

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15632 of 2015

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Prafulla Kumar, son of Late Vishnu Deo Sinha, resident of Mohalla-Khandakpar, P.O. + P.S.- Biharsharif, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Mines and Minerals Department, Government of Bihar, Patna.
2. The Collector, Nalanda, Biharsharif.
3. The Deputy Director, Mines and Minerals, Nalanda-cum-Certificate Officer, Mines and Minerals, Patna Circle, Patna.
4. The Assistant Mines Officer, Nalanda, Biharsharif.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Bibhakar Tiwary, Advocate.
For the State	:	Ms. Ratna Kumari, Ac to PAAG-2
For the Mines Dept.	:	Mr. Naresh Dixit
		Mr. Brij Bihari Tiwary, Advocates.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 06-12-2018

The present writ petition has been filed for the following

reliefs -

“(i) To issue an appropriate writ preferably in the nature of certiorari for setting aside the order dated 14.03.2014 passed in certificate case no. 04/07-08 by the Certificate Officer, Mines and Minerals, Patna Circle, Patna along with the entire certificate case no. 04/07-08 holding it to be inherently without jurisdiction.

(ii) To hold and declare that the certificate dated 08.03.2008 issued against the petitioner is not a certificate under the Bihar and Orissa Public Demand Recovery Act (hereinafter referred to as ‘the Act’) being not in consonance with Form No. 1 of Schedule-II of the Act.

(iii) To grant any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the case.”



2. Learned counsel for the petitioner raises a short contention to assail the certificate filed by the Collector as well as the order dated 14.03.2014 disposing of the petitioner's objection. Reference is invited to a copy of a certificate enclosed as part of Annexure-11 to the writ petition which discloses that the certificate officer has not recorded his requisite satisfaction on the certificate before proceeding in the matter.

3. Learned counsel for the respondents appears and has been heard. He relies on the counter affidavit to oppose the writ petition, however, the stand with regard to the infirmity pointed out in the certificate has not been controverted.

4. Having heard the parties and on consideration of the materials on record, I find substance in the submission of learned counsel for the petitioner. It is not in dispute that the certificate has been issued without recording the requisite satisfaction of the certificate officer inasmuch as the relevant column in the certificate has been left blank. Recording of such satisfaction by the certificate officer is a built-in safeguard against arbitrariness and intended to ensure that the certificate officer applies his mind before proceeding in the matter. Such requirement is therefore held to be mandatory in nature. Failure in this regard invalidates the certificate as filed by the Collector and consequently the entire



certificate proceeding founded upon such infirm certificate cannot be sustained in law.

5. It may further be noted that a copy of the certificate enclosed by the respondents not only does not record the requisite satisfaction, but surprisingly, does not also bear the signature of the certificate officer, nor has been dated.

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. In the above view of the matter, therefore, the certificate dated 08.03.2008 in certificate case no. 04/07-08 is hereby quashed and the certificate proceeding in consequence thereof together with the impugned order dated 14.03.2014 passed by the certificate officer are hereby set aside. The certificate officer shall file a fresh certificate and proceed thereafter in accordance with law.

8. The writ petition stands allowed as above.

Ibrar/BT

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.12.2018
Transmission Date	N.A.

