

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24786 of 2018

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Mishel Kumar S/o Late Mohan Prasad, Resident of 3 C, Shumbha Complex,
West Boring Canal Road, P.S.- Srikrishnapuri, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Chairman, Bihar Rajya Pul Nirman Nigam Ltd., 7, Sardar Patel Marg, Patna Bihar, 800015
4. The Managing Director, Bihar Rajya Pul Nirman Nigam Ltd., 7, Sardar Patel Marg, Patna Bihar, 800015
5. The Senior Project Engineer, Works Division No. 1, Bihar Rajya Pul Nirman Nigam Ltd., 7, Sardar Patna, Bihar – 800 015

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Amit Shrivastava, Sr. Advocate Sangeet Deokuliar, Girish Pandey, Advocates
For the Respondent/s	:	Mr. Ravindra Priyadarshi, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 17-10-2025

1 The petitioner has filed the instant application for the following reliefs:

“A) A writ in the nature of CERTIORARI or any other appropriate writ/s, order/s direction/s for:

i. Setting aside the Certificate Case No. 02/17-18 and in proceeding whereby and where under an demand of Rs. 72,08.033.00 (Rupees Seventy Two Lakhs Eight Thousand and



Thirty Three Only) has been made as the same amount has been claimed to be due upon the Bihar Rajya Pul Nirman Nigam Ltd., by the Respondent authorities without any basis and without any just reason.

(B) A writ in the nature of MANDAMUS or any other appropriate writ/s, order/s direction/s for directing and commanding the Respondents:

i. To consider the withdrawal of the contract and all liabilities of the Petitioner effective from the date of information communicated to the Respondent authorities vide letter dated 23.12.2016.

ii. To refund the earnest money, security deposit and other like amounts which were deposited by the Petitioner with the Respondent authorities at the time of entering into the contract.

(C) To any other relief/s to which the petitioner is found entitled to."

2. The brief facts as culled out from the petition are that the petitioner has approached



this Court challenging the initiation of Certificate Case No. 02/17-18, whereby a demand of Rs. 72,08,033/- has been raised by the respondent authorities, i.e., Bihar Rajya Pul Nirman Nigam Ltd., claiming the same to be due under an agreement dated 07.04.2016 for collection of toll and parking settlement under a flyover on Bailey Road, Patna.

3. It is the case of the petitioner that he was allotted a parking area admeasuring 7370 sq. metres under the said agreement, but upon taking possession of the site, he immediately encountered serious irregularities in the parking done in the area which rendered the execution of the contract impossible. Despite repeated written intimations and requests to the respondent authorities, as well as the local police, no steps were taken to remove the encroachments to facilitate proper enforcement of parking. Instead, the petitioner was continuously pressed for payment instalments, without addressing his grievances. It is the further case of the petitioner that due to cooperation from the authorities and



facing continued hindrance in performance of his duties under the agreement, the petitioner expressed his willingness to withdraw from the contract vide letter dated 23.12.2016. However, no formal action was taken by the respondents and on 31.03.2017, the agreement was cancelled, further the petitioner was directed to deposit the remaining amount, under threat of legal action. Subsequently, a notice under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 was issued to the petitioner, and Certificate Case No. 02/17-18 was also instituted for recovery of the said amount.

4. The petitioner asserts that he is not liable to pay the demanded sum. He further claims that the respondents are instead liable to refund the earnest money, security deposit and other amounts already paid by him.

5. The Learned counsel for the petitioner submits that the initiation of certificate proceedings against the petitioner is arbitrary, illegal, and without any lawful basis. It is



contended that the entire dispute arose on account of the encroachment and non-cooperation by the respondent authorities, which rendered the contract incapable of being performed.

6. It is further argued that the petitioner had no authority to regulate traffic or remove encroachments, and it was solely the responsibility of the respondent authorities to ensure that the site was encroachment-free and viable for toll collection and parking operations.

7. The Learned counsel places reliance on the judgment of the Division Bench of this Court reported in **(2006) 2 PLJR 176 (The Certificate Officer of Siwan Central Co-operative Bank Vs. The State of Bihar & Ors.)**, wherein it was held that certificate proceedings cannot be sustained in the absence of a legally due and payable amount under an agreement or statute. Mere allegations or claims of dues without a lawful basis cannot justify recovery proceedings under the Public Demands Recovery Act.

8. The observations made by the



Division Bench of this Court in **The Certificate Officer of Siwan Central Co-operative Bank (supra)** are quoted hereinbelow:

“6. It is noticed by us that the action of the appellant for the recovery of the alleged amount of defalcation under the provisions of the Bihar Public Demands Recovery Act cannot be justified in absence of any due and payable amount to the Bank in terms of the provision of the agreement or under the provisions of the aforesaid Acts. The observations made by the Learned Single Judge in latter part in paragraph 4 of the impugned judgment are quite weighty and cannot be dislodged in course of the submissions before us.

7. A certificate proceeding contemplated under law proceeded on the premise that there is money due and payable either in terms of the agreement or contract or under the provisions of law. Mere an allegation of the Bank with regard to the defalcation by the employee in course of the period of his service would not tantamount “Ipso Facto” that the amount due was



legally payable to the Bank by the person against whom such allegations are made. It is in this context, there would not arise any question of grant of a certificate and resultant recovery thereof under the provisions of the said Acts

8. This Court in *Murlidhar Sohanlal v. State of Bihar*, 1998 (3) Patna Law Journal Reports 526, had an occasion to deal with similar situation and upon evaluation of the relevant provisions of law and similar facts situation has held that the Corporation, in the present case Bank, can avail the remedy of certificate proceeding treating it to be a public demand provided the person liable to pay the same has agreed by a written instrument that it shall be recoverable as a public demand. Apart from the fact that there is no such agreement and there is mere allegation of defalcation of the aforesaid amount by the employee of the Bank, the proposition of law enunciated in the said judgment in the said case by this Court, after examining and appreciating the provision of Section 9 read with Item



No. 15 of Schedule I of Bihar and Orissa Public Demands Recovery Act, 1914, would directly cover the facts of the present case and, therefore, the appeal on hand is without any substance and merit and deserves to be dismissed at the threshold.”

9. It is also submitted that there is no written instrument, under which the petitioner had agreed to recover the alleged dues as a public demand, as required under Section 9 read with Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914. In absence thereof, the certificate proceeding in question is unsustainable in law.

10. The Learned counsel concludes that the actions of the respondents are in violation of the petitioner’s fundamental rights under Article 14, 19(1)(g), and 21 of the Constitution of India and that the demand of Rs. 72,08,033/- is untenable and deserves to be quashed.

11. A counter affidavit was filed on



behalf of the respondent Nos. 3 to 5, which disclose that the Bihar Rajya Pul Nirman Nigam Ltd. submits that the contract was awarded to the petitioner for settlement of a parking area measuring 7370 sq. metres under the four-lane flyover between Sheikhpura More and Jagdeo Path More, pursuant to an open tender dated 04.12.2015.

12. It is submitted that Clauses 2 and 11 of the tender documents required bidders to inspect the site, before bidding and provided that all offers would be deemed to have been made with full knowledge of the site conditions. The petitioner, after such inspection and with full understanding of the terms, participated in the tender and was declared the highest bidder. Accordingly, he executed Agreement No. 1/2016-17 dated 07.04.2016 for toll collection for a period of one year, at a bid amount of Rs. 58,01,000/-. Though the petitioner deposited 10% of the bid amount (Rs. 5,80,100/-), but he failed to deposit the remaining 90% of bid money (Rs. 52,20,900/-)



in three instalments due on 06.06.2016, 06.08.2016, and 06.10.2016, despite repeated communications by the respondents. He also failed to submit electricity bill receipts, violating Clauses 16(i) and 30 of the agreement.

13. Furthermore, it is alleged that the petitioner has also violated Clause 3 of the agreement by allowing unauthorized vendors to occupy the parking space and collecting money from them. Based on this, show-cause notices were issued on 19.10.2016 and 19.11.2016, but the petitioner failed to respond satisfactorily. As a result the agreement was terminated on 31.03.2017 and the petitioner was directed to deposit the outstanding amount within 15 days. Upon failure, the respondents initiated proceedings under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914, resulting in Certificate Case No. 02/17-18 for recovery of Rs. 72,08,033/-.

14. It is argued that the petitioner cannot now raise issues of encroachment or



deficiency, having accepted the site conditions at the time of bidding. The respondents allege that such claims are afterthoughts aimed at evading contractual obligations and that the petitioner was unlawfully benefitted by permitting unauthorized vendors on the site.

15. It is further contended that the petitioner failed to avail the alternative statutory remedy under Section 9 of the Public Demands Recovery Act and instead approached this Court. On this ground, the writ petition is not maintainable and liable to be dismissed.

16. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents

17. On careful perusal of the agreement executed between the parties, it is noted that the agreement contains no provision authorizing recovery under the Public Demands Recovery Act, 1914 (hereinafter called as the PDR Act) in case of default. Clause 25 of the agreement stipulates that "That if the licensee fails



to execute the any work which they have agreed to execute under this agreement to the entire satisfaction of the Senior Project Engineer, Works Division No. 1, Patna the same shall be executed by the Senior Project Engineer, Work Division No. 1, Patna at the cost of licensee and the amount shall be recoverable from the licensee as the penalty / fine without prejudice to any other remedies which may be open to the government in this regard.”

18. The petitioner’s contention that the respondents failed to provide an encroachment-free site, which was essential for the performance of the contract.

19. Reliance was placed by the petitioner on the Division Bench judgment in ***The Certificate Officer of Siwan Central Co-operative Bank vs. State of Bihar & Ors., (2006) 2 PLJR 176***, is relevant in the present case. The judgment holds that certificate proceedings under the PDR Act require a legally due and payable amount supported by a written instrument. Mere allegations or disputed claims do



not justify such proceedings.

20. In the absence of any clause in the agreement permitting recovery under the PDR Act, coupled with the petitioner’s valid grievance regarding encroachments and non-cooperation, and failure of respondents to avail statutory remedy before initiating certificate proceedings, the impugned Certificate Case No. 02/17-18 cannot be sustained.

21. Accordingly, the entire proceedings of Certificate Case No. 02 of 1917-18 is quashed.

22. Accordingly, the writ petition is allowed.

23. Interlocutory Application, if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.10.2025
Transmission Date	

