

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2026 of 2014

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Krishna Kumar Choudhary, S/o Sri Birendra Choudhary, R/o Mohalla - Lal Darwaza, P.S.- Kotwali, District- Munger

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, the Department of Excise, Government of Bihar, Patna
3. The District Magistrate, Munger
4. The Excise Superintendent, Munger
5. The Certificate Officer, Munger

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashutosh Ranjan Pandey,
Mr. Rakesh Narayan Singh, Advocates
For the Respondents: Mr. Hari Shankar Roy, AC to Pr. AAG

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 23-02-2016

The present writ petition has been filed for quashing the entire certificate proceedings in Certificate Case No. 4 of 2013-14 in terms of the notice dated 28.06.2013 issued by the Certificate Officer, Munger (Annexure-10) including the relevant requisition dated 10.05.2013 issued by the Superintendent of Excise, Munger for an amount of Rs. 34,38,320/- to be recovered from the petitioner.

2. It is submitted on behalf of the petitioner that the entire certificate proceedings are wholly illegal and unsustainable. For the financial year 2012-13, the petitioner was granted settlement for country made liquor shop in Munger Municipal Corporation area pursuant to an advertisement for which he deposited Rs. 44,10,000/- as security deposit and an advance of Rs. 4,81,470/- prior to the



commencement of business. The petitioner also deposited the monthly licence fee till July, 2012 but owing to various reasons, he could not deposit the licence fee of the months of August and September, 2012. In due course, a notice dated 28.09.2012 was issued to the petitioner by the Superintendent of Excise, Munger raising a demand for Rs. 10,28,970/- said to be in arrears, failing which the petitioner's licence was directed to be suspended. Thereafter a requisition dated 10.05.2013 was issued for an amount of Rs. 34,38,320/- in pursuance of which the impugned notice dated 28.06.2013 under Section 7 of the Bihar & Orissa Public Demands Recovery Act, 1914 (for short, "the Act") by the Certificate Officer, Munger for the said amount came to be issued to the petitioner. Learned counsel submits that the recovery in terms of the Act is impermissible in absence of any written agreement between the parties authorizing the respondents to have recourse to the Act for recovery of the sum in question.

3. Learned counsel for the respondents, on the other hand, opposes the writ petition. He relies on the statements made in the counter affidavit filed on behalf of the Superintendent of Excise, Munger (respondent no. 4) to submit that the petitioner had defaulted in making payment of the monthly licence fees and the amount of Rs. 10,28,970/- demanded against the petitioner was an amount payable

to the Collector and hence, action sought to be taken under the provisions of the Act is justified.

4. Having heard the parties and on careful consideration of the materials available on record, this Court finds considerable merit in the writ petition. It is not in dispute that the amount in question relates to the arrears of monthly licence fee payable by the petitioner in terms of Licence No. 02/2012-13 for the retail vending of country liquor including spiced country liquor (Annexure-1). Neither the licence nor even the NIT contained any provision for recovery of the arrears of licence fee by means of certificate proceeding. It is also not in dispute that no separate agreement has been entered into between the parties by which the respondents were authorized for recovery under the Act. It is the respondent's own case as evident from paragraph 28 of the counter affidavit that the demand in question is being sought to be recovered with reference to Article 9 of Schedule-I of the Act.

5. Section 4 of the Act authorizes the Certificate Officer to file a certificate in his office on being satisfied that any public demand payable to the Collector is due. The term "public demand" has been defined in Section 3(6) to mean "any arrear or money mentioned or referred to in Schedule I" It is, therefore, evident that before any amount due to the Collector may be subjected to

recovery proceedings by resorting to the provisions of the Act, the same must qualify as a “public demand” and it must, therefore, be demonstrated to fall within any of the Articles of Schedule I to the Act.

6. In the instant case, the respondents have relied on Article 9 of Schedule I to submit that the amount owing from the petitioner is a “public demand”. The said Article 9 reads as follows:-

“9. Any money payable to a servant of the Government or any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument, that it shall be recoverable as a public demand.”

7. It is thus evident that a written instrument of agreement for recovery as a public demand is a sine quo non, which undisputedly does not exist in the present case.

8. In the above view of the matter, therefore, it must be held that the nature of the amount sought to be recovered from the petitioner cannot constitute a ‘public demand’ in absence of any express agreement being a pre-condition of Article 9 of Schedule I of the Act and hence, the same is incapable of being recovered by the respondents by resorting to the provisions of the Act.

9. The impugned requisition dated 10.05.2013, notice issued under Section 7 of the Act dated 28.06.2013 and consequently,

the entire certificate proceedings in Certificate Case No. 4 of 2013-14
are hereby quashed. The writ petition is allowed.

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(Vikash Jain, J)