IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16496 of 2019

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Nawal Kishore Banka Son of Late Banwari Lal Banka and R/o 8/1/3, Loudon Street Kolkata- 700017 through his power of Attorney holder namely Nand Lal Kumar, male aged about 46 years son of Raj Kumar Singh resident of Village- Dharseni, Barbigha, District- Sheikhpura- 811101 ... Petitioner

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, Vaishali at Hazipur.
5. The District Certificate Officer, Vaishali at Hazipur. ... Respondents

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Appearance :

For the Petitioner : M/sGautam Kumar Kejriwal, Atal Bihari Pandey, Alok Kumar Jha, Mukund Kr. & Ekta Rani, Advs.

For the Respondents : Mr.Ravi Ranjan, AC to SC XXII

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

6 19-07-2023 The present writ petition has been filed for the following reliefs :

(a) For issuance of a writ in the nature of certiorari for quashing of the notice dated 16.02.2019 issued in Certificate Case Number 03/2018 – 19 by the respondent District Certificate Officer, Vaishali against the petitioner;

(b) For holding and a declaration that the entire proceeding of filing of requisition for a certificate and institution of the Certificate Case Number 03 of 2018 – 19 as well as the issuance of notice seeking appearance of the petitioner in the said certificate case by the respondents suffers from complete illegality and jurisdictional error as the

amount sought to be recovered from the petitioner through the process of certificate proceedings under the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the Act for short) is not a public demand within the meaning of Section 3(6) read with schedule – I of the act;

(c) For holding and a declaration that the petitioner in individual capacity owes no liability towards the amount of capital subsidy disbursed by the respondent Department of Industries to the company of the petitioner and specially when the said company has not been shown as certificate debtor;

(d) For holding and a declaration that the amount of subsidy provided by the respondent Department of Industries to the company of the petitioner is not a loan or advance recoverable from the industrial unit within a time period rather a grant in aid extended by the state government to the entrepreneurs making investments in the state for establishment of units covered under the Industrial Policy Resolution and as such not recoverable in terms of the provisions of the act;

(e) For restraining the respondents from taking any coercive action against the petitioner both in the proceedings of Certificate Case Number 03 of 2018 – 19 as well as any other mode or method devised or may be devised by the respondents for the purpose of recovery of the amount of subsidy installment provided by the respondent Department of Industries to the company of the petitioner;

(f) For any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case;

2. Counsel for the petitioner has stated that the impugned order passed by the respondents under the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as, "the Act") is illegal, arbitrary and one without jurisdiction. The reasons given by the authority for passing the impugned order does not come under the provision of the Act. Learned counsel for the petitioner has taken this Court through the various provisions of the Act and the pleadings to contend that the petitioner was given subsidy under the Industrial Policy Resolution and the amount sought to be recovered from the petitioner cannot be termed as a public demand. Counsel for the petitioner has also stated that the notice has been issued to the petitioner in his personal capacity and not in the name of the Company and that the petitioner is only one of the Directors of the Company whereas the agreement was entered between the registered Company and the Government of Bihar. Therefore, the petitioner cannot be made personally liable for the recovery of any amount.

3. Learned counsel for the petitioner has relied on the judgment of the Hon'ble Court in C.W.J.C. No. 7808 of 2019, dated 11.08.2022 to buttress his contention that the Director of

the Company cannot be made liable if the agreement is entered between the Company and the Government, therefore, prayed this Hon'ble Court to allow the present writ petition.

4. Counsel for the respondents while opposing the maintainability of the writ petition has stated that the petitioner has been given subsidy amount and thereafter based on the request of the The Director, Food Processing, Department of Industries, Government of Bihar, New Secretariat, Bailey Road, Patna, respondent no. 3, the Certificate Officer under Letter No. 144, dated 30.01.2019, has issued a letter of recovery of a sum of Rs.852.64 Lakhs with interest at the rate of 12 per cent per annum till 31.12.2018 and interest at the rate of 12 per cent per annum till the realization of the money. That the competent Certificate Officer thereafter has instituted a Certificate Case No. 3 of 2018 – 19 and issued notices to the petitioner.

5. That the petitioner is a certificate debtor under Section 3(1) of the Act. Counsel has further stated that the objections of the petitioner under Section 9 of the Act have not been filed till date and, therefore, the present writ petition is not maintainable.

6. When queried by this Court, the learned counsel for the respondents has fairly submitted that the order of the Hon'ble Division Bench of this Court in C.W.J.C. No. 7808 of 2019, dated 11.08.2022, has not been appealed against is

binding upon it and has also not disputed the proposition of lawlaid down therein.

7. A perusal of the memorandum of agreement, dated 28th December, 2011, shows that the memorandum of agreement has been entered between the M/s Siddhi Reoils and Industries Private Limited, 2nd Floor, Parijaat Apartment, 24A, Shakespear Sarani, Kolkata – 700 017, a company incorporated under the Company Act, 1956, and the Government of Bihar acting through the Principal Secretary, Department of Industries, Government of Bihar. The authorities instead of proceeding against the M/s Siddhi Reoils and Industries Private Limited have initiated proceedings against the petitioner, who is only one of the Directors of the Company. Further, perusal of the memorandum of agreement shows that there is an arbitration clause in the same agreement, i.e., Clause 9.1 and that in the event of termination due to default, the authorities have the right to proceed against the petitioner under the general law as well. A reading of the memorandum of agreement shows that there is no agreement as such between the parties to proceed under the Act. Further, the Division Bench of this Hon'ble Court in C.W.J.C. No. 7808 of 2019 under similar circumstances has held as under :

> *"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."

7. Having regard to the above the law laid down by the Division Bench of this Hon'ble Court, the impugned notice is **set aside**. However, it is left open to the respondents to initiate necessary action against the M/s Siddhi Reoils and Industries Private Limited either under the general civil law or by invoking the arbitration proceedings as contemplated in

Clause 9.1 of the memorandum of agreement.

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

(A. Abhishek Reddy , J)

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