

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4454 of 2023

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Ishwar Dayal Ram Son of Late Baudh Ram @ Boudh Ram, Resident of Village-Kushi, Police Station-Mufassil Thana Aurangabad, District-Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Schedule Caste and Schedule Tribe Welfare Department, Government of Bihar, Patna.
2. The Principal Secretary, Schedule Caste and Schedule Tribe Welfare Department, Government of Bihar, Patna.
3. The Director, Schedule Caste and Schedule Tribe Welfare Department, Government of Bihar, Patna.
4. The District Welfare Officer, Aurangabad.
5. The District Magistrate, Aurangabad.
6. The District Education Officer, Aurangabad.
7. In charge Officer, District Auction Branch, Aurangabad.
8. The Certificate Officer, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Ojha, Advocate Mr. Ashok Kumar Karna, Advocate
For the Respondent/s	:	Mr. Prasant Pratap, GP-2 Mr. Gyan Shankar, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 19-04-2023

Heard learned counsel for the parties.

2. The petitioner has prayed for the following relief(s):-

“I. Issuance of writ in the nature of certiorari for quashing order contained in Memo No. 1913 dated 03.11.2022 and Memo No. 1984 dated 15.11.2022 issued by the



District Welfare Officer, Aurangabad whereby and where under the District Welfare Officer, Aurangabad had directed the Petitioner to deposit the amount of Rs. 37,56,000 on the basis Letter No. 8864 dated 25.08.2022 issued by the Economic Offence Unit, Bihar with false allegation that the said amount had been misappropriated by the Petitioner without even serving the Letter No. 8864 dated 25.08.2022 issued by the Economic offence Unit Bihar to the Petitioner and without issuance of any Show cause Notice to the Petitioner about the allegations as alleged and the same is violative of Principle of natural justice.

II. Issuance of writ in the nature of certiorari for quashing the Memo No. 104 dated 16.01.2023 issued by the District Welfare Officer, Aurangabad by which the District Welfare Officer Aurangabad had directed the Petitioner to deposit the amount of Rs. 37,56,000 on the basis Letter No. 8864 dated 25.08.2022 issued by the Economic Offence Unit, Bihar with false allegation that the said amount had been misappropriated by the Petitioner without serving the Letter No. 8864 dated 25.08.2022 issued by the Economic offence Unit Bihar to the Petitioner and without issuance of any Show cause Notice to the Petitioner about the allegations as alleged which is violative of Principle of natural justice.

III. Issuance of writ in nature of certiorari for quashing the Certificate Notice dated



26.12.2022 contained in Letter No. 744 dated 26.12.2022 issued by the Certificate Officer, Aurangabad by which the Certificate Officer had initiated the certificate case bearing Case No. 709/2022-23 against the Petitioner under the provision of Bihar & Orissa Public Recovery Act, 1914 (in short Act 1914) and directed the Petitioner to deposit the amount of Rs. 792804 and Rs. 2401 without considering that the said amount sought to be recovered is not a public demand within the meaning of provision of section 6 of Bihar & Orissa Public Recovery Act, 1914 as well as the said amount do not comes under the Schedule -I of Act, 1914 as there was neither written agreement nor the amount was due to the Petitioner and the said amount is itself disputed.

IV. Issuance of deceleration that initiation of certificate case bearing Case No. 709/2022-23 against the Petitioner under the provision of Bihar & Orissa Public Recovery Act, 1914 (in short Act 1914) is without jurisdiction as the amount sought to be recovered is not a public demand within the meaning of provision of section 6 of Bihar & Orissa Public Recovery Act, 1914 as well as the said amount do not comes under the Schedule -I of Act, 1914.

V. To restrain the Respondent authority from recovery of the said amount of Rs. Rs. 792804 and Rs. 2401 during the pendency of the present Writ Application as the said amount is not public demand under the provision of Act,



1914 and the certificate proceeding is itself not maintainable in the eye of law.”

3. The preliminary objection has been raised by the learned counsel for the respondents that a remedy lies to the petitioner to first raise objections in terms of Section 9 of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as “the Act, 1914”) and thereafter, in terms of Section 60 of the Act, 1914, the appeal also lies against any order of rejection of objections. The petitioner has not availed of any such remedies and has approached this Court without availing efficacious statutory remedy available under the provisions of said Act.

4. Learned counsel for the respondents submits that the present writ petition is not maintainable and he relies on the judgment passed in the case of **Central Coalfields Ltd., Vs. State of Jharkhand & Ors.**, reported in **2005(7) SCC 492**.

5. Learned counsel for the petitioner submits that principle of natural justice has been violated and he, therefore, preferred this writ petition before this Court. He relies on the judgment passed in the case of **Whirlpool Corporation vs Registrar of Trade Marks, Mumbai & Ors.**, reported in **1998(8) SCC 1**.



6. I have considered the submissions. This Court finds that the Supreme Court in the case of **Central Coalfields Ltd., Vs. State of Jharkhand & Ors., (supra)** takes into account the provisions of the Act, 1914 and has observed as under:-

“Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be disposed of by making certain observations. It is no doubt true that according to the appellant Company the certificate proceedings could not have been initiated under the Bihar and Orissa Public Demands Recovery Act, 1914, in view of the provisions of the Coal Bearing Areas (Acquisition and [Development](#)) [Act](#), 1957, the Mines and Minerals (Regulation and [Development](#)) [Act](#), 1957 and also the Coking Coal Mines (Nationalization) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar and Orissa Public Demands Recovery Act, 1914 and the appellant Company was directed to make payment. The said order is subject to appeal under [Section 60](#) of the said Act. A reading of the order dated 17.11.1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of the Coking Coal Mines (Nationalization) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from



the appellant Company. Reference was made to [Sections 6](#) and [7](#) of the said Act and it was observed that the State Government had power to make demand of rent from the appellant Company. In view of the above position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals. Those orders, therefore, do not suffer from any infirmity. As observed by the Division Bench, the powers of the Appellate Authority under the Bihar and Orissa Public Demands Recovery Act, 1914 are very wide and the appellant may raise all contentions including the contention as to the jurisdiction of the State Government and/or its officers in initiating certificate proceedings against the Company. Regarding the earlier decision in National Coal Development Corpn. the High Court was right in observing that the contention regarding alternative remedy was neither raised nor considered nor a finding had been recorded thereon. In view of the said fact also it would be appropriate if the appellant Company is granted liberty to approach the Appellate Authority by filing appeals and the Bihar and Orissa Public Demands Recovery Act, 1914.”

7. Keeping in view the above and specific provisions



laid down in the Act, 1914 providing a person to raise objections regarding the demand raised by the State or its authorities, it is found that the arguments regarding violation of principle of natural justice can only be taken up as an objection before the concerned authorities. If such objections are raised, the same shall be addressed to and decided on merits by the concerned authorities. If the petitioner is still aggrieved, he has the remedy of filing of an appeal under Section 60 of the Act, 1916.

8. Granting such liberty to the petitioner, the present writ petition is held to be not maintainable and as such, the same is dismissed.

(Sanjeev Prakash Sharma, J)

Amrendra/-
Item No. 25

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20.04.2023
Transmission Date	

