

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24644 of 2018

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Shishir Kumar Son of Nand Kishore singh Resident of Village- Basauli, P.S.-
Rajapakar, District- Vaishali At present residing Near S P'S Residence, S.D.O.
Road Hajipur, District- Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Panchayat Raj
Department, Government of Bihar, Patna
2. Zila Parishad, Vaishali through its Chief Executive Officer.
3. The Deputy Development Commissioner-cum- Chief Executive Officer, Zila
Parishad, Vaishali
4. Addl. Chief Executive Officer, Zila Parishad, Vaishali
5. District Certificate Officer, Vaishali District

... .. Respondent/s

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Appearance :

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For the Petitioner/s	:	Mr. Prakritita Sharma, Advocate
For the State	:	Mr. Rohit Singh, AC to GP 6
For the Zila Parishad	:	M/s Shri Nandan Pd. Singh, Sr. Advocate Surendra Prasad, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 21-07-2026

1. The petitioner has filed the Writ
application for the following reliefs:

*"i. To issue a writ in the nature of
certiorari to quash the entire
proceeding of certificate case No. 2
of 2016-17, pending before
Respondent no. 5, the District
Certificate Officer, Vaishali
registered and initiated on the
basis of a 28. 5. 16 (Annexure-3)*



wrongly requisition dated mentioning Addl. Chief Executive Officer, Zila Parisad Vaishali as Certificate Holder for the recovery of certain amount allotted / advanced for performing work under Schemes of Zila Parishad Vaishali only on the ground that the adjustment bill has not been submitted without any finding of defalcation. The amount sought to be recovered does not qualify the definition of Public Demand as defined U/S 3 (6) of the Bihar Public Demand Recovery Act (herein after referred as the Act) and is not recoverable Under Article 15 (iii) of Schedule I of the Act in absence of any written agreement and also the Certificate signed and filed without application of the mind leaving gaps and blanks unfilled vitiating the entire proceeding and the notice U/S 7 served without certificate

ii. To quash the notice under section 7 of the Act as well as the order dated 5. 10. 2018 (Annexure



-6) passed by the District Certificate officer rejecting the objection filed U/S 9 of the Act by the petitioner without following the procedure U/S 10 as well as without considering and dealing with the points raised therein.

iii. To grant leave to add, amend, modify or otherwise vary the grounds in support of this writ application.

iv. To grant such other relief or reliefs to which the petitioner may be found entitle in equity and/ or in law by Your Lordships in the facts and circumstances of this case.”

2. Heard the Learned counsel for the petitioner as well as the Learned counsel for the State.

3. At the very outset, the Learned counsel for the petitioner contended that the issue involved in the present Writ petition is no longer *res integra*. It is contended that the issue stands squarely covered by the order dated 03.09.2025



passed in **CWJC No. 19096 of 2018 (Ram Lagan Prasad Vs. The State Bihar & Ors.)** by this Court in which this Court has passed the order in light of a judgment passed by a Co-ordinate Bench of this Court in **CWJC No. 4332 of 1995 (Akhauri Bijoy Kumar Sinha Versus The State of Bihar & Ors)**, wherein an identical issue was considered and adjudicated. The Learned counsel for the parties, therefore, submit that in view of the aforesaid judgment, the present Writ petition may also be disposed of, in terms of the order dated 03.09.2025.

4. In **Ram Lagan Prasad (supra)** this Court has held as follows:

“5. I find substance in the argument of the learned Counsel. The money advanced by Rohtas Zila Parishad to the Petitioner for execution of certain construction work, while he was working as Junior Engineer, is not a public demand within the meaning of the Act. Public demand has been defined in Sub-section (6) of Section 3 of the Act as under:

"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 upon the date on which a certificate is signed under Part II."

Schedule I, which runs into 15 Clauses contains various types of dues, which can be recovered as a public demand under the Act. Thus, in order to bring the case within a public demand it has to be shown that the amount sought to be recovered from the Petitioner is covered by some Clause of Schedule I. Learned Counsel for the Respondents has failed to show that the amount sought to be recovered from the Petitioner is covered by any of the Clauses of Schedule I. Since the amount in question is not a public demand, it cannot be legally recovered under the provisions of the Act.

6. The impugned order of Respondent No. 3 rejecting the objection of the Petitioner, that the amount in question could not be legally recovered as public demand, suffers from an error apparent on the face of the record and is, therefore, liable to be quashed.

7. In the result the writ petition is allowed and the entire proceedings of Certificate Case No. 1 of 1993-94 including the impugned order dated 26.6.95 of the



Respondent No. 3 is quashed. Quashing of the certificate proceedings will not preclude the Respondent No. 2 from recovering the amount, if any, due from the Petitioner by any other mode available to him under law.

5. In view of the fact that this matter is squarely covered by the aforesaid order, the Writ application is allowed, in light of the order passed in **Akhauri Bijoy Kumar Sinha (supra)**, and accordingly, entire proceedings of Certificate Case No. 14 of 1913-14 including the impugned order dated 18.09.2013 (Annexure-3), distress warrant dated 10.07.2016 (Annexure-4) issued in the Certificate Case No. 14 of 2013-14 are quashed. Quashing of the certificate proceedings will not preclude the concerned respondent from recovering the amount, if any, due from the Petitioner by any other remedies available to respondent under law.

6. With the aforesaid observations, this Writ petition is allowed in terms of order passed in **Akhauri Bijoy Kumar Sinha (supra)**."

5. The Learned counsel for the petitioner further relied upon the judgment passed in **Rabindra Nath Singh Vs. State of Bihar**



reported in 2007(1) PLJR 192 as well as an order passed by a Co-ordinate Bench of this Court in **Brij Mohan Prasad V. State of Bihar** reported in **2008 SCC Online Pat 1157**.

6. The relevant paragraphs i.e., paragraph Nos. 6 to 9 of **Rabindra Nath Singh (supra)** are quoted hereinabove:

"6. Having considered the matter and with the consent of the parties I dispose of this writ application at the stage of admission itself. The question is whether the said recoverable money is a public demand or not. In other words, whether any misappropriated or defalcated automatically ipso facto becomes a public demand and can be recovered by process taken under the Public Demand Recovery Act, 1914. Learned counsel for the State has sought to rely on Entry 8A Schedule I of the Public Demand Recovery Act. He submits that in view of Sec.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. In view



thereof Entry 8A of Schedule I is relied on which is quoted:-"Any outstanding loans and advances payable to State Government or to a Department or official of the State Government by anybody whatsoever."

7. In my view, this entry is wholly inapplicable to a case of defalcation of the present nature. The Entry clearly speaks of loan and advance. These expressions clearly denote that some amount is given to a person who has to return the same. It is not that he has merely to account for. Therefore, it appears that a money can be public demand under Entry 8A of List I it must be shown that this was a loan and advance by the Government to the person which the person was required by law to refund or return or repay. In the present case the money which was given for distribution as scholarship cannot be termed as a loan and advance bringing it within the meaning of Entry 8A of Schedule I of the Public Demand Recovery Act.

8. That being so, it is not a public demand. It follows that if it is not a public demand then resort to the



provision of the Public Demand Recovery Act would be clearly illegal, without jurisdiction and abuse of the process of the Court. Needless to say that the proceeding which is wholly without jurisdiction a party is not required to submit to the jurisdiction and take an objection as regards the jurisdiction. A party has an opportunity to come to this Court directly and challenge the jurisdiction and is entitled to relief by this Court.

9. The proceedings being wholly without jurisdiction, in my view, leaves no discretion to this Court. It is established that no person can be deprived of his life, liberty or property except by authority of law and by procedure established by law. As in the present case the petitioner is sought to be deprived of his life and liberty (Coercive steps contemplated under Public Demand Recovery Act) and his property (Attachment and other provision of the Public Demand Recovery Act) under the law which has no application. Thus, it has to be held that the proceedings are in violation of Articles 14, 21 as well as 300A of the Constitution."



7. The relevant paragraphs i.e., paragraphs of **Brij Mohan Prasad (supra)** are quoted hereinabove:

"8. Learned counsel for the petitioner relies on Board's Instruction 10 in respect of implementation of the Act.

"Certificate procedure not to be used where there is any doubt of debtor's 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.”

11. 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 proceedings are only for recovery of those predetermined liability.

13. Board's Instruction 10, as quoted above, also comes to the aid of the petitioner. The petitioner could only be proceeded against if in any departmental proceeding he is held guilty. In such a departmental proceeding petitioner would have a right to defend himself against the alleged defalcation. The department would be required to establish defalcation by evidence and the petitioner would have a right to rebut the same.

14. Regrettably, no such proceedings were ever taken up against the petitioner, yet the petitioner is held guilty of defalcation and is being proceeded against for recovery of the assumed liability of the petitioner. This cannot be permitted. Therefore, this Court has been



left with no option but to set aside the certificate proceeding on the ground, as indicated above, in so far as the petitioner is concerned. The certificate proceeding would continue as against the rest. The writ petition is thus allowed and the certificate proceeding as against the petitioner being Certificate (Misc) No. 17/04-05 pending before the Certificate Officer, Patna, is quashed."

8. In view of the fact that this matter is squarely covered by the aforesaid order, the Writ application is allowed, in light of the order passed in **Ram Lagan Prasad (supra)**, and accordingly, entire proceedings of *certificate case No. 2 of 2016-17, pending before Respondent no. 5, the District Certificate Officer, Vaishali* including the requisition dated 28.05.2016 (Annexure-3), Notice dated 5. 10. 2018 (Annexure -6)) issued in the *certificate case No. 2 of 2016-17*, are quashed. Quashing of the certificate proceedings will not preclude the concerned respondent from recovering the amount, if any, due from the



Petitioner by any other remedies available to respondent under law.

9. With the aforesaid observations, this Writ petition is allowed in terms of order passed in **Akhauri Bijoy Kumar Sinha (supra).**

10. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.07.2026
Transmission Date	

