

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24175 of 2013

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Sachchidanand Rai. Eden Transport Private Limited S/O Late Jaleshwar Rai
Flat No. 7, Third Floor, Loudan Street, Kolkata- 700017, Presently Residing At
Flat No. 202, Maa Sambhavi Apartment, Behind PNB Bank, Ashiana More, Rara
Bazar, Police Station- Shastri Nagar, District- Patna- 800014

.... Petitioner

Versus

1. The State of Bihar through Secretary, Department of Transport, Government of Bihar, Patna.
2. The Joint Commissioner Cum Secretary, Regional Transport Authority, Patna Cum Certificate Officer, Patna Division, Patna.
3. Bihar State Road Transport Corporation through its Managing Director, Sultan Palace, Bir Chand Patel Path, Patna.
4. The Chief Mechanical Engineer, Bihar State Road Transport Corporation, Sultan Palace, Bir Chand Patel Path, Patna.
5. The Administrator, Bihar State Road Transport Corporation, Sultan Palace, Bir Chand Patel Path, Patna.

.... Respondents

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Appearance:

For the Petitioner	:	Mr. Abhinav Shrivastava, Mr. Raushan, Mr. Kushagra, Mr. Nilanjan Chatterjee, Advocates
For the BSRTC	:	Mr. Mukul Sinha, Advocate Ms. Jahan Ara, Advocate
For the State	:	

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-09-2018

The present writ petition has been filed for the following reliefs__

- (i) To issue a writ in the nature of certiorari for quashing the entire certificate proceedings including consequential orders arising out of Certificate Case No. 08/2011-12 pending before



the Secretary, RTA and quashing the notice issued under Section 7 of the Bihar & Orissa Public Demands Recovery Act, 1914 (for short 'the PDR Act') whereby the petitioner is coerced for the payment of Rs. 36,40,995/- as being alleged dues and further quashing of warrant of attachment of moveable property in execution of decree for money dated 23.11.2013 arising out of Certificate Case No. 08/2011-12 issued under the signature of Certificate Officer and pursuant to thereto the authorities attached buses of the petitioner company on 29.11.2013.

(ii) To issue writ in the nature of mandamus commanding the respondents not to take any coercive action till the pendency of the Miscellaneous Application fled under Section 34 of the Arbitration and Conciliation Act, 1996 which is pending before the Court of learned Sub-Judge I, Patna.

(iii) To any other relief or reliefs to which the petitioner is found to be entitled in the facts and circumstances of the case.

2. At the very outset and without going into the detailed merits of the matter, learned counsel for the petitioner submits that the entire



certificate proceeding for recovery of the due of the company are wholly arbitrary and illegal as such dues are sought to be recovered from the petitioner who happens to be the Managing Director of the said Company- Eden Transport Private Limited. Learned counsel for the petitioner placed reliance in the case of Kanhaiya Lal vs. The State of Bihar and Ors., 2002 (2) PLJR 553 for the proposition.

3. Learned counsel for the respondents appears and has been heard. He is unable to controvert the stand of the petitioner except stating that the petitioner has signed the agreement between the parties, albeit in the capacity of the Managing Director of the company.

4. Having heard the parties and on consideration of the materials on record, this Court finds merit in the submission of the petitioner. It is well settled that the Managing Director of a company cannot be personally held liable for the amount recoverable from the company. It will apposite to advert to paragraphs 5 and 6 of Kanhaiya Lal's case (supra) which may fruitfully be reproduced hereunder –

"5. After hearing the counsel for the parties, we are of the view that the submissions of the counsel for the appellant are well founded and they must be accepted. The law on the point is well settled that the liability of the company cannot be enforced against its officers including Director or Managing Director. Amongst the decision cited by the counsel pointed reference may be made to two of them rendered in the context of the proceedings under the Public Demand Recovery Act, namely, those of Bejai Singh Dugar Vs. Certificate Officer, Bhagalpur (supra) and Damodar Prasad Nathani Vs. State of Bihar (supra). In the former case a Division Bench of this Court



after a detailed consideration of the matter observed that execution of certificate against the Managing Director of any company or for that matter any authority of the company for the dues of the company cannot be resorted to. Any debt payable by an incorporated company can be realized only by seizing the assets of the company and not by putting in prison the Managing Director or any of the officer of the company for, no individual associated with an incorporated company can be held liable for the dues of the company, which is a legal person having its own rights and liabilities. In the latter case, a learned Single Judge of this Court following the decision in Smt. Sarla Devi Agrawala Vs. State of Bihar (supra) held that the Directors of Shareholders of a company cannot be proceeded with for realization of dues against the company which can be realized only from the assets of a company which is a juristic person.

6. In the above view of the matter, there is no room for any doubt that the appellant could not be arrayed as a certificate-debtor as was initially sought to be done. It is relevant to mention here that the term certificate-debtor has been defined in Section 3(1) of the Act to mean, "the persons named as debtor in a certificate filed under this Act...". Thus the name of the appellant could not be included in the requisition made by the Electricity Board and in certificate signed by the Certificate Officer, therefore, rightly deleted the name of the appellant from the records of the proceeding."

5. In the above circumstances, I have no hesitation in holding that the entire certificate proceeding initiated in terms of the requisition dated 22.12.2011 and the certificate filed on 03.01.2012 (Annexure 13 series) are without jurisdiction and liable to be quashed. Ordered accordingly.

6. The writ petition stands allowed.



7. It is made clear that this judgment has been passed without entering into the other contentions of the petitioner.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2018
Transmission Date	NA

