IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.474 of 2024

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Kamakhya Narain Singh S/o Late Bhuneshwer Singh, Resident of Village- Kheraje Sahpur, P.O.- Lal Shahpur, P.S.- Sadar (Mabbi O.P), District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Collector, Darbhanga.
2. The District Cooperative Officer cum Certificate Officer, Darbhanga.
3. The Branch Manager, Bihar State Cooperative Bank Ltd. Darbhanga.
4. The Co-operative Extension Officer, Bahadurpur, District- Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amarendra Narayan, Adv.
For the Respondent/s	:	Mr. Government Pleader 16
For the State	:	Mr. Sitaram Yadav, GP-16 Mr. Yatindra Narayn, AC to GP-16
For the Bank	:	Mr. Bindhyachal Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

16 11-12-2024 Heard the learned counsel for the parties.

2. This writ petition has been filed for the following relief(s):-

> *"That this petition is being filed for issuance of writ of appropriate nature order or direction setting aside order (without any specific date) contained in memo no. 1256 dated 27.09.2023 issued under the signature of Certificate Officer cum District Cooperative Officer Darbhanga disposing of petitioner's objection under section 9 of the Bihar & Orissa Public Demands Recovery Act 1914; and*

directing him to deposit certificate amount within fortnight failing which warrant of arrest would be issued against him.

The petitioner also prays for quashing requisition and entire certificate proceeding no. 20/2017-18 which is being maintained against petitioner illegally without holding him liable for payment of any dues since Petitioner as Chairman had taken advance of Simra Nehalpur PACS and utilized its fund for purchase of Paddy which under instructions of respondent was handed over to the Miller for converting it in CMR and the Miller (respdt. No. 5) did not supply it for which he alone will be responsible; and in the case of similarly situate case of non-supply of CMR liability has been fixed on the Miller and other Millers have been put under arbitration vide orders passed.

The respondents have not passed order in accordance with the directions of the Hon'ble Court, in terms of order dated 01.11.2022 in CWJC 14562/2022 passed by this Hon'ble Court directed for passing reasoned order and without affording reasonable opportunity to defend and lead evidences in support of his claim denying liability. Even copy of the orders has not been *supplied to the petitioner. Even on approach for its certified copy, was refused having no such provision for issuing certified copy. The petitioner is being kept under threat and apprehensive for coercive action against him for unjustified reasons.*

The petitioner also prays for restraining respondents from taking any coercive steps against the petitioner, during pendency of this case."

3. Learned counsel appearing on behalf of the petitioner has stated that the petitioner was working as a Chairman of the PACS which has taken a loan from the respondent bank. Thereafter, the petitioner has demitted the office. That the respondent bank has initiated certificate proceedings against the petitioner in his individual capacity stating that the loan taken by the PACS is liable to be repaid by the petitioner as he has taken the loan and signed all the papers on behalf of the PACS. Learned counsel has stated that though the petitioner has filed his objections to the certificate proceedings being initiated against him in his individual capacity, the authority without taking note of the legal position has passed the order which is impugned in the present writ petition. Learned counsel has stated that though the Certificate

Officer has taken note of the fact that the loan which was taken by the petitioner was not in his individual capacity but as a chairman of the Simra Nehalpur PACS, the authority has passed the order directing the petitioner to pay the loan amount or else face arrest. Learned counsel has relied on the judgments of this Hon'ble Court reported in ***(Nawal Kishore Pd. Singh vs State of Bihar) 2006 (3) BLJ 676*** and ***(Kanhaiya Lal v. State of Bihar) 2022(2) PLJR 553*** in support of his case.

4. Per contra, the learned counsel appearing on behalf of the respondent Bank has vehemently opposed the present writ petition. Learned counsel has stated that though the petitioner has taken the loan in the capacity as a Chairman, he has misused his position and mismanaged the affairs of the PACS, therefore, the loan which was taken by the petitioner could not be repaid. That the authorities left with no other alternative have approached the Certificate Officer for recovery of the loan amount. Learned counsel has stated that the petitioner is liable to repay the loan amount as he has acted contrary to the departmental guidelines with regard to the procurement of the paddy and supply of the rice in advance. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. This Court in ***(Nawal Kishore Pd. Singh vs State of Bihar) 2006 (3) BLJ 676*** under similar circumstances has held as under:-

> *"However, in view of the fact that the said purported agreement, which has been executed, has been executed by the petitioners in their official capacity, there cannot be any dispute that they cannot be proceeded in their individual capacity. Loan was granted by the Central Cooperative bank to the Transport Cooperative Society. Both are juristic entities. It was not a loan personally granted to the petitioners nor was any such loan personally guaranteed by the petitioners nor the petitioners stood surety for the said loan.*
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> *4. In that view of the matter, the entire certificate proceedings as against the petitioners in their individual capacity is wholly without jurisdiction and is liable to be quashed. The order passed under Section 10 of the Act rejecting the petitioners' petition under Section 9 of the Act denying liability is erroneous on the face of it. It has no legal sanctity. The same is liable to be quashed and is quashed in so far as it relates to the petitioners in their personal capacity is concerned. It will be open to the Central Cooperative Bank to substitute the names by names of the present office bearers who again, it is made clear, would not be liable in their personal capacity. It is elementary that a Corporate entity cannot by itself stand up in*

> *Court proceedings. It has to act through a person. It is only for that limited purpose, the names of office bearers would be there in the certificate proceedings."*

6. Likewise a Division Bench of this Hon'ble Court in the case of ***Kanhaiya Lal v. State of Bihar reported in 2022(2) PLJR 553*** has held as under:-

> *"... which has examined a similar matter and held that the certificate proceedings against the Directors of a Company incorporated under the provisions of Companies Act could not lie as the Company has an independent juristic Corporate entity."*

7. Admittedly, as seen from the record and even as per the certificate order passed by the respondent Certificate Officer cum District Cooperative Officer, Darbhanga dated 27.09.2023 vide memo No. 1256/ Darbhanga, the Certificate Officer has come to the conclusion that the loan was not taken by the petitioner in his individual capacity but as a Chairman of the PACS. However, the authority has gone ahead and stated that the petitioner has contravened the departmental guidelines prescribed for procuring the paddy due to which the PACS has suffered a loss and therefore, the petitioner who was a Chairman at that point of time is liable to repay the loan is contrary to the

above stated legal position. Merely because the petitioner has signed the vouchers/ loan agreements /promissory notes for procurement of the loans, the same does not mean that he can be made personally liable. The real controversy is as to whether the loans were taken in his individual capacity or on behalf of the PACS, once the authority comes to a conclusion that the loans were taken in the name of the PACS, the petitioner cannot be made personally liable for the repayment of the said loan. The respondent Banks are free to proceed as against the PACS and recover the loan amount due but they cannot file a certificate case against the former Chairman or any other officer if the loans are taken in the name of the PACS.

8. Having regard to the above, the impugned order vide memo no. 1256 dated 27.09.2023 is set aside. However it is made clear that in case the respondent Bank is so advised, they are free to proceed against the PACS for recovery of the loan in accordance with law.

9. With the above directions, the present writ petition is allowed to the extent indicated.

(A. Abhishek Reddy , J)

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