

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18750 of 2008

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Awadhesh Kumar Singh son of Narayan Prasad Singh, resident of village-
Balaitha, P.O. Dhodhi, P.S. Beldaur, Khagaria. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Khagaria
3. The District Certificate Officer, Khagaria
4. The State Bank of India through its Branch Manager, Jamalpur Gogri,
P.O. Jamalpur, P.S. Gogri, District-Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Firoz Shamim
Mr. Subodh Kumar

For the SBI : None

For the State : Mr. Suman Kumar Jha

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

4 22-03-2017 Heard Learned counsel for the petitioner and learned
counsel appearing on behalf of the State. However, no one appears
on behalf of the respondent-State Bank of India.

This writ application was filed for quashing the order dated
order dated 04.08.2008 passed by the learned Collector, Khagaria
in Certificate Appeal No. 4/2006-07 contained in Annexure-2 by
which he allowed the appeal and set aside the order dated
14.08.2006 in Certificate Case No. 21 of 2004-05 passed by the
District Certificate Officer, Khagaria (Respondent No. 3). The
Collector had also directed the Court below to put a signature on
the current date over the requisition of the certificate proceeding.

The aforesaid order was challenged in this Court on the
main ground that the same was passed without affording the
petitioner any opportunity of hearing. Furthermore, it was



contended that the Certificate issued in Certificate Case No. 21 of 2004-05 by the District Certificate Officer was vitiated and non est in the eye of law and it had been passed suppressing the statutory provisions as contained in Section 6 of the P.D.R. Act.

The matter had been heard earlier by this Court, which after considering the previous judgments of this Court had allowed the writ application and set aside the impugned orders. However, the respondent-Bank choose to challenge in an intra court appeal contending that the order dated 17.05.2010 passed by the writ Court was bad as it had been passed without hearing the respondent-Bank. Accordingly, the matter has come back to this Court on remand and is being heard.

Today also, there is no representation on behalf of the State Bank of India.

Learned counsel for the State submits that the position in the eye of law has not changed till date. The order which passed quashing the impugned orders of the present writ application who had been on the basis of the Division Bench judgment of this Court which is reported in 1998 (2) PLJR 498 (Jai Prakash Dwivedi Vs. The State of Bihar and Ors.) and settles the law on the present issue in paragraph No. 3 of the said judgment, this Court has held in the following terms:-

“3. Mr. Kamendra Kumar, counsel for the respondent Bank, however, submitted that omission to sign the certificate does not go to the root of the matter. It is at best a mere irregularity which can be cured. Reliance was placed on **Dwarika Ram Jagatranka**



alias **Dwarika Prasad Jagatranka vs. State of Bihar** (1963 BLJR 655). We have examined the said decision. The facts of that case were quite distinguishable. The point at issue is fully covered by the language of section 6 of the Bihar Public Demands Recovery Act itself. The said section read as hereunder:

‘6. *Filling of certificate on requisition.*-On receipt of any such requisition, the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due and shall include in the certificate the fee if any paid under section 5, sub-section(2) and shall cause the certificate to be filed in his office.’

From bare perusal of the above provision it would appear that the Certificate Officer may sign the certificate on receipt of the requisition but only on being satisfied that the “demand” is recoverable and that its recovery is not barred by any law. The certificate officer is thus expected to apply his mind and then sign the certificate. In that view of the matter, we are satisfied to hold that the omission to put the signature on the certificate is not an empty formality but goes to the root of the matter. It cannot be said that the certificate officer was satisfied about the recoverability of the public demand. The certificate in question will be deemed to be no certificate in the eye of law.”

Considering the matter and the provisions of law in this regard, I have no hesitation in holding that the impugned order dated 04.08.2008 as contained in Annexure-2 stand vitiated as being against the statutory provisions. Accordingly, the same is quashed.

The writ application stands allowed.

However, in the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

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