

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2966 of 2019

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Naresh Kumar Son of Late Surendra Prasad Resident of Digha Ghat, Near
Alpna Cinema, P.S.- Digha, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Transport Department, Govt. of Bihar, Patna
3. The State Transport Commissioner, Bihar, Patna
4. The Joint Commissioner-cum-Secretary, Regional Transport Authority-cum-Certificate Officer, Patna Division, Patna
5. The District Transport Officer, Nalanda

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate
For the Respondent/s : Mr. Chitranjan Sinha (PAAG 2)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-10-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

“(I) For issuance of writ in the nature of certiorari for quashing of Memo No.799 dated 19-12-2018 issued by the Joint Commissioner-cum-Secretary, Regional Transport Authority-cum-Certificate Officer, Patna Division, Patna whereby he has threatened for issuance of warrant of attachment/arrest of the petitioner without deciding the objection filed by the petitioner under Section 9 of the PDR Act.

(ii) For setting aside the entire certificate proceeding bearing No.29/10-11 pending in the Court of Joint Commissioner-cum-Secretary, Regional Transport Authority-cum-Certificate Officer, Patna Division, Patna because the District Transport Officer, Nalanda, going against his own proposal and recommendation has issued certificate for recovery of tax for the Bus bearing No. BR 21P 2449 w.e.f. 28-02-2002 to 31-03-2005.

(iii) For holding that the DTO, Nalanda could not have issued certificate for recovery of tax for the entire period when he has himself admitted in his letter No.166 dated 26-02-

2004 that from 04-05-2002 to 31-07-2002, the vehicle was seized by the Financer, from 01-08-2002 to 18-09-2002, there was strike of the Transporters, tax have been paid for the period from 19-09-2002 to 18-11-2002, thereupon, the vehicle was again seized by the Financer on 16-11-2002 and while under seizure, it met with an accident, as such, when it was released on 26-12-2003, it was not in a running condition, it would be repaired only on 12-02-2004 and thereafter, despite applications being made by the petitioner, the duplicate copy of the RC Book, fitness certificate and the permit was not issued to the Bus in question.

(iv) For holding that at the time of issuance of certificate, the DTO, Nalanda also did not took note of the fact that the tax have been paid for a certain period and particularly from 12-02-2004 to October, 2004.

(v) For holding that the Certificate Officer should have decided the objection filed by the petitioner under Section 9 of the PDR Act as the DTO, Nalanda failed to refute or even contest the objection raised by the petitioner upon the certificate and after five reminders being issued by the Certificate Officer, he could only say that since the amount has not been deposited, it may be recovered.

(vi) For holding that the execution of the certificate without deciding the objection filed by the petitioner under Section 9 of the PDR Act is arbitrary and illegal exercise of power by the Certificate Officer.

(vii) For holding that the Certificate Officer should have cancelled the certificate in exercise of powers under Section 53 of the PDR Act because the certificate holder, i.e., DTO, Nalanda was not reasonable diligent in pursuing the certificate case inasmuch as the petitioner filed his objection in the year 2013 and thereafter, for four years, the DTO, Nalanda did not file any reply to the objection and after lapse of four years, he filed a reply in which he neither refuted nor contested the claim of the petitioner but simply said that since the amount has not been deposited, it may be recovered. In such a situation, the Certificate Officer should have cancelled the certificate but he proceeded to execute it without deciding the objection.

(viii) For staying the further proceeding of Certificate Case bearing No.29/10-11 pending in the Court of Joint Commissioner-cum-Secretary, Regional Transport Authority-cum-Certificate Officer, Patna Division, Patna during the pendency of this writ application.

(ix) For any other direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

It is not in dispute that petition under Section 9 of the

Bihar & Orissa Public Demands Recovery Act, 1914

(hereinafter referred to as “the Act”) is pending consideration/petitioner intends to file before the appropriate authority.

Learned counsel for the parties jointly pray that the instant petition be disposed of with direction to the appropriate authority to consider and decide the same expeditiously.

Learned counsel for the State states that the appropriate authority shall consider and decide the petition filed/ to be filed by the petitioner under Section 9 of the Act positively within a period of two months from the date of appearance of the petitioner before him along with a copy of this order and the issue of limitation shall not come in the way of decision on merits.

Statement accepted and taken on record.

As such, petition stands disposed of in the following terms:-

(a) Petitioner shall appear in the office of the appropriate authority on **02.11.2022** along with a copy of this order, on which date documents in support of the petition shall be filed, or else file a fresh petition under Section 9 of the Act.

(b) The appropriate authority shall consider and dispose of the petitioner’s petition expeditiously, by a reasoned

and speaking order, preferably within a period of two months from the date of appearance of the petitioner before him and till then no coercive steps be taken against the petitioner;

(c) The authority shall also examine as to whether the amount in question falls within the definition of public demand or not;

(d) Needless to add, while considering such petition, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Order assigning reasons shall be supplied to the parties;

(f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioner to challenge the order passed by the appropriate authority, before the appropriate forum, if so required and desired.

(i) We have not expressed any opinion on merits. All

issues are left open;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed
of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-Ishika

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	