

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7154 of 2023

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Prabhakar Tekriwal Son of Late Shankar Prasad Tekriwal Resident of 73,
Kautilya Nagar, P.S. - Hawai Adda, Town and District – Patna ... Petitioner
Versus

1. The State of Bihar through the Additional Secretary, Department of Home and Police, Bihar State Government.
2. The Additional Chief Secretary, Department of Home and Police, Bihar State Government.
3. The Director General of Police, Bihar.
4. Divisional Commissioner, Koshi Division at Saharsa.
5. Dy. Inspector General (D.I.G.), Koshi Range, Saharsa.
6. The Collector -cum -District Magistrate, Saharsa.
7. The District Certificate Officer, Saharsa.
8. The Superintendent of Police (S.P.), Saharsa.
9. Dy. Superintendent of Police (D.S.P.) -2, Headquarters -cum -accounts officer -District Police, Saharsa. ... Respondents

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Appearance :

For the Petitioner : Mr.Dev Kumar Pandey, Adv.
For the Respondents : Mr.Arvind Ujjwal (Sc 4)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

10 06-12-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following reliefs :

“A. For setting aside the notice dated 06-4-2023 as contained in Annexure - P/1 (series), issued by the office of Respondent no.7 under the provisions of the Bihar and Orissa Public Demand Recovery Act 1914 against the petitioner whereby and where under the petitioner has been informed about the initiation of certificate case no. 17/2023, pending in the court of respondent no 7 and further in said certificate case the petitioner, having been arbitrarily made as certificate debtor, has been directed to pay a sum of Rs. 18,34,021/- (Rs. Eighteen Lakh Thirty Four Thousand and Twenty One only) as a Public demand.



B. For setting aside the impugned requisition made 17 years after the alleged cause of action, as contained in memo no 3749, dated 30-11-22, as made by Respondent SP [contained in Annexure- P/1 (series)], to recover the amount from a petitioner, the liability whereof was arbitrarily imposed on petitioner's father who died 10 years ago.

C. For setting aside the impugned certificate undated and unverified by the respondent certificate officer [contained in Annexure P/1 (series)] however a seal and signature impressed at the bottom of said certificate showing the date of 5-4-2023, purported to be issued under section 4 and 6 of the aforesaid Act and also for setting aside the entire certificate case no 17 /2023-24 initiated arbitrarily against the petitioner for recovery of above mentioned amount.

D. For any other relief or reliefs which the petitioner is found entitled in the facts and circumstances of this case.”

3. Learned counsel for the petitioner has stated that the authority concerned without any application of mind have issued the impugned notice seeking to recover the amounts due for the services rendered to his late father Sri Shankar Prasad Tekriwal. Learned counsel for the petitioner has submitted that 10 years after the death of his father the authorities are trying to recover amounts spent as expenditure towards the provision of the Body Guard and Security Guard provided to his father who was a Cabinet Minister and also an MLA (Member of Legislative Assembly). Learned counsel has stated that the amount sought to be recovered are not public demand and,



therefore, the initiation of the proceedings against a dead person is non-est in the eye of law. Learned counsel has stated that the father of the petitioner was a Member of the Legislative Assembly in Bihar from Saharsa Constituency assembly seat in the year 1990, 1995 and 2000 and was also a Cabinet Minister from 1990 to 2002. That the father of the petitioner resigned as a Finance Minister, however, remained as a Member of the Lower House till 06.05.2005. That by virtue of being a Cabinet Minister the father of the petitioner was entitled to Body Guards and he was allotted three Body Guards each of 8 hours duty. That after resigning as a Cabinet Minister in the year 2002 his father has returned two Body Guards, but, however, retained one Body Guard till January, 2005, as per his entitlement. That during the life time of his father, his father never received any notice asking him to pay the expenditure incurred for providing the Security Guard. That the action of the respondents in initiating proceedings against the dead person is against the principles of natural justice, void ab initio and non-est in the eye of law. That the amount sought to be recovered are not public demand and, therefore, the initiation of proceedings itself is bad in law, therefore, prayed this Hon'ble Court to set aside the impugned order.



4. Per contra, the learned counsel appearing on behalf of the respondents has stated that the present writ petition is not maintainable and the petitioner can raise all the above questions by way of filing his objections under Section 9 of the Bihar and Orissa Public Demand Recovery Act (hereinafter referred to as, 'the Act'). In case the petitioner files his petition under Section 9 of the Act the authority will consider the same and pass necessary orders under Section 10 of the Act. Learned counsel has, therefore, prayed for dismissing the present writ petition.

5. The only consideration in this particular case is as to whether the authorities are justified in initiating the action for recovery and the amount as public demand after a period of 10 years from the date of death of a dead person for the services rendered to him in person. Admittedly, the services which were rendered to the father of the petitioner were in the nature of personal services. i.e., that of providing personal Body Guards to the father of the petitioner. A coordinate Bench in CWJC No. 2317 of 2017 (Pawan Kumar Singh Vrs. State of Bihar & Ors.) has held as under :

“Certificate procedure not to be used where there is any doubt of debtors liability,-Requiring-officers should bear in mind that the certificate procedure is intended only for the recovery of sums regarding which there is no doubt of the liability of the debtor. Cases in which the debtor is likely with some show of



reason to deny his liability should be reported with a view to institution of civil suits. No such certificate shall be made in respect of any demand the recovery of which is barred by any law of limitation for the time being in force. In the case of rent due to Wards and Government estate the period of limitation depends upon the Tenancy Act applicable and is determined by Schedule III part I. of the Bihar Tenancy Act or Section 234 of the Chota Nagpur Tenancy Act, as the case may be. The period of limitation for certificate filed by the examiner of Local Account under the Local Fund Audit is three years from the date of the order of surcharge”, the Court held that where the liability of the petitioner has not been ascertained by any competent authority, it cannot be said that the petitioner is guilty of defalcation and that too to the amount as indicated above. The learned coordinate Bench clearly held that “Certificate proceedings are proceedings for recovery of ascertained dues. It is not a proceeding where the certificate officer is to act like a Civil Court and determine the liability. The liability is, prima facie, predetermined and the proceeding are only for recovery of those predetermined liability.”

6. In this particular case the expenditure incurred for providing the personal Body Guards to the Member of the Legislative Assembly are personal in nature. If at all the authorities wanted to recover the same they should had done so during the life time of the said person. More over, the claim is hopelessly barred by limitation as they are admittedly sought to be recovered after a period of 10 years from the date of death of the person.

7. Having regard to the above the initiation of the



proceeding against the petitioner that to after a period of 10 years from the date of death of the father of the petitioner is not only hit by the provisions of the Limitation Act, but, also is contrary to the provisions of the Act. Therefore, the same has to be necessarily termed as illegal, bad and tis accordingly quashed.

8. The writ petition is, accordingly, **allowed**.

(A. Abhishek Reddy , J)

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