

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.7389 of 2014**

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Vijay Chauhan son of Shri Bishwanath Chouhan, resident of Village- Bhitiharwa,
P.S. Gaunaha, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary Department of Finance, Government of Bihar, Patna.
2. The Commissioner, Commercial Taxes, Government of Bihar, Patna.
3. The Assistant Commissioner, Commercial Taxes, Bettiah Circle, Bettiah, West Champaran.
4. The Additional Collector-cum-Chief Certificate Officer, Bettiah, West Champaran.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate.

For the Respondent/s : Mr. Lalit Kishore(PAAG)

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-01-2016

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

2. The present petition has been filed for quashing the order dated 03.10.2013 as well as the order dated 01.11.2013 passed by the Additional Collector cum-Chief Certificate Officer, Bettiah, West Champaran in Certificate Case No. 27 of 2002 whereby and whereunder the warrant of arrest has been ordered to be issued and petition for objection filed on behalf of petitioner has been illegally, arbitrarily and mechanically rejected.

3. Learned counsel for the petitioner states that his earlier petition in C.W.J.C. No. 5340 of 2007 was disposed of by

this Court in its order dated 13.07.2007, *inter alia*, observing as follows:-

"Since, the petitioner has already appeared in the Certificate proceeding, he may file his objection deny the liability to pay the tax dues as demanded by the respondent authorities and in case, it is so done, the same would be considered and decided by the Certificate Officer under the power envisaged under Section 9 of the Bihar & Orissa Public Demands Recovery Act and necessary decision shall be rendered in accordance with law. Till a decision is taken by the authorities, no coercive steps shall be taken against the petitioner. The petitioner undertakes to file his objection etc. within a period of four weeks from today".

4. It is admitted that the petitioner was able to file his objection petition under Section 9 of the Bihar & Orissa Public Demands Recovery Act (for short, "the Act") only on 02.05.2008 along with a petition for condonation of delay in view of his illness for which he was under treatment. The petition for condoning the delay was never rejected by the Certificate Officer rather the certificate proceeding was taken forward by granting opportunity to both the sides. On 04.08.2009, the petitioner even filed written arguments which was taken on record and in due course on 04.08.2010, opportunity was granted to the petitioner and it was observed



that in case the petitioner did not avail such opportunity of hearing, the matter would be decided on the basis of available materials on record. Thereafter, by the impugned order dated 03.10.2013, warrant of arrest was issued against the petitioner without deciding the objection petition under Section 9 of the Act on merits. By the further order dated 01.11.2013, the said objection petition under Section 9 has been rejected without considering the merits of the matter and without reference to the material on record by way of the aforesaid written arguments also available on record.

5. Learned counsel for the respondents submits that the petitioner was required to file his objection petition under Section 9 of the Act within a period of four weeks in terms of the order of this Court and if he was prevented from doing so on the ground of illness, the appropriate course would have been to approach this Court for the purpose of extension of time for filing the objection petition.

6. Having heard the parties and on consideration of the materials on record, this Court is of the view that in the interest of justice, the petitioner may be granted one more opportunity to appear before the Certificate Officer to support his objection petition. It would appear that the prayer for condonation of delay was filed by the petitioner bona fide which has not been rejected and the matter was proceeded with by

the Certificate Officer by grant of opportunity to both the parties. It is also a matter of record that the petitioner has been appearing before the Certificate Officer from time to time.

7. In the above view of the matter, therefore, the impugned order dated 01.11.2013 is set aside with a direction to the Certificate Officer to grant a further opportunity to the petitioner of being heard before passing orders afresh, disposing of the petitioner's objection petition under Section 9 of the Act on merits in accordance with law.

8. It is made clear that till disposal of the objection petition as aforesaid, no coercive steps shall be taken against the petitioner pursuant to the warrant of arrest issued in Certificate Case No. 27 of 2002. It is made clear that in case the petitioner once again fails without reasonable cause to appear before the Certificate Officer on the date fixed, the Certificate Officer shall be at liberty to proceed in the matter in accordance with law.

(Vikash Jain, J)

Md. Ibrarul/-

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