

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23768 of 2012

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1. Manohar Sao @ Man Singh S/O Late Moti Sao resident of Village & P.O- Giriyak, District- Nalanda.
 2. Kishori Sao @ Tuntun S/O Late Moti Sao, resident of Village & P.O- Giriyak, District- Nalanda.
 3. Bimlesh Kumar @ Lattan S/O Late Moti Sao, resident of Village & P.O- Giriyak, District- Nalanda.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The District Magistrate- Cum- Collector, Nalanda at Biharsharif.
3. The Sub Divisional Officer, Rajigr in the Distt- Nalanda.
4. The Additional Collector-Cum- Officer on Special Duty Cum Certificate Officer, Nalanda.
5. The Block Development Officer, Giriyak in the district of Nalanda.
6. The Officer in charge, Giriyak Police Station in the distric of Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Md. Obaidullah, Advocate.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

13 02-05-2017

Heard learned counsel for the petitioners and
learned counsel appearing on behalf of the State.

The petitioners seek a writ in the nature of



certiorari, quashing the entire proceedings and Certificate Case No. 15/2011-2012, which is pending in the Court of Additional Collector-cum-Officer on Special Duty (Purchase) cum Certificate Officer, Nalanda at Biharsharif. The further prayer of the petitioners is to quash the notice, dated 12.12.2011, issued in Certificate Case No. 15/2011-2012, whereby and whereunder a demand of Rs. 35,45,160/- has been made.

The facts which led rise in the present application is that the petitioners' late father, Moti Sao being a P.D.S. dealer availed the facility under the "Sampoorna Gramin Rojgar Yojna", had lifted foodgrains (Rice) at Rs. 10/- per k.g. and thus, became liable for payment of an amount of Rs. 35,45,160/-. The amount aforesaid is said to be recoverable under the Public Demand Recovery Act.

It is submitted by the petitioners that one Giriyak P.S. Case No. 162 of 2005, dated 07.12.2005 was instituted under Section 406 of the Indian Penal Code, of which Bharat Pd. Singh (Block Development Officer) was the informant and late Moti Sao, father of petitioners (since deceased), was made an accused, wherein it was alleged that the P.D.S. dealer, who had the licence of the Shop, had been cancelled for alleged irregularities. The details of the first information report need not be gone into and it



can be said that the petitioners' late father was proceeded against and cognizance was taken vide order dated 04.08.2006. The petitioners' late father was taken into custody and while in custody, as the bail of the late Moti Sao was refused by this Court, the petitioners' late father died on 03.09.2006. Accordingly, the case was dropped and closed by order dated 05.09.2006.

Strangely enough, though the case against the petitioners' late father was dropped, the Block Development Officer, Giriyak, Nalanda has filed a requisition for issuance of certificate in the Court of Certificate Officer claiming therein for recovery of Rs.35,45,160/- . Thereafter, the Certificate Officer vide notice dated 12.12.2011 has sent a notice to the petitioners annexing the copy of the certificate. It is against the said notice and also the entire proceedings that the petitioners have preferred the present writ application.

Learned counsel for the petitioners submits that though the petitioners' late father died wayback in the year 2006, the present certificate proceedings have been initiated against the petitioners after a lapse of five years which is wholly barred under the statutory provisions of the Public Demand Recovery Act. He further submits that since the very initiation of the certificate proceedings is barred, the notice is wholly illegal and arbitrary and



thus, the same is fit to be quashed.

A counter affidavit has also been filed by the Block Development Officer-cum- Executive Magistrate, Giriyak, Nalanda, who has stated that the entire certificate proceedings bearing Certificate Case No. 15/2011-2012 which is pending before the Certificate Officer is wholly legal and valid, as admittedly, the petitioners are the legal heirs of the deceased Moti Sao against whom the first information report had been lodged in the year 2005. It was submitted that the dues which were that of the petitioners' late father remained pending and, therefore, the certificate case has been instituted against his heirs for recovery of the dues of their late father Moti Sao. As such, it is submitted that the notices issued in pursuance of the said requisition are wholly legal and valid and does not warrant interference by this Court.

Having heard learned counsel for the petitioners and learned counsel for the State, it appears that the proceedings have already been closed against the late father and are now hit by the principles of limitation and cannot be entertained. The said issue has already been resolved in catena of judgement of this Court and has been recently decided by this Bench of this Court in C.W.J.C. No. 21332 of 2011.

A perusal of Section 65(2) of the Bihar and Orissa



Public Demand Recovery Act, 1940 clearly bars any proceeding beyond a period of three years. It appears that this is wholly applicable in respect of the contention of the petitioners wherein the respondents have proceeded against the petitioners after a lapse of five years which is hit by the provisions of Section 65(2) of the Act. Section 65(2) reads as hereunder.

65. Application of the (Limitation Act, 1963)-

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2. “Except as declared in sub-section (1), or as otherwise provided in this Act, the provisions of the (Limitation Act, 1963), shall apply to all proceedings under this Act as if a certificate filed hereunder were decree of a Civil Court.”

In a judgement reported in 2007(4) PLJR 590 passed in the case of *M/s Lal Chand Panna Lal & Ors. Vs. The State of Bihar & Ors.* This Court at paragraph -13, holds such a demand in the following terms:-

“In the counter affidavit it has specifically been stated that the demand relates to the period 10.05.86 to August, 1998 and September, 1988 to November, 1997. Section 65 Sub-section (2) of the



P.D.R. Act, 1914 provides: that the provisions of Limitation Act shall apply to all proceedings under this Act as if a certificate filed hereunder were decree of a Civil Court. The limitation as provided is of three years. The requisition for initiating Certificate proceeding was filed on 09.09.2005 much beyond the period of limitation. In spite of that the Certificate Officer has signed a Certificate under Section 6 of P.D.R. Act that recovery is not barred by any law. This objection raised by the petitioner has not been answered or denied specifically in the counter affidavit. The certificate proceeding is apparently barred by limitation. If the statute has casted a duty upon the statutory authority to act in a particular manner, he must act in that manner only, and this act must be justifiable under the provisions of the Act. The applicability of the Limitation Act under the P.D.R. Act makes it obligatory for the Certificate Officer to verify before issuance of Certificate that the certificate proceeding is not barred by limitation.”



This Court finds that in the present case the proceedings initiated against the petitioners were clearly started much after the period of limitation prescribed under the Act. As such, the same is hit by the principles of law of limitation and thus, cannot be sustained. The notices issued in pursuance thereof are also barred and cannot be justified on any score as Section 65(2) of the PDR Act clearly bars the institution of such a proceeding. Therefore, the contention of the petitioners that they stand vitiated is fit to be accepted.

In the result, the entire proceedings in Certificate Case No. 15/2011-12 and also the notice dated 12.12.2011 as contained in Annexure- A are quashed.

The writ application stands allowed.

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

(Anjana Mishra, J)

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