

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7808 of 2019

1. Anil Kumar Choudhary Son of Late Shambhu Nath Choudhary R/o Purani Bazar, Ward No. 13, At and P.O. and P.S.-Madhepura, District-Madhepura-852113.

2. Ashok Kumar Choudhary, Son of Late Shambhu Nath Choudhary R/o Purani Bazar, Ward No. 13, At and P.O. and P.S.-Madhepura, District-Madhepura-852113.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Finance, Govt. of Bihar, Patna
2. The Principal Secretary cum Commissioner Department of Finance, Govt. of Bihar, Patna
3. The Director Food Processing Department of Industries, Govt. of Bihar, New Secretariat, Bailey Road, Patna
4. The District Magistrate cum Collector Araria
5. The District Certificate Officer Araria

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Adv. Mr. Atal Bihari Pandey, Adv. Mr. Alok Kumar Jha, Adv.
For the Respondent-State	:	Mr. Naman Nayak, AC to AAG-10

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 11-08-2022

In the present application, the petitioners have primarily sought for quashing of the Certificate Case No. 1 of 2018-19 instituted against them, as they have sought for quashing of the notice of demand dated 05.02.2019 issued under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 (for short 'the PDR Act') by the Certificate Officer, Araria in the



aforesaid certificate case.

2. Subsequent to the filing of the writ petition, the petitioners filed an Interlocutory Application praying therein for grant of leave to amend the relief by adding the following reliefs in the main writ petition:-

“(a) For issuance of a writ or order or direction in the nature of certiorari for quashing of the order dated 10.6.2022 passed in certificate case no. 1 of 2018-2019 by the respondent certificate officer, Araria during the pendency of the writ application.

(b) For holding and a declaration that the impugned order dated 10.06.2022 passed in certificate case no. 1 of 2018-19 by the respondent certificate officer, Araria is non speaking, cryptic and suffers from serious jurisdictional error as it does not deal with the vital question of jurisdiction raised by the petitioners in its objection filed under Section 9 of the Bihar and Orissa Public Demand Recovery Act, 1914.”

3. Having heard the parties, the interlocutory application was allowed and the petitioners were directed to add the aforesaid reliefs in the main writ application vide order dated 25.07.2022 and the matter was adjourned to 08.08.2022 at the request of the learned counsel for the respondents.

4. The petitioners contention is that they are the two Directors of Auro Sundram International Private Limited, a Company duly incorporated under the provisions of the Indian



Companies Act, 1956 having its registered office at Haridwar, Uttarakhand. The Company got a lease of 35.65 acres of land in the year 2010 from the Bihar Industrial Area Development Authority. Thereafter, the management of the Company prepared a detailed project report for setting up an industrial unit under the integrated development scheme formulated for food processing unit in the State of Bihar under which the State of Bihar had promised to grant capital subsidy to the extent of 40% of the project cost in case of organized sector and 35% of the project cost in case of individuals. The Company submitted its detailed project report before the State Investment Promotion Board for necessary recommendations and approval of the project so as to entitle it for all such incentives offered by the State. The project of the Company was finally approved by the Project Appraisal and Monitoring Committee in its meeting held on 01.02.2010. After the Company was declared and held entitled for the benefit of incentive of capital subsidy in terms of the aforesaid scheme, a memorandum of agreement was executed on 31.12.2010 by and between the Company and the respondent no. 3. Accordingly, the Company had been assured the grant of capital subsidy of Rs. 5 crore, out of which, first installment of Rs. 50 lacs was released pursuant to an order



passed by the respondent no. 3. Subsequently, the production capacity of the initial project was revised and, accordingly, the project cost got escalated Rs. 110.117 crore which was also approved by the Project Appraisal and Monitoring Committee in its meeting held on 26.09.2011. In the meanwhile, the Company faced an unfortunate incident of mob violence on the industrial plot on which the civil construction work and other developmental activities for establishment of the industrial unit was being carried out. The violent mob damaged the civil construction work and set ablaze the construction vehicles and other valuable articles lying at the site for which Forbesganj P.S. Case No. 268 of 2011 and Forbesganj P.S. Case No. 269 of 2011 dated 03.06.2011 were registered by the Duty Magistrate who had witnessed the whole occurrence. As a result of the occurrence, the entire construction and development activities at the industrial plot had come to a halt. The petitioners approached this Court by filing C.W.J.C. No. 20087 of 2012 with a prayer for necessary direction upon the State authorities including the local administration and the district authority to provide all necessary assistance to the Company in completing the project so that the production activity could start in the industry.



5. The further case of the petitioners is that pursuant to the aforesaid unfortunate incident that took place in the industrial premises of the Company, the State Government had constituted an enquiry commission under the chairmanship of a retired Hon'ble Judge of this Court to make an enquiry into the whole matter and submit a report. Such report was submitted by the enquiry commission wherein the Company as well as its Director were found having no role and finally the State Government published action taken report in the light of the report of the enquiry commission. Suddenly, the petitioners received a letter dated 13.12.2018 by the respondent no. 3 seeking explanation from them being Directors of the aforesaid company against proposed action for recovery of the first installment of the capital subsidy on the ground of the industrial unit under development being not in production. A similar show-cause notice was also issued by the General Manager, District Industries Centre, Araria vide letter dated 22.12.2018. A detailed response to the notice issued by the respondent no. 3 was filed by the petitioners on 30.01.2019. Subsequently, they received the impugned notice dated 05.02.2019 issued by the respondent no. 5 in connection with the Certificate Case No. 01 of 2018-19 along with the copy of impugned requisition dated



29.01.2019 purportedly submitted in the office of the respondent no. 5 by the respondent no. 3. By the aforesaid notice, the Certificate Officer had asked the petitioners to deposit 94,42,000/- with interest at the rate of 12% per annum till realization of the money. The petitioners filed their objection under Section 9 of the PDR Act wherein it was pleaded that the certificate proceeding is misconceived. They did not avail any benefit of capital subsidy in individual capacity and, as such, not accountable in independent capacity for the same. It is the Company in which the petitioners were Directors, who is the beneficiary of the capital subsidy and the demand made is wholly illegal. The objection was also raised that the amount of capital subsidy disbursed to the Company is in fact an aid from the side of the respondent-State of Bihar for the purpose of promotion to the industries in the State. It is not a loan sanctioned and disbursed for a particular project recoverable within a time frame as per the terms and conditions. Therefore, it is not a public demand nor is falling within any of the items enumerated in Schedule-I of the Act and, as such, no certificate proceeding could have been initiated by the respondent no. 5.

6. Mr. Gautam Kejriwal, learned counsel for the petitioners submitted that despite the objections raised by the



petitioners, respondent no. 5 proceeded to pass the impugned order whereby the petitioners have been directed to deposit Rs. 96,42,000/- in the Government Treasury Account of the respondent no. 3 and submit a no dues certificate in his office after obtaining the same from the respondent no. 3 within sixty days failing which coercive actions under the PDR Act shall be taken against them without regard being had to the vital question of jurisdiction raised by the petitioner in the objection filed under Section 9 of the PDR Act. He contended that the impugned order has been passed by the respondent no. 5 without deciding and dealing with any of the issues of jurisdiction raised by the petitioners. He has not touched the issue of maintainability of certificate proceedings in terms of Schedule-I entry 9 of the PDR Act and has straightway accepted the claim of the respondent no. 3. He contended that the entire proceedings of Certificate Case in question and the consequent order arising out of the same is absolutely without jurisdiction. He further contended that the law is well settled on the point that liability of the Company cannot be enforced against its officers including Director or Managing Director. In this regard, he has placed reliance on the Division Bench judgment of this Court in **Kanhaiya Lal v. The State of Bihar & Others** since



reported in **(2002) 2 PLJR 553** and **Sri Niwas Choubey v. The State of Bihar & Others** since reported in **(2015) 2 PLJR 376**.

7. Mr. Naman Nayak, learned AC to AAG-10 for the State submitted that the Company is the beneficiary under the scheme of the State Government. The petitioners are the Directors of the aforesaid Company. In fact, it was the petitioner no. 2, who had entered into an agreement with the respondent no. 3. As per the terms of the agreement, the petitioners upon release of the subsidy amount were supposed to operate the unit for at least five years and they were not supposed to transfer the unit or its plant and machinery. He contended that a surprise inspection was carried out by the departmental authorities whereupon it was found that the unit is closed and is not operating or carrying out any commercial activity. Accordingly, the petitioners were issued a show-cause notice as to why the subsidy amount so released to them be not recovered in view of the fact that the unit was found closed during inspection. The petitioners did not submit any satisfactorily reply to the show-cause notice. Hence, since public money was involved and the petitioners were the beneficiaries and they were supposed to run the unit as per the terms and conditions of the release subsidy amount, the respondent no. 3 approached the Certificate Officer



for recovery of a sum of Rs. 94,42,000/- with interest from the petitioners whereupon the Certificate Officer instituted the Certificate Case and issued notice and after hearing the parties passed the impugned order in accordance with law. He contended that the petitioners are certificate debtors under Section 3(1) of the PDR Act and, in case, they have any grievance against the order passed by the Certificate Officer, they have statutory remedy of appeal under Section 60 of the PDR Act with a further forum of revision under Section 62 of the Act. He further contended that the liability against the Company has to be executed ultimately through its Directors and, therefore, the petitioners cannot take the plea that they are not accountable for the liabilities of the Company.

8. We have heard learned counsel for the parties and carefully perused the writ application as well as the counter affidavit filed on behalf of the State.

9. It is not in dispute that it was the Auro Sundram International Private Ltd., an incorporated company, which had submitted the project report for setting up the industrial unit. The project report submitted by the Company was approved by the Project Appraisal and Monitoring Committee of the respondents-State. It was the Company which was held entitled



for the benefit of incentive of capital subsidy in terms of the memorandum of agreement executed between the parties. The agreement was executed on 31.12.2010 by and between the Company and the respondent no. 3 representing the Government of Bihar in the Department of Industries. The first installment of capital subsidy was also released in favour of the Company. Thus, the liability, if any, was of the Company and not of the individual Directors of the Company. The individual Directors had not availed any benefit of the capital subsidy from the respondents in individual capacity. As such, they are not accountable in independent capacity for the same. The Certificate case in question was not initiated against the Company rather the same has been initiated against the petitioners, who are admittedly the Directors of the Company. It is the petitioners who have been made the Certificate debtors and they have been directed to pay the certificate demand of Rs. 96,42,000/-.

10. It is well settled that a company incorporated under the Indian Companies Act, 1956, whether as a Private Limited Company or a Public Limited Company, is a juristic entity. It has a legal entity, separate and distinct from its shareholders, with its own legal rights and obligations. There was no contract



between the petitioners and the respondent no. 3. In the present case, the memorandum of agreement was between the company and the respondent no. 3. The Directors of the Company cannot be made personally liable for the outstanding dues and the liabilities of the Company. It is not the case of the respondents that the petitioners had given any guarantee or indemnity etc. It is also not the case of the respondent no. 3 that the petitioners had played any fraud in the matter.

11. In **Kanhaiya Lal** (supra), it has been clearly held by this Court that certificate proceeding as against the Managing Director at the behest of the Bihar State Electricity Board for the dues of the Company is not maintainable. It was also decided in the said case that where proceedings were without jurisdiction, there was no question of preferring an appeal specially when to prefer appeal substantial money has to be deposited.

12. In **Sri Niwas Choubey** (Supra), it has been clearly held by this Court that for recovery of dues against an incorporated company, the Bihar State Electricity Board had instituted a Certificate Proceeding against the petitioner/appellant, who was the Managing Director of the company. The petitioner took a plea before the Certificate Officer that it was the Company which was the consumer and no



Certificate Proceeding could be maintained against him. In this regard, he had placed reliance on a Division Bench judgment of this Court in **Kanhaiya Lal** (supra). The Certificate Officer dismissed the objection filed by the petitioner. Thereafter, the petitioner challenged the Certificate Proceeding by filing a writ application before this Court which was placed before a learned single Judge who relegated the petitioner to seek alternative remedy of appeal. Being aggrieved by the order passed by the learned single Judge, the petitioner preferred an intra court appeal before this Court which was allowed by a Division Bench and the order passed by the learned single Judge as well as the entire Certificate Proceeding pending before the Certificate Officer were set aside on the ground that the Certificate Proceeding was wholly without jurisdiction. The Division Bench further held that when the proceeding was wholly without jurisdiction, a person cannot be forced to face the proceeding and prefer the appeal first and then come to the Court.

13. In view of the well settled position of law as well as two Division Bench judgments of this Court referred hereinabove, we are of the considered opinion that the initiation of a Certificate Proceeding against the petitioners in their



individual capacity in the present case is wholly without jurisdiction and bad in law.

14. Accordingly, the order dated 10.06.2022 passed by the Certificate Officer, Araria in Certificate Case No. 01/2018-19 whereby the petitioners have been directed to deposit the amount in demand within sixty days from the date of order, failing which coercive actions under the PDR Act and the entire Certificate Proceedings of Certificate Case No. 01/2018-19 are set aside.

15. The writ application stands allowed.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22-08-2022
Transmission Date	NA

