

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9010 of 2023

Abdul Razak @ Abdur Razzaque, Son of Late Abdul Ghafoor @ Late Dr. Abdul Gafoor, resident of village - Bauharwa, Bhelai Kalan Khurd P.S.-Jalai, District-Saharsa, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home and Police, Bihar State Government.
2. The Additional Chief Secretary, Department of Home and Police, Bihar State Government, office at Old Secreteriat, P.S. - Sachivalaya, Patna.
3. The Director General of Police, Bihar, Office at Old Secreteriat, P.S. - Sachivalaya, Patna.
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.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dev Kumar Pandey, Adv.
For the Respondent/s : Mr.P.K. Verma (AAG 3)

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

6 07-10-2024 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. 16/2023, before 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. 04,90,881/- (Rs. Four Lakh Ninety Thousand Eight Hundred and Eighty One only) as a Public demand.

B. For setting aside the impugned requisition letters, having been apparently issued 17 years after the alleged cause of action, as contained in memo no 3749, dated 30-11-22, and also in format 48H of the Public Demand Recovery Rules as made on 30.11.2022 by Respondent SP [contained in Annexure- P/1 (series)], to the respondent direct for recovering the aforementioned amount from the petitioner, the liability whereof was arbitrarily and unilaterally imposed on petitioner's deceased father who died three years before as sitting member of legislative assembly (in short MLA) from Rashtriya Janta Dal (RJD) party, representing Mahishi assembly seat in the District of Saharsa.

C. For setting aside the impugned certificate, undated and unverified by the respondent certificate officer [contained in Annexure P/1 (series)] however containing seal and signature thereof, 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 16 /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 Abdul Ghafoor @ Late Dr. Abdul Gafoor. Learned counsel for the petitioner has submitted that three 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 1995, 2000, 2005, 2010, 2015 and 2020 and was also a Cabinet Minister from 20.11.2015 to 26.07.2017. 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 being quitting the post of State's minority welfare Minister in



2017, his father had returned two Body Guards, but, however, retained one Body Guard 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 three 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 three 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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