IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12411 of 2016

Future Generali India Insuerance Company Limited through the Branch Manager / Authorized Signatory, Patna Branch, 1st Floor, Harihar Chamber, Boring Road, Patna - 1

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperative, Govt. of Bihar, Patna
2. Deputy Secretary, Department of Cooperative, Govt. of Bihar, Patna.
3. The District Magistrate cum District Certificate Officer, Patna.
4. The District Certificate Officer-cum-Additional Collector, Patna.
5. Managing Director, Patliputra Central Cooperative Bank Ltd., S.P. Verma Road, Patna.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 12414 of 2016

I F F C O Tokio General Insurance Company Limited 1st Floor, Block C, Opposite Allahabad Bank, Patliputra Colony, Patna 800013.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperative, Govt. of Bihar, Patna
2. Deputy Secretary, Department of Cooperative, Govt. of Bihar, Patna.
3. The District Magistrate cum District Certificate Officer, Patna.
4. The District Certificate Officer-cum-Additional Collector, Patna.
5. Managing Director, Patliputra Central Cooperative Bank Ltd., S.P. Verma Road, Patna.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 12434 of 2016

Reliance General Insurance Company Limited through the Manager, Goverment Business Bihar / Duly constituted Attorney / Authorized Signatory , Kaushalaya Estate, Dak Bungalow Chowraha, Patna

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of

Cooperative, Govt. of Bihar, Patna

2. Deputy Secretary, Department of Cooperative, Govt. of Bihar, Patna.
3. The District Magistrate cum District Certificate Officer, Patna.
4. The District Certificate Officer-cum-Additional Collector, Patna.
5. Managing Director, Patliputra Central Cooperative Bank Ltd., S.P. Verma Road, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12441 of 2016

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Cholamandalam Ms General Insurance Company Limited through the Authorized Signatory 3rd Floor, IG Complex, Opp. Hotel Lalita West Boring Canal Road, Patna

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperative, Govt. of Bihar, Patna
2. Deputy Secretary, Department of Cooperative, Govt. of Bihar, Patna.
3. The District Magistrate cum District Certificate Officer, Patna.
4. The District Certificate Officer-cum-Additional Collector, Patna.
5. Managing Director, Patliputra Central Cooperative Bank Ltd., S.P. Verma Road, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12444 of 2016

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Hdfc Ergo General Insurance Company Limited through the Authorized Signatory, 1st Floor, Uma Complex, Frazer Road, Patna

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperative, Govt. of Bihar, Patna
2. Deputy Secretary, Department of Cooperative, Govt. of Bihar, Patna.
3. The District Magistrate cum District Certificate Officer, Patna.
4. The District Certificate Officer-cum-Additional Collector, Patna.
5. Managing Director, Patliputra Central Cooperative Bank Ltd., S.P. Verma Road, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12458 of 2016

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Tata Aig General Insurance Company Limited through the Asst. Manager (Weather) / Authorized Signatory, Grand Plaza Building, Near Dakbunglow Chouraha, Frazer Road, Patna

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperative, Govt. of Bihar, Patna
2. Deputy Secretary, Department of Cooperative, Govt. of Bihar, Patna.
3. The District Magistrate cum District Certificate Officer, Patna.
4. The District Certificate Officer-cum-Additional Collector, Patna.
5. Managing Director, Patliputra Central Cooperative Bank Ltd., S.P. Verma Road, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12525 of 2016

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I C I C I Lombard General Insurance Company Limited , through the Manager (Legal)/Duly constituted Attorney / Authorized Signatory, Uma Complex, Frazer Road, Patna

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperative, Govt. of Bihar, Patna
2. Deputy Secretary, Department of Cooperative, Govt. of Bihar, Patna
3. The District Magistrate Cum District Certificate officer, Patna
4. The District Certificate - Cum - Additional Collector, Patna
5. Managing Director, Patliputra Central Cooperative Bank Ltd., S.P. Verma Road, Patna

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 12411 of 2016)

For the Petitioner/s : M/s Y.V.Giri, Sr. Advocate
Durgesh Kumar Singh

For the Respondent/s : Mr. Ramadhar Singh, GP 25
Mr. M.P.Yadav GP 23
Ms. Meera Singh AC to GP 23

(In Civil Writ Jurisdiction Case No. 12414 of 2016)

For the Petitioner/s : M/s Y.V.Giri, Sr. Advocate
Durgesh Kumar Singh

For the Respondent/s : Mr. Sanjay Parasmani, AC to GP 4

(In Civil Writ Jurisdiction Case No. 12434 of 2016)

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Durgesh Kumar Singh
For the Respondent/s	:	Mr. Manikant Mishra, GP-25 Mr. Ranjit Kumar, AC to GP 26

(In Civil Writ Jurisdiction Case No. 12441 of 2016)

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Durgesh Kumar Singh
For the Respondent/s	:	Mr. Manoj Kumar, AC to GP 4 Mr. Sanjay Parasmani, AC to GP 4

(In Civil Writ Jurisdiction Case No. 12444 of 2016)

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Durgesh Kumar Singh
For the Respondent/s	:	Mr. Sarvesh Kumar GP 24

(In Civil Writ Jurisdiction Case No. 12458 of 2016)

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Durgesh Kumar Singh
For the Respondent/s	:	Mr. Ramadhar Singh, GP 25

(In Civil Writ Jurisdiction Case No. 12525 of 2016)

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Durgesh Kumar Singh
For the Respondent/s	:	Mr. K.K.Singh, AC to GP 22

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 10-09-2024

1. As identical issues are involved in all the Writ applications, they were heard and considered together and as such common order is being passed.

2. However, there is a slight variation of Certificate Case number in each of the Writ petition hence, for better appreciation of the case, the reliefs prayed for by one of the petitioners are quoted herein below:

3. The petitioner of CWJC No. 12411 of 2016 has filed the present Writ petition for the following reliefs:

> *(I) To issue a writ of certiorari for quashing the entire proceeding of Certificate case no. 06/15-16 initiated under the provisions of Bihar &*

Orissa Public Demand Recovery Act (hereinafter referred to as the "PDR Act") including the notice issued under Section 7 of the PDR Act.

(II) To issue writ of prohibition, prohibiting respondent Certificate Officer from proceeding any further or taking any steps in Certificate Case no. 06/15-16 pending before him.

III. To grant any other relief or reliefs for which petitioner is entitled.

4. As stated above, the variation of only Certificate Case Number in each of the Writ petition, which are mentioned as below:

In CWJC No. 12414 of 2016 : Certificate Case No. 05/15-16

In CWJC No. 12434 of 2016 : Certificate Case No. 9/15-16

In CWJC No. 12441 of 2016 : Certificate Case No. 07/15-16

In CWJC No. 12444 of 2016 : Certificate Case No. 10/15-16

In CWJC No. 12458 of 2016 : Certificate Case No. 8/15-16

In CWJC No. 12525 of 2016 : Certificate Case No. 11/15-16

5. The brief facts culled out of Writ petition(s) are that the petitioner in all the Writ petitions are registered Companies registered under the Companies Act and are licensed by the Insurance Regulatory Development Authority of India (in short referred to as 'the IRDA") as a non life Insurance Company and are leading General Insurance Companies in

private sector.

6. It is submitted on behalf of petitioner(s) that the Govt. of India for the benefit of the farmers and to compensate loss of agriculture, due to adverse weather condition like deficit or excess rainfall, high and low temperature, humidity etc. initiated Weather Based Crop Insurance Scheme through Department of Agriculture & Cooperation, Govt. of India, for protection and benefit of farmers and Pilot Weather Based Crop Insurance Scheme (hereinafter referred to as WBCIS) was to be implemented in States of Union of India including Bihar. In Bihar, WBCIS was to be implemented by Bihar State Government through Department of Cooperative. It is further submitted that the Automatic Weather Stations (hereinafter referred to as AWS) were to be installed through third party vendors who were approved by the Department. Third party vendor for installing Automatic Weather Station were engaged by the petitioner(s).

7. It is further contended by the Learned Senior counsel for the petitioner(s) that WBCIS was for Kharif 2013 and Rabi 2013-14. Pilot WBCIS aimed to mitigate hardship of the insured farmers against likelihood of financial loss, on account of anticipated losses of crop resulting from incidence of

adverse condition of weather parameters like deficit or excess rainfall, unseasonal rains, temperature, frost, humidity and all farmers, (loanee or non-loanee) cultivating paddy and maize crops were eligible for coverage under Pilot WBCIS. The Pilot scheme was compulsory for loanee farmers for the crop notified by the State Govt. in selected areas and optional for non loanee farmers. In case of loanee farmers, respective Bank of the farmers used to collect premium and those were transmitted to the Insurance Companies. Declaration/Proposal form is received through the Bank and the list of farmers is annexed to the declaration/ proposal form sent by the Bank. Several Insurance Companies including that of the petitioner(s) were empanelled for implementation of the said scheme vide Notification/letter no. 13011/01/2008- Credit II, Govt. of India, Ministry of Agriculture, Department of Agriculture and Cooperation, Krishi Bhawan, New Delhi dated 07.02.13 issued under the signature of Joint Secretary to the Govt. of India. Pursuant to that the petitioner(s) and other companies were invited by the Cooperative Department, Govt. of Bihar, for participation in discussion on implementation of scheme and release of subsidy. The Companies including Petitioner(s) received invitation to participate for discussion on implementation of scheme in SLCC

(State Level Coordination Committee) vide letter dated 12.03.13. Companies were invited by the Department to participate for discussion on implementation of Kharif 2013 scheme in SLCCI (State Level Coordination Committee on Crop Insurance) vide letter dated 20.03.13. It is further contended that in the light of the Notification dated 07.02.13, Cooperative Department of the State of Bihar vide Notification dated 06.06.13, issued under the signature of Deputy Secretary, Department of Cooperative, Govt. of Bihar issued Notification for implementation of the WBCIS for 31 districts of the State of Bihar and vide the said Notification petitioner(s) Company was allotted nine districts namely, Patna, Nalanda, Purnia, Buxar, Arwal, Shekhpura, Arariea, Katihar and Kishanganj for insurance of Kharif (Aghani Dhan & Bhadai Maize) and insurance was for the period of 01.07.13-10.11.13.

8. It is further contended that from the Notification dated 06.06.13 it appears that besides other, insured amount was decided as Rs. 22,500/- per hectare and for which premium of insurance was fixed at 10.00%. It further appears that 2.5% premium was to be paid by the farmer and rest in equal proportion (50:50) was to be paid by Union of India and State Government respectively. Loanee farmers are compulsorily

covered through Bank and proposal to be submitted by the Bank and Non-loanee farmers were extended the benefit as optional for which proposal forms were to be submitted individually. Loanee farmers were covered for whose loan were sanctioned by 31.07.13. Loanee farmers are covered through Bank for which the proposal has to be duly filled by Bank and the same had to reach office of the petitioner(s) by 31.08.13. Non Loanee farmer can opt for crop insurance through Bank by 30.06.13. Bank had to submit the Demand Draft of collected premium and proposal forms by 15.07.13. Non loanee farmer could also take crop insurance through agent authorized by insurer. Excess rainfall and deficit rainfall are covered as per the term sheet provided by the implementing Department. It is further contended that all companies would receive the amount of subsidy through Agriculture Insurance Company of India and the company would provide all the details including premium, list of insured farmers to the Department. Banks were to provide list of farmers to the Company.

9. It is further submitted on behalf of the petitioner(s) that letter of acceptance for implementation of WBCIS in Kharif 2013 was issued and sent to the department addressed to the Principal Secretary for implementation of

WBCIS in the district of Patna, Nalanda, Purnia, Buxar, Arwal and Shekhpura for kharif 2013 was accepted vide letters dated 08.05.13 & 09.05.2013 and sufficient automatic weather stations were installed within the insured districts and list of the same was given to the Nodal Bank on 18.06.13. It is also submitted that a meeting was called by the Principal Secretary in his Office on 22.10.13 for consultation due to drought. Respondent Principal Secretary had the opinion that the claim must be paid before the onset of Rabi 2013-2014 of which sowing starts from 15th of November. On being shown difficulty for various reasons, by the Insurance Companies, Principal Secretary was of view that though the task was difficult but it was not impossible and it can be done by taking the data from the Automatic Weather Stations. The representatives of companies including petitioner(s) were directed to be present in certain districts, for payment to beneficiaries by organizing camps between 15.11.13 17.11.13 vide letter dated 31.10.13 issued under the signature of Deputy Secretary.

10. It is contended by the Learned Senior counsel that the petitioner of each Writ petition through their respective letter(s) requested the Department for release of State subsidy

share in accordance with the terms of the scheme. As demanded by the petitioner(s) of each Writ petition the subsidy premium were received by petitioner(s). Thereafter, a meeting was called on 13.11.13 vide letter dated 06.11.13 issued under the signature of Deputy Secretary for taking stock of the preparation of distribution of the claim amount between 15.11.13 to 17.11.13 in the camp organized at the district level and vide letter dated 14.11.13, the petitioner(s) were asked to submit the list of benefited farmers. Accordingly, petitioner(s) submitted list of total premium received, total claims triggered and the claim ratio, The same was recorded in the meeting dated 13.11.2013, which was headed by Principal Secretary, Department of Co-operative, Bihar.

11. It is submitted by the Learned Senior counsel that that payment to the loanee farmers were made to their respective banks by way of cheque. Thereafter payment to non-loanee farmers were also made individually by cheque and no objection was made at the time of payment by everyone including the Govt. and the Farmers. Calculation on the term sheet was made available to the department (about total premium received and total amount of claim settled for kharif 2013). The petitioner(s) submitted Utilization Certificate after

payment of claim to Bank, for the loanee farmer and non loanee farmer for kharif 2013.

12. The petitioner(s) received a show cause letter under the signature of Deputy Secretary of Govt. of Bihar wherein it was alleged that the petitioner has played with the weather data to minimize the claim paid to the farmers. It was further alleged that certain amount were paid less. Details of amount has been mentioned in each Writ petition. The petitioner(s) submitted a detailed reply to the said show cause letter stating therein that they have settled the claim in terms of Notification and as per the data provided by the Vendors and there was no manipulation with the Weather Data. Weather Data is monitored, recorded and shared with the implementing agency by third party vendors and data is used by the implementing agency for claim calculation and on the basis of which claim are settled. It is contended that Credibility of the Vendors has been acknowledged by the GOI for the purpose which is reflected in National Crop Insurance Program (NCIP) operational guidelines. Claim settlement was done on the basis of the data received from Notified Automatic Weather Stations only.

13. It is submitted by Learned Senior counsel for the petitioners that a technical committee was formed for

comparison of claim on the basis of weather data submitted by the Insurance Companies with the respect of State Weather Station vide letter dated 02.4.2014. The petitioner(s) requested twice for a date to explain the reasons for difference before the Technical Committee. However, in proceeding of the technical committee held on 11.07.14 only four members of said committee were present and major technical experts of the said committee were not present. It is further submitted that from time to time the petitioner(s) had provided all clarification.

14. It is further submitted that on 15.7.2014 a meeting of SLCC was held and in the meeting it was mentioned that Certificate proceeding for recovery of amount from the Insurance Company has already been initiated. Again vide letter dated 20.08.14 issued under the signature of Deputy Secretary petitioner(s) were asked to furnish Weather Data in specified format. The Deputy Secretary, Co-operation Department, Bihar vide letter dated 04.12.2014 required the petitioner(s) to submit the list of Weather Stations with their location and distance from the other weather stations. Accordingly, the petitioner(s) submitted the list of weather stations confirming that that the conditions of Notification dated 06.06.2013 in this regard have been complied with completely.

It is further submitted that none of the respondents herein ever found any deviation/breach of any of the conditions of Notification dated 06.06.2013 with respect to the compliance of the terms and conditions of Notification dated 06.06.2013.

15. It is submitted that in sitting of technical committee for discussion the Director of IMD mentioned that condition of minimum 90% of weather stations were bad and data collection was not properly done.

16. All of a sudden petitioner(s) received notice u/s 7 of the PDR Act and case was numbered as follows:

In CWJC No. 12414 of 2016 : Certificate Case No. 05/15-16

IN CWJC No. 12411 of 2016 : Certificate Case No. 06/15-16

In CWJC No. 12434 of 2016 : Certificate Case No. 9/15-16

In CWJC No. 12441 of 2016 : Certificate Case No. 07/15-16

In CWJC No. 12444 of 2016 : Certificate Case No. 10/15-16

In CWJC No. 12458 of 2016 : Certificate Case No. 8/15-16

In CWJC No. 12525 of 2016 : Certificate Case No. 11/15-16

All Certificate Case were issued under the signature of Certificate Officer cum Addl. Collector, Patna and date of appearance for objection was fixed and also a demand amount as mentioned was made.

17. It is contended by Learned Senior Counsel that the Managing Director of Patliputra Central Cooperative Bank,

SP Verma Road, Patna on behalf of the Principal Secretary, Department of Cooperation had filed a requisition in Form no. 2 (Section 5) of the PDR Act without having any concrete calculation with respect to the demand mentioned in Form No.2. Further, no court fee has been paid while filing the requisition, as required in terms of Section 5 (2) of the PDR Act and it is neither in Form no. 2 nor in consonance with Section 5 of the PDR Act. There is no power to delegate the authority of the requisitioning officer by the Government official to a non-government official. It may be stated that the Patliputra Central Cooperative Bank, S P Verma, Road, Patna is a Cooperative Society registered under the Cooperative Society Act. It is not the government therefore, even if the amount is payable to the government, the Managing Director of the Patliputra Central Cooperative Bank cannot initiate or file a requisition for the purpose of initiating the proceeding. It is further contended that the amount alleged to be due is payable to the farmers for their agriculture insurance and it is not payable to the State Government and in the requisition it is wrongly written that it is payable to the State Government. It may also be stated that there is no agreement or instrument executed by the Insurance Company with the State Government or any authority that a dues of the insurance payable to the farmers is recoverable by way of public demand therefore, it cannot be treated as a public demand in terms of Section 3(6) read with Schedule-1 of the PDR Act. Since the alleged dues is not a public demand the requisition and preparation of Certificate is wholly without jurisdiction.

18. It is further contended by the Learned Senior counsel that on the basis of the requisition, the Certificate Officer (Res. No. 4) passed order and made it a Certificate and the order of Certificate Officer in relation to the preparation of the Certificate is not in terms of Form No. 1 (Section 4 & 6). Form no. 1 says that on the requisition itself the Certificate officer has to certify on two places. He has to say that "I further certify that the above mentioned dues are justly recoverable, and that is recoverable by suit and not barred by law". On the Certificate as contained in Annexure -15 the Certificate Officer said his satisfaction that suit is maintainable and not barred. Moreover, he has initiated a Certificate proceeding on the basis of direction issued by the Collector of the District which is mentioned in the order itself therefore, the order contained in Annexure-15 (Certificate) is not in Form-1 and it does not follow either Section 4, 5 & 6 and therefore, it is void ab-initio.

19. It is submitted by Learned Senior Counsel that it is a settled law that the proceedings under the PDR Act are stringent one and all procedural safeguard has to be protected. It has been said that infraction of any of the procedure provided under Form 1 & 2 if not followed in its letter and spirit, the proceeding becomes illegal and without jurisdiction and it is a fit case in which the Certificate Officer is restrained from taking any steps in the proceeding by issuance of a Writ of Prohibition or even if by issuance of Writ of Mandamus restraining the respondents.

20. It is further submitted that the petitioner was not given any opportunity of being heard and a unilateral decision has been taken in utter violation of Principles of Natural Justice and action of the respondents is in violation of Article 14 of the Constitution of India and from bare perusal of Section 3(6) of the PDR Act it appears that the alleged claim/recovery does not come under the purview of public demand as enumerated in Section 3(6) of the PDR Act.

21. On the other hand, separate counter affidavit(s) were filed by the respondent Nos. 3 and 4 in each of the above Writ petitions. A Similar stand has been taken in all the separate counter affidavits.

22. It is averred in the Counter affidavit that Weather Based Crop Insurance Scheme (WBCIS) aims to mitigate hardship of the insured farmers against likelihood of financial loan on account of anticipated loans of crop resulting from incidence of adverse conditions of weather parameters like deficit or excess rainfall. It is further averred that Cooperative Department, Government of Bihar vide letter dated 06.06.2013 (Annexure-1 to the writ petition) issued Notification for implementation of WBICS for 31 districts of Bihar and the Petitioners Company was allotted 9 districts namely, Patna, Nalanda, Purnea, Buxar, Arwal, Sheikhpura, Araria, Katihar and Kishanganj for insurance of Kharif for the period of 01.07.2013 to 10.11.2013. It is stated that the Managing Director, Patliputra Central Cooperative Bank Ltd. issued requisition for a Certificate under Section 5 of PDR Act on Form No. 2 on behalf of the Principal Secretary Cooperative Department for recovery of public demand from the Petitioner Company.

23. A supplementary Counter affidavit has been filed on behalf of the respondent Nos. 3 and 4 in all the Writ petitions. It is averred in supplementary counter affidavit that the Principal Secretary, Co-operative Department has duly authorized the Managing Director, Patliputra Central Co-

operative Bank Limited to make requisition of Certificate on his behalf. Accordingly, the Managing Director, Patliputra Central Co-operative Bank Limited issued Certificate in Form No. 2 to the Certificate Officer, Patna for recovery of the Public Demand of the said money with regard to the payment of claim against the loss of crops under Section 5 of the PDR Act. It is further averred that the Certificate Officer, Patna in the view of the aforesaid facts initiated Certificate Cases for the recovery of the aforementioned amount and the notice dated 05.02.2016 has been issued in this regard under Section 7 of the Bihar and Orissa Public Demand Recovery Act and the aforesaid matters are under the consideration before the Court of Certificate Officer, Patna.

24. Heard the rival contentions of the Learned counsel for the petitioner(s) as well as the Learned counsel for the Respondents and perused the record.

25. The question arises herein is that Whether the Certificate proceeding can be initiated against petitioner(s) which are Insurance Companies where requisition(s) is not on behalf of the requisitionists but has been filed by the Managing Director, Patliputra Central Cooperative Bank Limited who has absolutely no concern so far as the agreement between the

parties is concerned when there is no agreement between the Bank and Insurance Companies.

26. In this context Shri Y. V. Giri, Learned Senior Counsel for the petitioners submits that it is evident from the materials on record that the requisition(s) were not made on behalf of the requisitionists but has been filed by the Managing Director, Patliputra Central Cooperative Bank Limited which has absolutely no concern, so far as the agreement between the parties is concerned. It had no *locus standi* at all under the Scheme under which crops insurance was done. It is also submitted that the demand in question is not a public demand which would be evident from the Scheme itself and further there is no agreement between the parties with respect to the recovery from the process of Certificate proceeding.

27. In support of its contention, Learned Senior Counsel placed reliance on the decisions of this Court as well as of Hon'ble Supreme Court as follows:- (1) **Satya Narain Jhunjhunwala Vs. The State of Bihar & Ors.** reported in **1996(2) PLJR 698 (2). Auto Cars Vs. Trimurti Cargo Movers Pvt. Ltd. & Ors.** reported in **2018(15) SCC 166** (3). **M.L.Sridhar Reddy Vs. State of Bihar & Ors.** reported in **[2023 (1) BLJ 459]**, **(4). Budha Singh Vs. State of Bihar**

reported in AIR 1981 (PAT) 149**, (5) Shaligram Dubey Vs. The State of Bihar & Ors.** passed in **(CWJC 13981 of 2018), (6) Awadh Kishore Prasad Vs. The State of Bihar & Ors.** passed in **(CWJC No. 9448 of 2016) and (7) Hari Prasad Agarwalla Vs. State of Bihar** reported **in 1976(O) PLJR 265**

28. A Co-ordinate Bench of this Court in the case of **Satya Narain Jhunjhunwala (supra),** has held as follows:

"16. In the instant case, the provisions of Section 11 of the said Act are not attracted at all for the amendment of the requisition. Therefore, the impugned order dated 9.10.1985 as contained in Annexure-4/C is hereby quashed and the instant Certificate proceedings is also quashed inasmuch as the same is initiated on the basis of an invalid requisition."

29. This Hon'ble Court in the case of **Shaligram Dubey (supra)** has held as follows**:**

"However, considering the aforesaid, matter is no longer res integra as defective Certificate would make the entire Certificate proceeding illegal, unsustainable and void ab initio.

Accordingly, the entire Certificate proceedings being District Certificate Case No. 07 of 2015-16 including the order dated 17.08.2017 and also order dated 14.05.2018 by which warrant *of arrest has been issued against the petitioner are set aside."*

30. In the case of **Awadh Kishore Prasad (supra)** this Court has held as follows:

> *"Demand notice has been issued to the petitioner which has been objected by him and he has straightway moved this Court making submission that there is inherent defect in the requisition as well as Certificate. It has been stated that Section 5 of the Act talks about requisition by the competent authority otherwise then the Collector and Section 6 of the Act talks about issuance of Certificate on requisition. The Rule has been framed attaching the format as in what manner requisition has been levied by the competent authority where it has been specifically mentioned that amount should be verified by the Requisitioning Officer as well as Certificate be issued in Form No.2 and Certificate in Form No.1. Form No.2 talks about verification of the accounts by the Requisitioning Officer and Form No.1 talks about certification of the amount by the Certificate Officer which are lacking in both requisition and the Certificate.*
>
> *Learned counsel for the petitioner has placed reliance on the judgment of this Court passed in the case of* ***Hari Prasad Agrawal vs. State of Bihar,*** *reported in* ***1975 B.B.C.J. 723*** *and in the case of* ***M/S Vishnu Sugar Mills Ltd. vs. The State of Bihar & others****, reported in* ***(2015) 1 PLJR 863****. In both the cases issue has been raised about the wrong requisition as well as Certificate and the Court decided, in absence of proper requisition and Certificate, the entire proceeding is without jurisdiction. Bihar and Orissa*

Demands Recovery Act is very stringent provision should be strictly followed. Any deviation by Requisitioning Officer as well as Certificate Officer has not been accepted by the Court and declared the proceeding bad in law.

In the present case, the situation is same. On perusal of the requisition as well as Certificate it appears that the same are not in terms of the law as provided in the format as there is no verification and certification by the respondent authority.

In such view of the matter, the entire proceeding of Certificate Case No. 26 of 2014-15 is set aside but liberty is given to the Corporation that the Corporation, if so advised, may rectify the error and take action in accordance with law."

31. This Court is of the considered view that the above ratio of Hon'ble Apex Court as well as this Court passed in aforesaid cases squarely applies to the present case in hand.

32. In view of the above ratio Patliputra Cooperative Bank has no *locus standi* to issue requisition and in the absence of proper requisition and Certificate, the entire proceedings of the Certificate Officer is without jurisdiction. Further the provisions of PDR Act should be strictly adhered and any deviations are declared bad in law. Therefore, the entire proceeding of Certificate Case No. 06/15-16, Certificate Case No. 05/15-16, Certificate Case No. 9/15-16, Certificate Case No. 07/15-16, Certificate Case No. 10/15-16, Certificate Case No.

8/15-16 and Certificate Case No. 11/15-16 with regard to CWJC No. 12411 of 2016, CWJC No. 12414 of 2016 , CWJC No. 12434 of 2016, CWJC No. 12441 of 2016, CWJC No. 12444 of 2016, CWJC No. 12458 of 2016 and CWJC No. 12525 of 2016 respectively are hereby set aside.

33. Interlocutory application(s), if any, shall stand disposed of.

34. In result, the Writ applications are allowed.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.10.2024
Transmission Date	NA