IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14400 of 2023

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Manoj Kumar Ranjan, Son of Late Basudev Malakar, Resident of Baisha, Police Station Parwata, District Khagaria.

... ... Petitioner/s

Versus

1. The State of Bihar through the District Collector, Supaul.
2. The District Certificate Officer, Supaul.
3. The Superintending Engineer, Building Construction Department, Building Circle, Saharsa.
4. The Executive Engineer, Building Construction Department, Building Division, Supaul.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Rupak Kumar, Adv.
For the Respondent/s : Mr.Sushil Kumar (Gp 22)

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

12 07-05-2025 Heard the learned counsel for the parties.

2. The present writ petition has been filed seeking the following reliefs:

> *"i. For quashing of the order dated 23.06.2023 passed by the District Collector, Supaul in Appeal No. 1 of 2022, as well as the order dated 30.07.2021 passed by the District Certificate Officer, Supaul in Certificate Case No. 406 of 2019, whereby the Petitioner has been*

directed to deposit a sum of ₹14,53,827/-.

ii. For any other relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The brief facts necessary for disposal of the case are that the Executive Engineer, Building Division, Supaul entered into contract with Lalan Prasad, Contractor for construction of a 132-prisoner capacity barrack at Birpur, to be completed within 18 months. At that time, the Petitioner was posted as junior Engineer in Section attached to Sub division, Birpur in Building Division, Building Construction Department, Supaul and has done the measurements in measurement book. After the work was completed, the final payment was made on 30.03.2005. Later on, 05.08.2008, an FIR bearing Birpur P.S. Case No. 125 of 2008 was lodged against the Petitioner alleging excess measurement and consequent financial loss to the State. Thereafter on 17.05.2019, the Executive Engineer requested initiation of a certificate case against the Petitioner for recovery of Rs. 14,53,827. After receipt of the noticve under Section 7 of the Act, the objections under Section 9 of the Bihar and Orissa Public Demands Recovery Act, 1914 was filed by the petitioner,

however they were rejected by the District Certificate Officer on 30.07.2021 (Certificate Case No. 406 of 2019). The appeal preferred against the said order (Appeal No. 01 of 2022) was also dismissed by the District Collector on 23.06.2023. Hence, the present writ petition.

4. Learned counsel for the Petitioner submits that the certificate proceeding initiated after nearly 14 years from the date of the alleged incident is barred by limitation under Section 137 of the Limitation Act, 1963. It is argued that any action to recover loss allegedly caused by the Petitioner in discharge of his official duties ought to have been initiated within a period of three years but in and the present case the proceedings were initiated after 14 years and therefore time-barred. It is further submitted that the alleged financial loss due to excess measurement, even if assumed to be true, does not constitute a 'public demand' within the meaning of Section 3(6) of the Bihar and Orissa Public Demands Recovery Act, 1914 and therefore the initiation of the Certificate Case is itself bad, illegal and without jurisdiction. Learned counsel has advanced thefollowing contentions:-

i. That the certificate proceeding is barred by limitation under Section 137 of the Limitation

Act, 1963.

ii. That the alleged loss is not recoverable as a 'public demand' under Section 3(6) of the Bihar and Orissa Public Demands Recovery Act, 1914.

5. Learned Counsel has laid emphasis on judgment of the Hon'ble Supreme Court in ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Limited and Another*** *reported in* ***(2019) 10 SCC 572.*** The Hon'ble Supreme Court in the above case has held that Section 137 of the Limitation Act applies to applications filed under laws like the Insolvency and Bankruptcy Code (IBC) when no specific limitation period is provided elsewhere. This section gives a time limit of 3 years to file such applications, and the limitation period starts from the date when the right to file the application arises (i.e., the date of default or when the debt becomes due). If an application is filed after this 3-year period, it will be treated as time- barred and cannot be accepted. Learned counsel has prayed this Hon'ble Court to allow the present writ petition and set aside the orders dated 30.07.2021 and 23.06.2023 passed by the Certificate Officer and the Appellate Authority respectively.

6. In **Prabhakar Tekriwal v. State of Bihar**, reported in **2024 (1) PLJR 622,** the Patna High Court held that the

expenditure incurred for providing personal bodyguards to a deceased Member of the Legislative Assembly was personal in nature and any attempt to recover such expenditure should have been made during his lifetime. Since the authorities sought recovery after more than 10 years from his death, the claim was held to be barred by limitation. The Court observed that initiating proceedings against the petitioner (the MLA's son) after such an inordinate delay was not only contrary to the provisions of the Limitation Act but also inconsistent with the governing statutory framework. Consequently, the proceedings were declared illegal and were quashed. This Court has held as under:-

> "*7. Having regard to the above the initiation of the proceeding against the petitioner that to after a period of 10 years from the date of death of the father of the petitioner is notonly hit by the provisions of the Limitation Act, but, also is contrary to the provisions of the Act. Therefore, the same has tobe necessarily termed as illegal, bad and is accordingly quashed."*

7. Per contra, learned counsel for the Respondents submits that the Petitioner, by carrying out excess measurements in the course of execution, caused huge financial

loss to the State, and is therefore liable to compensate the loss. It is contended that such loss constitutes a public demand and is recoverable under the Bihar and Orissa Public Demands Recovery Act, 1914. It is further submitted that the Respondents have already lodged an FIR against the Petitioner for the said acts and rightly initiated the certificate proceedings for recovery of the amounts. Learned Counsel has stated that the order passed by the Certificate Officer and the Appellate Authority are both well reasoned orders which do not require any interference of this Hon'ble Court. Learned counsel has therefore prayed for dismissing the present CWJC.

8. The question that arises for consideration in the present case is -

> "i. Whether the certificate proceeding is barred by limitation under Section 137 of the Limitation Act, 1963.
>
> ii. Whether the amount sought to be recovered from the Petitioner falls within the ambit of "public demand" as defined under Section 3(6) of the Bihar and Orissa Public Demands Recovery Act, 1914."

9. It is not in dispute that the agreement was executed in 2004, and the final payment to the Petitioner was made on 30.03.2005. The certificate proceeding was initiated only in 2019, i.e.,

after a delay of nearly 14 years. No explanation for such inordinate delay has been offered by the Respondents. Under Section 137 of the Limitation Act, the period of limitation for recovery of money where no specific article applies is three years. In absence of any statutory provision under the Bihar and Orissa Act providing for a longer period of limitation, the general law of limitation applies. Therefore, the certificate proceeding initiated in 2019 is barred by limitation and not maintainable.

10. The Petitioner has relied on the Judgment of Hon'ble Supreme Court in ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Limited and Another*** reported in (***2019) 10 SCC 572*** where it was held that as per Section 137 of the Limitation Act when no specific limitation period is provided elsewhere and an application is filed after this 3-year period, it will be treated as time-barred and cannot be accepted. The Hon'ble Supreme court has held as under:-

> "6. Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that *it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137. As rightly pointed out by the learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21-7-2011, as a result of which the application filed under*

Section 7 would clearly be time-barred. So far as Mr Banerjee's reliance on para 11 of B.K. Educational Services (P) Ltd., suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.

7. This being the case, we fail to see how this para could possibly help the case of the Respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the Limitation Act when it is clear that a particular article gets attracted. It is well settled that there is no equity about limitation - judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature."

11. Similarly, in the case of ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd***., the Hon'ble Supreme Court held that the Section 7 application filed in March 2018 was time-barred because the default had occurred on 8 July 2011. Under Section 137 of the Limitation Act, a three-year limitation period applies, and since the application was filed after this period, it was not maintainable.

"40. The discussion foregoing leads to the inescapable conclusion that the application made by Respondent 2 under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the corporate

debtor with specific assertion of the date of default as 8-7-2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. NCLT having not examined the question of limitation; NCLAT having decided the question of limitation on entirely irrelevant considerations; and the attempt on the part of the Respondents to save the limitation with reference to the principles of acknowledgment having been found unsustainable, the impugned orders[1]*. 2 deserve to be set aside and the application filed by Respondent 2 deserves to be rejected as being barred by limitation."*

12. Having regard to the same, the initiation of the certificate proceeding after a lapse of 14 years is time barred.

13. The second issue in question is as to whether the amount sought to be recovered qualifies as a "public demand" under Section 3(6) of the Bihar & Orissa Public Demands Recovery Act or not. It is to be seen that no notification or statutory provision has been cited to prove that this type of claim is included in any of the categories listed in Schedule I of the Act. Hence, in absence of such inclusion, the demand cannot be treated as a public demand.

"11. 3(6) "Public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II;"

12. It thus becomes clear that in order to institute a certificate proceeding for recovery of any money by way of public demand it has to be essentially covered by any of the entry made in Schedule-I……

22. There is also no escape from the settled position in law that unless the money due is a public demand, the certificate proceedings under the Act cannot be instituted much less continued. Reference in this connection may be usefully made to the division bench judgment of this Court in the case of Narendra Narayan Singh v. State of Bihar reported in 2002 (2) PLJR 176.

23. Thus when the amount sought to be recovered from the Petitioner is not public demand within the meaning of Section 3(6) of the Act, there can also be no escape from the irresistible *conclusion that recourse to certificate proceedings against the Petitioner under the Act would be clearly illegal without jurisdiction and abuse of process of court."*

14. The Hon'ble Supreme Court in ***Sone Valley Rice Mill v. State of Bihar*** *reported in* ***(2014) 3 PLJR 819***, held that recovery through certificate proceedings is only valid if the amount qualifies as a "public demand" under Section 3(6) of the Bihar & Orissa Public Demands Recovery Act.

15. Since the amount sought to be recover do not fall under under any of the items listed in Schedule I, it was not a public demand, and therefore, initiating certificate proceedings against the petitioner is illegal, without jurisdiction, and an abuse of process.

16. Similarly, in ***M/S. Murlidhar Sohanlal v. State of Bihar*** reported in ***(1998) 3 PLJR 526***, this Court held that since the agreement did not specify that the dues were recoverable as a public demand, they could not be treated as such under the law. Therefore, initiating certificate proceedings to recover the dues was invalid and without legal basis, and the orders passed in those proceedings were liable to be quashed.

"7. This being the position, in my view,

> *in absence of any agreement as required under law the dues of the Corporation against the Petitioner could not be treated a public demand within the meaning of the Act and realized thereunder. Therefore, action for realization of the same through a certificate proceeding initiated by the District Certificate Officer, Saharsa and impugned orders passed therein are per se invalid and liable to be quashed."*

17. In light of the above, this Court is of the considered view that that the certificate proceeding initiated in Certificate Case No. 406 of 2019 is not only barred by limitation but also without jurisdiction as the amount sought to be recovered does not fall within the meaning of "public demand" under Section 3(6) of the Bihar and Orissa Public Demands Recovery Act, 1914.

18. Accordingly, the impugned order dated 23.06.2023 passed by the District Collector, Supaul in Appeal No. 01 of 2022 and the order dated 30.07.2021 passed in Certificate Case No. 406 of 2019 by the District Certificate Officer, Supaul are hereby quashed.

19. With the above directions, the present writ petition stands allowed.

(A. Abhishek Reddy , J)

Bhardwaj/-

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