

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20210 of 2011

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Gaya Prasad Diwakar Son of Late Halkhori Thakur Resident of Mohalla-South Chakkar Maidan, Muzaffarpur, Police Station-Muzaffarpur Mufassil, District-Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Nirman Bhawan, Baily Road, Patna.
2. The Engineer-In-Chief, Road Construction Department, Government of Bihar, Nirman Bhawan, Bailey Road, Patna.
3. The Chief Engineer, Road Construction Department, Government of Bihar, Nirman Bhawan, Bailey Road, Patna.
4. The Superintending Engineer, R.C.D. North Bihar Circle, Muzaffarpur.
5. The Executive Engineer, Road Construction Division No.2, Muzaffarpur.
6. The District Certificate Officer, Muzaffarpur.

.... Respondents

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Appearance:

For the Petitioner : Mr. Uma Shankar Tiwary, Advocate
For the Respondents : Mr. Yogendra Pd. Sinha, AAG 7
Mr. Shankar Kumar, AC to AAG 7

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-10-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the demand notice issued by the District Certificate Officer, Muzaffarpur to the petitioner (Annexue-4); and for connected reliefs.

3. The short facts according to the petitioner are that he retired on 31.01.2001 as Junior Engineer from the Road Construction Division, Muzaffarpur and handed over charge to the successor Junior



Engineer along with the balance bitumen on that day. In due course, a certificate came to be issued against the petitioner in Certificate Case No. 185 of 2011-12 at the instance of the respondent Executive Engineer, Road Construction Division, Muzaffarpur for recovery of an amount of Rs. 17,64,768/- (Rs. 15,14,768/- towards cost of bitumen + Rs. 2,50,000/- towards advance unadjusted).

4. Learned counsel for the petitioner submits that the entire certificate proceeding is wholly illegal and without jurisdiction, inasmuch as the pre-conditions of Article 9 of Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914 (for short “the PDR Act”) are not fulfilled in the absence of a written instrument by which the petitioner might have agreed to recovery of the amount under the Act, and hence the amount in question does not constitute a “public demand” within the meaning of Section 3(6) of the PDR Act. Reliance is placed on the decision of a Division Bench of this Court in *Indradeo Prasad Sinha vs. The State of Bihar and Ors.*, 1992 BBCJ 162.

5. It is submitted on behalf of the petitioner that even otherwise the amount in question is not recoverable, as liability for the same is being seriously disputed and the amount is not due from the petitioner at all. It is pointed out that departmental proceedings were never initiated with regard to the alleged defalcation of bitumen or advance prior to his retirement. On the other hand, the document of handing over and taking over charge on 31.01.2001 clearly shows that



the petitioner delivered the balance bitumen (Annexure-1). Further, the complete account of the bitumen relating to the period April, 1998 to December, 2000 was also submitted to the Assistant Engineer, which was duly incorporated (Annexure-4). Similarly, the petitioner also submitted accounts to the Assistant Engineer for the advance of Rs. 2,50,000/- received from the Assistant Engineer for executing the maintenance work of the Road Department, which showed that the advance was reduced to nil by payments vide voucher nos. 1 to 135. It is therefore, submitted that nothing whatsoever remained due from the petitioner, much less to the extent of the amount sought to be recovered by resorting to recovery proceedings under the PDR Act.

6. Learned counsel for the State submits that in view of the notice under Section 7 of the PDR Act having been served on the petitioner, adequate statutory remedy is available to the petitioner by filing an objection petition denying his liability under Section 9 of the PDR Act. He also refers to paragraph 23 of the counter affidavit to submit that the petitioner did not furnish the accounts relating to the bitumen and the cash advance despite a number of letters requiring him to do so.

7. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. It is well settled that existence of an alternative remedy is *per se* not an absolute bar to exercise of discretion under writ jurisdiction,

particularly when the action complained against is wholly without jurisdiction. The facts pleaded by the petitioner have not been disputed by the respondents. There is no dispute that there is no written instrument to satisfy the requirement of Article 9, Schedule I of the PDR Act, and in view of this, the amount sought to be recovered in certificate proceedings cannot qualify as a “public demand”. The action of the Certificate Officer therefore, suffers from inherent lack of jurisdiction to proceed in the matter. The facts relating to handing over of the bitumen (Annexure-2) and accounting of the advance of Rs. 2,50,000/- in its entirety (Annexure-3) by the petitioner have also not been disputed by the respondents. In such circumstances, the certificate proceedings must be held to be wholly illegal and without jurisdiction.

8. The impugned notice under Section 7 of the PDR Act (Annexure-4) is accordingly hereby quashed and the writ petition stands allowed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
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