

## Nutan Singh Vs State Of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 16, 2025

**Acts Referred:** State Financial Corporation Act, 1951 â€” Section 32G

Bihar and Odisha Public Demand Recover Act 1940 â€” Section 3(2), 3(3), 4, 9, 38, 65, 66

Motor Vehicle Act, 1988 â€” Section 47, 48, 49

**Hon'ble Judges:** Anubha Rawat Choudhary, J

**Bench:** Single Bench

**Advocate:** Mitul Kumar, Aditya Raman

### Judgement

Anubha Rawat Choudhary, J

1. Heard the learned counsel present on behalf of the parties.

2. This writ petition has been filed for the following reliefs: -

Ã¢â€ForÃ¢, issuanceÃ¢, ofÃ¢, appropriateÃ¢, Writ/Writs,Ã¢, Order/OrdersÃ¢, or

Direction/Directions, in the Nature of Certiorari for quashing the paper publication [vide Annexure-4] published in Hindi daily news paper Ã¢â€Prabhat

Khabar, Deoghar Edition dated 22.9.2019 (being Item No. 21) by which it was notified being demand of arrears of Road Tax and Additional Tax from the

petitioner, on account of passenger Bus No. JH-15D-6131.

AND

For quashing the issuance of Body Warrant Dt. 13.9.2019 (Annexure-3) against Petitioner in terms of Section 38 of Bihar and Odisha Public Demand Recover Act

1940, which has been issued contrary to the fact that a Ã¢â€No Objection CertificateÃ¢â€ have been deemed to be given by the DTO Deoghar to Petitioner.

AND

For quashing the demand of Rs.5,82,585/- and its interest thereto Rs.69,910.20 = Total Rs.6,52,492/- from the Petitioner, by the Respondent Authority.Ã¢â€

Arguments of the Petitioner.

3. Learned counsel for the petitioner submits that the solitary point which he wants to argue in the present case is as to whether the District Transport

Officer, Deoghar, who is also the certificate holder, could also be the certificate officer of the present case. He has submitted that the objection, if

any, that may be filed in terms of Section 9 of Bihar and Orissa Public Demand Recovery Act, 1914 has to be filed before the Certificate officer and

since the certificate officer is the certificate holder, he cannot be a judge in his own case and therefore the present writ petition has been filed.

4. During the course of argument, no other point has been argued in this case. This has also been recorded in the order dated 27.11.2024.

Arguments of the Respondents.

5. The learned counsel for the respondents has submitted that there is no illegality in the appointment of the Certificate Officer in the present case. He

has referred to paragraph 8 and 9 of the counter affidavit dated 25.11.2024 and submitted that the District Transport Officers in serial no. 1 to 14 of

the letter dated 06.01.2020 were appointed as a certificate officers by the sanction of the Commissioner who sanctioned the same vide letter no. 143

dated 05.10.2018. He has submitted that Notification has been annexed which is in terms of Section 3(3) of the Bihar and Orissa Public Demands

Recovery Act, 1914. The learned counsel has also submitted that the recovery through certificate proceedings is essentially in the nature of execution

and submitted that there were no merits in the arguments of the petitioner.

Findings of this Court.

6. Vide order dated 25th<sup>th</sup> July 2024 the point involved in this case was formulated as follows: -

Whether the certificate holder can be allowed to function as certificate officer or not?

The foundational facts of the case.

Case of the petitioner.

7. That the facts leading to the present case as per the records is that Petitioner had purchased a Passenger Bus bearing Registration No. JH-15D-

6131 from Tata Motor Dealer-M/S R.A. Himmatsingka & Co. which was registered before Deoghar District Transport Office in the name of

Petitioner on 23.07.2001 on the given address of petitioner as B.N. Jha Path, Deoghar. However, on 02.09.2009, the vehicle was shifted to the

jurisdiction of District Transport Office, at Banka (Bihar) and the new address was incorporated in the owner book in terms of Section 49 of Motor

Vehicle Act and thereafter the taxes were paid to the District Transport Officer, Banka (Bihar).

8. It has been stated in the writ petition that Respondent No.2 issued body warrant dated 13.09.2019 against the petitioner, of which petitioner was not

aware. It is the case of the petitioner that at no point of time the petitioner received any show cause notice from Respondent No. 2 and all of a

sudden, the petitioner came to know from the newspaper Prabhat Khabar, Deoghar Edition dated 22.09.2019 (at Item No. 21) that body warrant had

been issued. On 27.09.2019, the petitioner filed a representation before Respondent No. 2 bringing to the notice of the respondent no.2 that the said

vehicle was brought to Banka (Bihar) and all taxes were paid at Banka and therefore the Demand notice was not proper. When no action was taken,

a legal notice dated 21.10.2019 was issued stating that in terms of Section 48 of Motor Vehicle Act, the Registering Authority, Banka sought for

“No Objection Certificate” from District Transport Officer, Deoghar and when there was no communication from the District Transport

Officer, Deoghar in terms of Section 48, new address of Banka (Bihar) was recorded and thereafter taxes were realized by District Transport

Officer, Banka after endorsing the present address at Banka. As per the writ petition, once the vehicle was brought to Banka and after exercise in

terms of Section 47 and 48 by the Registering Authority Banka and subsequently the District Transport Officer, Banka who modified the owner book

to the extent that the vehicle was operating in State of Bihar and the vehicle number was also changed to BR-51-9105 and primary taxes were paid at

Banka, there was no occasion to raise any demand by the respondent District Transport Officer, Deoghar.

Case of the Respondents.

9. In this case, two counter affidavits have been filed, one prior to formulation of the aforesaid point and one thereafter. In the counter affidavit dated

18.01.2020, it has been stated at paragraph 9 that the vehicle was registered in Deoghar Transport Office in the name of the petitioner along with

hypothecation with Tata Motors Finance Ltd. and this fact has been concealed by the petitioner. The petitioner had only paid the tax of the said

vehicle till the year 2008 in the District Transport Office, Deoghar and did not pay since 2009 up to the date of filing the of counter affidavit. The fact

that the vehicle was registered in the District Transport Office, Banka (Bihar) was denied by the respondents in their counter affidavit by stating that

the petitioner cheated the government for more than Rs.5,63,612/- by not paying the tax. It has been also denied that the petitioner had obtained

“No Objection Certificate” from the respondents in terms of Section 48 of the Motors Vehicle Act, 1988 and the rules contained therein. It has

been further stated at paragraph 11 that the District Transport Office, Deoghar never received any letter/representation for obtaining “No

Objection Certificate” neither from the petitioner nor from the District Transport Officer, Banka, Bihar. It has also been stated that the petitioner

very well knew that the respondent “District Transport Office, Deoghar will not issue the NOC until and unless the petitioner clears all the dues of

tax amount and clears the hypothecation terms and conditions by Tata Motors Finance Ltd. The petitioner created forged and fabricated documents in

District Transport Office at Banka, Bihar, which cannot be accepted in the eyes of law.

10. When the petitioner did not pay the tax amount of the said vehicle for the period from 23.10.2009 to 22.07.2019, a Certificate Proceeding vide

certificate case no.31/2019-2020 under Bihar and Orisa Public Demands Recovery Act, 1914 was initiated against the petitioner for recovery of public

demand of Rs.5,63,612/- along with the interest. Thereafter, notice was issued to the petitioner and when the petitioner did not appear nor objected to

the proceedings, then a notice was issued in the local newspaper Prabhat Khabhar, Deoghar on 29.08.2019 and prior to this one more time it was

issued in the local newspaper. It has been stated that after following the due procedure a warrant of arrest was issued.

11. As per the 2nd counter-affidavit, dated 25.11.2024, which was filed by the respondent no.1, it has been asserted that in terms of

Section 3 (2) of the aforesaid Act of 1914, "Certificate Holder" means a government or person in whose favour a certificate has been filed under

the Act and includes any person whose name is substituted or added as creditor by the Certificate Officer.

"Certificate Officer" has been defined

under Section 3 (3) of the Act of 1914 which means a Collector, Sub-Divisional Officer, and any officer appointed by a Collector, with the sanction of

the Commissioner, to perform the functions of Certificate Officer. A reference has also been made to Section 4 of the Act of 1914 to say that when

the Certificate Officer is satisfied that any public demand is payable to the Collector is due, he may sign a certificate in a prescribed form and shall

cause the certificate to be filed in his office. As per Section 12, Certificate filed under section 4 or 6 may be executed by the Certificate Officer in

whose office the original certificate is filed or the Certificate Officer to whom a copy of the certificate is sent for execution under section 13 (1).

Along with the said counter affidavit, an order contained in memo no.143 dated 05.10.2018 issued by the Commissioner under Section 3 (3) of the

aforesaid Act of 1914 has been annexed which inter alia notifies Sri Philbius Barla, the District Transport Officer, Deoghar as the certificate officer

for Deoghar area. It has been asserted that appointment of certificate officer at district level is completely a matter related to district, and department

of transport is not related to this and that it is completely the authority of the District Collector to appoint certificate officers after obtaining the

sanction of the Divisional Commissioner.

Rejoinder to the counter-affidavit dated 18.01.2020

12. A rejoinder has been filed to the aforesaid counter affidavit denying the allegations and it has been stated that the vehicle has been registered at

Banka, Bihar with new address. In the rejoinder to counter affidavit, it has been further stated that as per the provisions of Section 7 of Bihar and

Orissa Public Demands and Recovery Act, 1914 (hereinafter referred to as the Act of 1914), notice has to be served to the certificate debtor in the

prescribed manner but the respondents have not annexed a copy of the notice to demonstrate this fact. It has also been stated that the petitioner had

appeared on 14.10.2019 and submitted that the vehicle has been shifted much earlier and therefore the question of payment of tax to District

Transport Office, Deoghar did not arise. It has also been asserted that the present case is not a case of new registration, rather it is a case regarding

the present address which was shifted to Banka, Bihar and that the petitioner is not supposed to pay taxes at two different States for a single vehicle.

#### Findings

13. Upon perusal of the certificate of registration filed by the petitioner as contained in Annexure 1 to the writ petition, it is apparent that the

concerned vehicle having registration no. JH 15 D 6131 in the State of Jharkhand taxes was paid up to 22.10.2009 and registration was valid up to

22.07.2011. It is the case of the petitioner that in the year 2009, the address of the petitioner was shifted and the vehicle was registered with the State

of Bihar as bearing registration no. BR 51 9105 and they have been paying taxes in the State of Bihar even for the period during which registration

was valid in the State of Jharkhand i.e. 22.07.2011. Thus, the vehicle had two valid registrations numbers in connection with the same vehicle at least

for a period between 02.09.2009 till 22.07.2011 one in the State of Jharkhand being JH 15 D 6131 and another in the State of Bihar bearing

registration no. BR 51 9105. The petitioner has claimed transfer of registration from Jharkhand to Bihar after completing the procedure as per section

48 and 49 of Motor Vehicles Act, 1988 as letters seeking no objection was sent by District Transport Office, Banka to which the District Transport

Office, Deoghar did not respond and on the other hand the respondents are alleging that there was no such communication from District Transport

Office, Banka and consequently there was no transfer as claimed by the petitioner, rather, it was a case of fresh registration at Banka without taking

no objection certificate from the District Transport Office, Deoghar. However, aforesaid fact, allegation and counter allegation have emerged

only in the writ proceedings as the petitioner had not participated in the certificate proceedings and claims that no notice was served under Section 7

of the Act of 1914 so as to enable the petitioner to file objection under Section 9 of the Act of 1914. It is also the case of the petitioner that upon

coming to know about the aforesaid certificate case where warrant was issued through newspaper, a representation was filed, bringing on,

record, the aforesaid fact, about transfer of vehicle and denying the liability but no relief was granted which occasioned filing of this writ

petition. The filing of representation is, admitted, in, the, counter, affidavit, but, it, has, been, stated, that, the representation

was never pressed by the counsel for the petitioner who had filed vakalatnama before the certificate officer.

14. Before proceeding further, the relevant provisions of Bihar and Orissa Public Demands and Recovery Act, 1914 and the rules framed thereunder

are quoted as under:

3. Definitions. - In this Act, unless there is anything repugnant in the subject or context -

(1) "certificate debtor" means the person named as debtor in a certificate filed under this Act and includes any person whose name is substituted or added as

debtor by the Certificate Officer;

(2) "Certificate Holder" means the Government or person in whose favour a certificate has been filed under this Act, and includes any person whose name is

substituted or added as creditor by the Certificate Officer.

(3) "Certificate-Officer" means a Collector, a Sub-Divisional Officer, and any officer appointed by a Collector, with the sanction of the Commissioner, to perform

the functions of a Certificate Officer;

(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;

4. Filing of certificate for public demand payable to Collector. - When the Certificate Officer is satisfied that any public demand payable to the Collector is due,

he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office.

5. Requisition for certificate in other cases. -

(1) When any public demand payable to any person other than the Collector is due such person may send to the Certificate Officer a written requisition in the

prescribed form:

6. Filing of certificate on requisition. - On receipt of any such requisition the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery

by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due and shall include in the certificate the fee if any paid

under Section 5, sub-section (2); and shall cause the certificate to be filed in his office.

15. The aforesaid provisions reveal that when dues are payable to the Collector, the proceedings in terms of section 4 are to be followed and when the

dues are payable to any person other than the Collector, the procedure as per section 5 and 6 are to be followed. It is not in dispute during the course

of arguments that dues with respect to taxes payable on vehicles are recoverable in terms of section 4 of the Act of 1914. Section 65 of the Act of

1914 provides that the Limitation Act, 1963 is applicable to the certificate proceedings to the extent mentioned therein as if the certificate filed were

decree of the civil court. As per section 64 of the aforesaid Act, the power under the Act of 1914 is in addition to and not in derogation to other modes

of recovery of any due, debt or demand. As per section 66 of the Act of 1914, the certificate officer is deemed to be a court and is deemed to be a

civil proceeding and as per section 58, the officers under the Act have power of civil court for the purposes of receiving evidence, administering oaths,

enforcing the attendance of the witnesses and compelling production of documents and all officers are subject to supervision and control of the

Collector.

16. The term ""Certificate-Officer"" has been defined to mean a Collector, a Sub-Divisional Officer, and any officer appointed by a Collector, with the

sanction of the Commissioner, to perform the functions of a Certificate Officer. In the present case, the District Transport Officer, Deoghar has

signed the certificate showing himself to be the certificate holder as the dues are relating to tax on vehicle and he is also the certificate officer as

appointed by the Commissioner in terms of the section 3 (3) of the Act of 1914. Admittedly, the dues relating to the vehicle tax are ultimately payable

to the account of the collector.

17. Section 7 of the Act of 1914 provides that when a certificate is filed in the office of a Certificate Officer under Section 4 or Section 6, he shall

cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a copy of the certificate. As per section

9, the certificate debtor may within thirty days from the service of the notice required by Section 7, or where the notice has not been duly served, then

within thirty days from the execution of any process for enforcing the certificate, present a petition in the prescribed form signed and verified in the

prescribed manner, denying his liability, in whole or in part. As per section 10, the Certificate Officer shall hear the petition, take evidence (if

necessary) and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed; and

may set aside, modify or vary the certificate and in case the Certificate Officer is not the Collector, and considers that the petition involves a bona fide

claim of right to property, he shall refer the petition to the Collector for orders, and the Collector, if he is satisfied that a bona fide claim of right to

property is involved, shall make an order cancelling the certificate. As per section 11, the Certificate Officer may at any time amend a certificate by

the addition, omission or substitution of the name of any certificate-holder or certificate-debtor or by the alteration of the amount claimed therein

subject to the law of limitation and when any such amendment is made a fresh notice and copy shall be issued as provided in Section 7. The disposal

of objection filed under section 9 is subject to appeal and revision and there is also a provision for filing a suit to have the certificate cancelled or

modified to the extent and in the manner prescribed under section 43 to 46 of the Act of 1914.

18. The point to be considered is whether objection to the certificate proceedings in terms of section 9 can be decided by District Transport

Officer, Deoghar who is the person responsible to quantify the dues and is the certificate holder and is also the certificate officer as notified.

The crux of the argument of the petitioner is that in case such a procedure is adopted, whether it would be against the principles of natural justice and

fair play as the certificate officer would be the deciding the objection himself with respect to the certificate signed by him and violate the principle that

“no man can be a judge in his own cause”.

19. In this respect, it would be useful to refer to the judgment passed by the Hon’ble Supreme Court in the case of reported in (2004) 11 SCC

625 (Delhi Financial Corporation and Anr. Vs. Rajiv Anand and Ors. ) wherein the matter relating to appointment the Managing Director of the

Financial Corporation as the authority under section 32 G of State Financial Corporation Act, 1951 for issuing certificate relating to recovery of due to

the financial corporation as arrear of land revenue was under challenge on the ground that “no man can be a judge in his own cause”, it has

been held in para 14 that mere appointment of an officer to issue the certificate does not attract the doctrine unless it is shown that the person

concerned was biased or was personally interested or personally acted in the matter concerned or has already taken a decision one way or the other

and will be interested in supporting the decision. Paragraph 14 of the aforesaid judgement is quoted as under:

“14. Thus, the authorities disclose that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that “no man can be

a judge in his own cause”. For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has

personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting. This being the law

it will have to be held that the decision of the Delhi High Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court

is correct. It will, therefore, have to be held that Managing Director of a financial corporation can be appointed as an authority under Section 32-G of the Act.”

Further, the matter in the said case was only relating to issuance of certificate and the amount was to be recovered through a proceeding by the

Collector in terms of section 32-G of the State Financial Corporation Act, 1951.



20. This Court finds that under the Act of 1914 with which we are concerned, the certificate officer signing the certificate has to certify that the

recovery of certificate amount is not barred by any law and in the present case also, the certificate officer, who is also the certificate holder has

certified in the prescribed form that the recovery is not barred by any law. This Court is of the considered view that there may be two kinds of

objection before the certificate officer, one relating to calculation error / payments already made and not accounted for/rate of interest charged etc.

and second which touches upon the recovery is not barred by any law which may include points relating to limitation, vicarious liability/liability from

legal heirs, jurisdiction etc. which questions the correctness of the certification made by the certificate officer that 'the recovery is not barred by any

law' and the certificate officer may be interested in defending his certification so made.

21. This Court is of the considered view that the certificate proceedings being in the nature of execution proceedings, the objection of the nature of the

first category can certainly be taken care of by the certificate officer himself by referring to the accounts and calculation maintained by the

department and amend the certificate accordingly.

22. So far as the objections with respect to the second category are concerned, the certificate officer may find himself legally bound or be interested

in defending his certification that 'the recovery is not barred by any law', and there is strong likelihood of a reasonable apprehension in the mind of the

certificate debtor that the certificate officer may not question his own certification, even if any objection is filed, or may be biased while deciding such

issues. Further, such issues may also require adducing evidence/calling for documents etc. This Court is of the considered view that the objections

with regard to the second category is required to be decided by a neutral person failing which disposal of such objection will be against the principle of

law that 'no man can be a judge in his own cause' and also the principle of law that 'justice should not only be done but should be seen to

have been done.'

23. This Court also finds that section 13 of the Act of 1914 and the Rule 10 and 11 of the rules also contemplates that the certificate officer may

transfer the proceedings for execution/disposal of objection under section 9 by another officer.

12. Who may execute certificate. - A certificate filed under Section 4 or Section 6 may be executed by-

(a) the Certificate Officer in whose office the original certificate is filed or

(b) the Certificate Officer to whom a copy of the certificate is sent for execution under Section 13 sub-section (1).

13. Transmission of certificate to another Certificate Officer for execution. -

(1) A Certificate Officer in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate Officer in the same district or to the

Collector of any other district.

(2) When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of Section 8 with respect to

certificates filed in the office of a Certificate Officer shall apply as if such copy were an original certificate:

Provided that it shall not be necessary to serve a second notice and copy under Section 7.

Rule 10 and 11

Petitions under section 9 denying liability

Rule 10. Signature and verification of petition denying liability. " (1) Every petition filed under Section 9, denying liability shall be signed and verified at the

foot by the certificate-debtor or by some other person on his behalf who is proved to the satisfaction of the Certificate Officer to be acquainted with the facts of the

case.

(2) The verification shall be signed by the person making it and shall state the date on which it is signed.

11. Transfer of such petitions. (1) The Certificate Officer may, subject to any general or special order of the Collector transfer to any Assistant Collector or

Deputy Collector subordinate to the Collector any petition filed under Section 9 and such Assistant Collector or Deputy Collector shall hear and determine such

petition accordingly:

Provided that the Collector may re-transfer any petition so transferred and order that it be heard and determined by the Certificate Officer.

(2) The provisions of Section 10 shall be applicable to any Assistant Collector or Deputy Collector to whom any such petition has been transferred under sub-

rule (1).

24. As a cumulative effect of the aforesaid findings, this Court holds that a certificate holder can also be a certificate officer if so notified in terms of

the Act of 1914 for expeditious recovery of dues and proceed to recover the dues if no objection is raised by the certificate debtor or the objections

are of the first category as mentioned above. However, if the objection falls under the second category, the objection has to be decided by another

certificate officer. The point formulated is answered accordingly.

25. The records of this case reveal that the notice under section 7 of the Act of 1914 was not served physically upon the petitioner and upon receipt of

knowledge regarding paper publication, the petitioner filed objection in the shape of representation but as per the case of the respondents, the same

was not considered as it was not pressed by the counsel, who entered appearance on behalf of the petitioner before the District Transport Officer-

cum-certificate officer, Deoghar.

26. Considering the nature of objection, this Court is of the considered view that the objection is not with regard to calculation etc. but is with regard to

the jurisdiction of the District Transport Officer-cum-certificate officer, Deoghar to raise the demand and touches upon the certification by the District

Transport Officer-cum-certificate officer, Deoghar that 'the recovery is not barred by any law'. In view of the aforesaid pronouncement, the objection

is required to be decided by an officer other than the District Transport Officer-cum-certificate officer, Deoghar, who is also the certificate holder.

This Court also finds that the District Transport Officer, Banka (Bihar) is not a party before this Court and disputed questions with regard to

registration of the vehicle at Banka as mentioned above cannot be decided in this writ proceedings.

27. This Court also finds that the objection has been raised by filing a representation before the District Transport Officer-cum-Certificate Officer,

Deoghar but the objection has not been prepared in the prescribed manner and this procedural error is required to be taken care of by the petitioner so

that the objections so raised are decided in accordance with law.

28. Accordingly, the petitioner is directed to submit the objection raised in the representation in the prescribed manner and file the same before the

District Transport Officer-cum-certificate officer, Deoghar within a period of three weeks from today.

Upon filing of the objection as aforesaid, the District Transport Officer-cum-Certificate Officer, Deoghar is directed to transmit the records within a

period of one week thereafter to the Collector of the District of Deoghar for disposal of the objection either himself or by any other Certificate

Officer.

The necessary decision with regard to the Certificate Officer who has to decide the objection be taken by the Collector within a period of 2 weeks

from the date of receipt of the records from the office of the District Transport Officer-cum-certificate officer, Deoghar.

The collector/the certificate officer who is assigned the task of disposal of objection shall do the needful in accordance with the law after giving due

opportunity to the petitioner and also to the District Transport Officer-cum-Certificate Officer, Deoghar and final order be passed within a period of 6

months from the date of receipt of the records.

29. In order to enable the petitioner to participate in the proceedings, the order directing issuance of warrant of arrest is set- aside.

30. Petitioner to cooperate with expeditious disposal of the proceedings, furnish self-attested copy of Aadhar card along with the objection to be filed

and also the mobile number / e-mail to be mentioned in the objection itself. The various orders including the intimation regarding transmission and

receipt of the records is directed to be duly intimated to the petitioner through mobile / e-mail.

31. This writ petition is disposed of in the aforesaid terms.

32. Pending interlocutory application, if any, stands closed.