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**(2008) 12 PAT CK 0048**

**Patna High Court**

**Case No:** CWJC No. 6522 of 2008

Ashok Kumar and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

**Date of Decision:** Dec. 2, 2008

**Acts Referred:**

- Companies Act, 1956 - Section 5

**Citation:** (2009) 2 PLJR 565

**Hon'ble Judges:** Navaniti Pd. Singh, J

**Bench:** Single Bench

**Advocate:** Sandeep Kumar, for the Appellant; Pankaj Kr. Sinha, for the Respondent

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

The two petitioners are Directors of M/s Nalanda Ispat Udyog Private Limited, a Company duly incorporated under the provisions of the Companies Act, 1956. They have filed this writ application for challenging the certificate proceedings in so far as they are being individually proceeded against for recovery of dues as against the Company aforesaid merely on the ground that they were Directors of the said Company, The certificate proceedings in question being Certificate Case No. 49 of 2001-2002 pending before the Certificate Officer, Nalanda at Biharsharif was instituted on the basis of a requisition filed by Assistant Commissioner of Commercial Taxes, Biharsharif for recovery of certain dues of sales tax for the period 1994-1995 incurred by the Company aforesaid which is a registered dealer as well for the purposes of sales tax laws as prevailing then. It is submitted that the liability is a corporate civil liability and cannot be fastened on the Directors or even the shareholders. It is, therefore, submitted that the proceedings as being pursued against the two petitioners individually is wholly unsustainable. Reliance has been

placed on judgment of this Court in CWJCs No 8147 and 9436 of 2006 disposed of on 22.8.2006 wherein in respect of the same petitioners, similar certificate proceedings instituted for recovery of sales tax dues pertaining to other periods have already been set aside. A copy of the judgment is Annexure-5 to the writ application. State has filed a counter affidavit. In the counter affidavit, their categorical stand is that by virtue of Section 5 of the Companies Act, 1956, the liability of the petitioners, who are shareholders and Directors of the Company, is there. They are rightly being proceeded against. Heard the parties and with their consent, the writ application is being disposed of at this stage itself.

2. A company is a body corporate on its incorporation within the terms of the Companies Act, 1956. On incorporation, the said body becomes a juristic entity which is to be sued or which can sue in its own independent name. It gets a juristic personality distinct and independent of its Directors or its shareholders. But being a juristic entity, having no physical existence, it has to operate through human beings. In course of its operation, the corporate body may incur a civil liability or a criminal liability. So far as criminal liability is concerned, Company, being a corporate entity alone, cannot be imprisoned nor can its mental state be determined. It is the officers incharge and responsible to the affairs of the Company when the offence was sought to have been committed, become liable. This is akin to vicarious liability and this is what is provided by Section 5 of the Companies Act. Section 5 of the Companies Act clearly predicates firstly that it creates an artificial situation for the purposes of that Act and that Act alone. The principles enshrined therein are not extendable to either Acts unless so specifically provided. Secondly, it deals with regard to punishment, penalty, imprisonment, fine etc. in respect of a default committed. This deals with criminal and quasi criminal proceedings and has no application to civil liabilities of the said corporate entity.

3. So far as a corporate entity is concerned, being a juridical body, its liability is exclusively its own and cannot be passed on to the others except either by a specific agreement inter party or by operation of any statute in this regard. None have been brought on record by the State.

4. Under the aforesaid circumstances and in view of the judgment, as referred to above, there is no escape from holding that the two petitioners, who are merely Directors and shareholders of the said Company, cannot be proceeded against in the certificate proceedings for the dues of the Company. The certificate proceedings to the extent as being sought to be enforced against the petitioners are, thus, wholly invalid and cannot be permitted to continue. However, petitioners being the only two Directors could continue as a party to the proceedings only for the purposes of representing the Company but no action can be taken against the petitioners in their individual capacity and against their body for the civil liability of the Company. The writ application, with the said observation and direction, is consequently allowed.