

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9952 of 2007

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1. Kumar Oil Industries, Runisaidpur, P.S. Runisaidpur, District Sitamarhi through its Proprietor Ram Pramod Gupta.
2. Ram Pramod Gupta alias Pappu Saw, Son of Shri Satya Narain Gupta, resident of village Saidpur, P.S. Runisaidpur, District Sitamarhi

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Cooperative Department, Bihar, Patna.
2. Registrar, Cooperative Societies, Bihar, Patna

.... Respondents 1st Party

3. The Central Cooperative Bank Ltd., Sitamarhi through the Managing Director-cum-Certificate Officer, Dumar, Sitamarhi

4. The Managing Director, the Central Cooperative Bank, Sitamarhi

... ... Respondents 2nd Party

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Appearance :

For the Petitioner : Mr. Yogendra Mishra, Sr. Advocate
Mr. Arvind Kumar Jha, Advocate

For Respondent-State : Mr. Kinkar Kumar, SC 9
Mr. Rakesh Kr. Sharma, AC to SC 9

For Respondent-Bank : Mr. Pushpendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-10-2016

Heard learned counsel for the petitioner, learned counsel for the respondent-State and also learned counsel for the respondent-Bank.

2. The present writ petition has been filed being aggrieved by the demand of Rs. 2,00,440/- sought to be recovered by resort to Certificate Case No. 672 of 1997-98; and for a direction to the respondents to finalize the claim under the One Time Settlement Scheme.

I.A. No. 8863 of 2013

3. This interlocutory application has been filed for amendment of the writ petition by adding relief nos. 4 and 5 as follows-

“4. An appropriate writ, order or direction quashing the entire proceeding of Certificate Case No. 672 of 1997-98 declaring as illegal, void and without jurisdiction, be issued.

5. An appropriate writ, order or direction commanding the respondents 3 and 4 or anybody else to forebear from taking any step in the said Certificate Case No. 672 of 1997-98 against the petitioner, be issued.”

Having regard to the nature of the prayer, the interlocutory application is allowed and the petitioner is permitted to make appropriate amendment in the writ petition.

4. Learned counsel for the petitioner makes a short submission to assail the jurisdiction of the Certificate Officer. A specific stand has been taken to the effect that for recovery of the dues from the petitioner, the Branch Manager of the respondent Central Cooperative Bank became the requisitioning officer and the Managing Director of the said Bank (respondent no. 4) became the Certificate Officer. Accordingly, Certificate Case No. 672 of 1997-98 came to be initiated at the instance of the Managing Director of the Bank which has been illegally continued against the petitioner. It is submitted that it is now well-settled by a number of judgments of this Court that an employee of a financing agency cannot act as the Certificate Officer for

recovery of the dues owing to it.

5. Learned counsel for the respondent-Bank has filed a counter affidavit. However, he is unable to controvert the facts stated by the petitioner. It has not been denied that the Managing Director of the said Bank has initiated the Certificate Case No. 672 of 1997-98 for recovery of the dues owing to the Bank.

6. Having heard the parties and on careful consideration of the materials on record, this Court finds considerable merit in the writ petition. In *Bihar State Credit & Investment Corporation Ltd Vs. Rajani Ranjan Sahau & ors.*, 2006(1) PLJR 212, a Division Bench of this Court upon extensive discussion with reference to various decisions on the subject, concluded as follows —

“78. The aforementioned decisions of the Supreme Court fully support the plea of the respondents-writ petitioner that the powers under the P.D.R. Act with regard to the mode of execution of a certificate and other incidental matters are sovereign powers and unalienable functions of the State that can be discharged only by an officer of the State Government directly under its administrative and disciplinary control and not by any private person or an employee of the Corporation.

79. The contention that the power to appoint ‘any officer’ as Certificate Officer presupposes that that officer would be under the direct administrative control of the Government can be viewed from another angle. In this case, it may be presumed that the Assistant Law Officer was appointed as the Certificate Officer on the request of the Corporation and with the consent of the Officer. But purely from the point of view of interpretation, the consent of the concerned officer would be wholly immaterial if the provision of section 3(3) is to be given the meaning as suggested by the appellants. Let us now take the case where the Collector, with due sanction from the Commissioner, appoints an Officer of the State Bank of India or the Electricity Board as ‘Certificate

Officer'. What will be the situation if the officer so appointed simply refuses to work as Certificate Officer? The employer, the Bank or the Electricity Board as the case may be, may find it difficult to take any action against him because to discharge the duties of a Certificate Officer is not a part of his contract of service. The State Government, of course, cannot take any action for the simple reason that there is no relationship of employer and employee between the two.

80. Moreover, if 'any officer' is to be appointed as Certificate Officer, then there is no bar that he should only deal with the dues of the organizations to which he belongs. Can, therefore, the Assistant Law Officer of the Corporation be also empowered to deal with cases of recovery of other dues, including those of the Government, the State Bank of India or the Bihar State Electricity Board? The answer can only be in the negative."

7. Similar observations of a learned Single Bench of this Court have been made in CWJC No. 6711 of 2006 (*Manoj Kumar Mathur vs. The Bihar State Credit & Investment Corporation Limited & others*) and other analogous cases.

8. As stated above, the respondents have not disputed that the requisitioning officer and the Certificate Officer are both officials of the respondent-bank and the Managing Director of the Bank has become the Certificate Officer. This is clearly not permissible within the meaning of the term 'any officer' as contemplated in Section 3(3) of the Bihar & Orissa Public Demands Recovery Act, 1914 (for short, "PDR Act"), which cannot include an official of the financing agency within its sweep. The initiation of the certificate proceeding and continuance thereof must be therefore held to be entirely without jurisdiction and are accordingly hereby quashed.

9. The writ petition stands allowed. It is made clear that since the writ petition has been allowed on the jurisdictional issue itself, this Court is not considering the merits of the other claims and submissions of the parties. It is further made clear that the present judgment shall not stand in the way of the respondents in taking steps for recovery of the dues from the petitioner appropriately as may otherwise be permissible in accordance with law.

(Vikash Jain, J)

B.T/Ibrar

AFR/NAFR	NAFR
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