

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3584 of 2015

=====

Devendra Kumar Singh, Son of Late Chandeshwar Singh, Resident of village -
Kanchanpur, P.O. Kanchanpur, P.S. Bihta, District - Patna

.... Petitioner

Versus

1. The State of Bihar through Revenue Secretary, Bihar, Patna
2. The Sub-Divisional Officer-cum-Certificate Officer, Danapur, District - Patna
3. The Bihar State Power Holding Company Ltd through the Energy Secretary-cum-Chief Managing Director, Bihar, Patna
4. The South Bihar Power Distribution Company Limited, through the Managing Director, Bailey Road, Patna
5. The Executive Engineer, Electric Supply Division, Bihta, Patna
6. The Assistant Electrical Engineer, Electric Supply Sub - Division, Bihta, Patna

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Nawal Kishore Singh,
Mr. Jitendra Nath Tiwary
Mr. Upendra Mishra, Advocates

For the Respondents : Mr. Sudhanshu Shekhar, AC to SC 24

For Respondent-SBPDCL: Mr. Vinay Kirti Singh, sR. Advocate
Mr. Vijay Kr. Verma,
Mr. Akhileshwar Singh, Advocates Advocate

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-08-2018

Heard learned counsel for the petitioner, learned counsel
for the State as well as learned senior counsel for the respondent-
South Bihar Power Distribution Company Limited.

2. The present writ petition has been filed for quashing
the entire proceedings of Certificate Case No. 108/2013-14 initiated by
the Certificate Officer, Danapur against the petitioner on the
requisition for a certificate sent under Section 5 of the Bihar and Orissa
Public Demand Recovery Act, 1914 (for short, "PDR Act") requesting



the Certificate Officer (Respondent No. 2) to recover Rs. 3,23,471/- from the petitioner towards electrical energy supplied; for quashing the impugned order dated 02.02.2015 directing the petitioner (certificate debtor) to deposit the certificate amount of Rs. 3,23,471/- by 02.03.2015; for quashing the requisition dated 06.12.2013 sent under Section 5 of the PDR Act; and further for staying the proceeding by restraining the Certificate Officer (Respondent No. 2) from proceeding in the said certificate case.

3. Learned counsel for the petitioner questions the validity and legality of the subject certificate proceedings on various counts as follows –

(i) The requisition issued under Section 5 of the PDR Act has not been dated nor verified in the manner prescribed, which was a mandatory requirement under the PDR Act, and failure in this regard vitiated the entire proceeding.

(ii) The demand raised against the petitioner in the certificate proceedings was time barred in view of Clause 10.18 of the Bihar Electricity Supply Code, 2007 and hence, no certificate could have been filed.

(iii) The Certificate Officer could not have proceeded against the petitioner in absence of any written agreement and the petitioner had not consented for recovery of the demand through the



certificate proceedings under the PDR Act.

(iv) The certificate filed by the Certificate Officer (Annexure-2/A) is completely invalid as the same does not bear the signature of the Certificate Officer nor the certificate case number nor the date of certificate.

(v) A copy of the certificate was not enclosed with the statutory notice issued under Section 7 of the PDR Act, which was a mandatory requirement of the Act.

4. Counter affidavits have been filed on behalf of the State as well as the respondent-Power Company in opposition of the writ petition. Learned senior counsel for the respondent-Power Company has sought to submit that the requisition has been issued on 06.12.2013 which was well within the period of two years from the date when such amount became due and as such the certificate proceeding is not barred by limitation. It is further submitted with reference to paragraph 8 of the counter affidavit of the respondent - Power Company that under agriculture supply, all consumers had to enter into an agreement for supply of energy. Clause 10 of the agreement provides for recovery of dues under the provisions of the PDR Act.

5. Having heard learned counsel for the parties and on careful consideration of the materials available record, this Court finds



merit in the writ petition. A bare perusal of the requisition discloses that the same is neither dated nor has been verified. Similarly, the certificate is neither dated nor bears the signature of the Certificate Officer and does not also contain the certificate case number

6. It has been held by this Court in *Hari Prasad Agrawal Vs. State of Bihar* reported in 1975 BBCJ 723 and also in *M/s Vishnu Sugar Mills Limited Vs. The State of Bihar & others* reported in 2015(1) PLJR 863 that the entire certificate proceeding is rendered without jurisdiction for want of proper requisition and certificate.

7. The petitioner has specifically stated that no agreement had been entered into between the petitioner and the Power Company for recovery of the dues under PDR Act. In the counter affidavit it has merely been stated that all the consumers had to enter into an agreement. The specific stand of the petitioner however has not been controverted and no positive statement has been made that an agreement had in fact been entered into between the parties. The respondents have also not enclosed copy of any agreement in support of their contention. The respondents have also not disputed the contention of the petitioner relating to infirmities in the requisition issued under Section 5 of the PDR Act, nor in the certificate filed, nor failure to attach a copy of the certificate with the notice under Section 7 of the Act.



8. In the above circumstances, the certificate proceeding initiated against the petitioner in connection with Certificate Case No. 108/2013-14 in the court of the Certificate Officer, Danapur, Patna (respondent no. 2) is hereby quashed. The writ petition stands allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.09.2018
Transmission Date	N.A.

