

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1470 of 2018

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Rakesh Ranjan, Son of Nathun Sahu, Resident of Nawadih, P.S.- Hantarganj, District- Chatara Jharkhand at present residing at 187 AP Colony, P.O.- G.P.O., P.S.- Rampur, District- Gaya the authorised signatory M/S Daya Engineering Works (Sleeper) Pvt. Ltd Manpur Gaya.

.... Petitioner/s

Versus

1. The South Bihar Power Distribution Company Ltd. through the G.M. Magadh Range Gaya.
2. The Electrical Superintending Engineer Electric Supply Circle Gaya cum the D.G.M. South Bihar Power Distribution Company Ltd.
3. The Electrical Executive Engineer Electric Supply Division Gaya (Rural).
4. The Electrical Junior Engineer Electrical Supply Section Manpur, Gaya.
5. The District Certificate Office cum D.M Gaya.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Anjani Kumar, Sr. Advocate. Mr. Nagendra Prasad Singh, Advocate.
For the State	:	Mr. Kinkar Kumar, SC-9
For the Electricity Board:		Mr. Prakash Kumar, Advocate. Mrs. Renu Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 16-04-2018

I.A. No. 2895 of 2018

This interlocutory application has been filed for amendment in the writ petition for quashing the certificate issued in Form No. 1 for recovery an amount of Rs. 19,05,107/- in Certificate Case No. 01/2009-10.

2. Having regard to the nature of the prayer, I.A. No. 2895 of 2018 is allowed and the same shall be treated as forming part of the writ petition.



C.W.J.C. No. 1470 of 2018

3. The main writ petition has been filed for quashing the order dated 01.12.2017 of the District Certificate Officer, Gaya contained in Memo No. 1000/Sa directing to deposit the *pendente lite* interest amount of Rs. 17,89,901/- (Seventeen Lakh Eighty Nine thousand Nine Hundred and One) till 15.12.2017 failing which warrant of arrest would be issued; and for connected reliefs.

4. Mr. Anjani Kumar, learned Senior counsel appearing on behalf of the petitioner submits that the entire certificate proceeding is wholly illegal and unsustainable in law. A copy of the certificate issued in Form no. 1 as enclosed in the counter affidavit of the respondent-Power Company discloses that the same has not been signed by the Certificate Officer and hence the same is no certificate in law. It is submitted that no recovery of dues can be effected through such invalid certificate. Reliance is placed on a Division Bench judgment of this Court in the case of *Jai Prakash Dwivedi vs. The State of Bihar & Ors., 1998 (2) PLJR 498*.

5. Learned counsel for the respondent-State seeks a short adjournment to file a counter affidavit and seek instruction in the matter.

6. Learned counsel for the respondent-Power Company appears and has been heard.

7. Having heard the parties and on a consideration of



materials on record, this Court finds merit in the writ petition. A bare perusal of the certificate in Form no. 1 as enclosed in the counter affidavit of the respondent-Power Company discloses that the certificate has not been signed by the Certificate Officer. In *Jai Prakash Dwivedi (supra)* it has been observed as follows :-

"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 can not 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."

8. This Court has thus no hesitation in holding that the certificate proceedings in question are wholly illegal and unsustainable. The certificate filed in Form no. 1 and consequently the entire certificate proceedings in Certificate Case No. 01/2009-10 are thus quashed, with liberty to the respondents to proceed afresh in accordance with law.

9. It is made clear that in case it is found that the stand



of the petitioner to the effect that the certificate in Form no. 1 has not been signed is found to be incorrect, the respondent State shall be at liberty to apply for recall of this judgment.

10. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.04.2018
Transmission Date	N.A.

