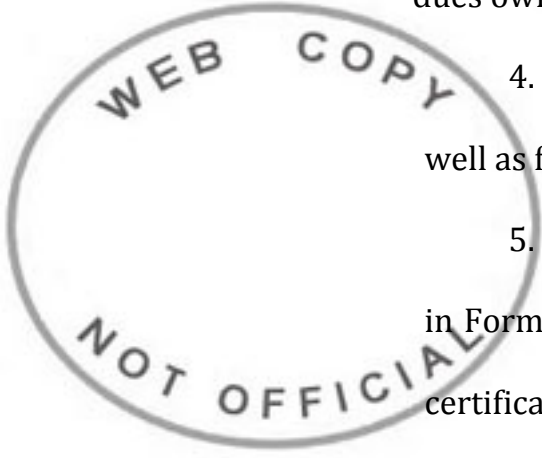
4. Learned counsel for the respondent power company as well as for the State have been heard.

5. It is not in dispute between the parties that the requisition in Form no. 2 describing Sri Kartik Kumar, petitioner no. 2, as the certificate debtor in column 1 thereof has been issued by the certificate holder. It is also not in dispute that Rs. 1,39,31,286/- sought to be recovered through certificate proceeding represents the dues of the petitioner company and not of the petitioner no. 2. Based on such requisition, a certificate in Form no. 1 has been filed in the office of the Certificate Officer, Saharsa, column no. 3 whereof names the petitioner company as the certificate debtor.

6. Section 5 of the PDR Act provides for issuance of a written requisition in respect of any public demand which is due against a person to be sent to the certificate officer. Section 6 of the PDR Act makes it clear that the certificate may be filed upon receipt of the aforesaid requisition. Evidently therefore, the certificate is based on the requisition itself and cannot be filed in respect of a certificate debtor other than the certificate debtor as shown in the requisition, as done in the instant case.

7. In *Kanhaiya Lal (supra)* this Court has held as follows:-

“.....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."

8. In the aforesaid view of the matter therefore, this Court

holds that the requisition issued by the certificate holder against the petitioner no. 2 for recovery of dues said to be owed by the petitioner no. 1 must be held to be invalid, and consequently, the certificate filed against petitioner no. 1 cannot be sustained. In the result, certificate proceedings in Certificate Case No. 59 of 2001-02 including the requisition issued in Form no. 2 and the certificate issued in Form no. 1 (Annexure 3 series) are hereby quashed. It is, however, made clear that the respondents shall be at liberty to issue a requisition for initiation of certificate proceedings afresh in accordance with law for recovery of the dues of Rs. 1,39,31,286/- against the petitioner no. 1.

9. It is also made clear that this Court has not entered into the merits of the other contentions raised in the writ petition.

10. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.04.2016
Transmission Date	