

**(2006) 09 PAT CK 0085****Patna High Court****Case No:** CWJC No. 16346 of 2004

Rabindra Nath Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

**Date of Decision:** Sept. 27, 2006**Acts Referred:**

- Constitution of India, 1950 - Article 14, 21, 300A

**Citation:** (2007) 1 PLJR 192**Hon'ble Judges:** Navaniti Pd. Singh, J**Bench:** Single Bench**Advocate:** Madan Mohan, for the Appellant;**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

Heard. The present writ application has been filed by the sole petitioner who was at the material time the Block Development Officer, Nawanganagar, district Buxar and has since superannuated, as against the Certificate proceedings being Certificate Case No. 2/2004-05 pending before the Subdivisional Officer-cum-Certificate Officer, Dumraon.

2. The challenge is to the validity of the Certificate proceedings on the ground that the dues sought to be realised are not public demand as contemplated therein. It appears that the Block Development Officer had to supervise distribution of scholarships to the Scheduled Caste and Scheduled Tribes students. The relevant rule has been appended to the writ application which clearly states that the Block Development Officer as far as possible will supervise distribution of scholarship. In the said rule it is specified that the Block Welfare Officer is mandatorily required to be present there at all such distribution and has to certify that the scholarships have been duly distributed. In the present case it is not in dispute that the petitioner

being Block Development Officer had received scholarship money. It is not in dispute that he had transferred the entire money by cheque to the account of Block Welfare Officer. It appears that the Block Welfare Officer did not distribute rather gave a wrong and misleading certificate of its distribution. It is stated that a criminal case was instituted and nothing was found against the petitioner. It was the Block Welfare Officer and others who were charge-sheeted and nothing has been found against the petitioner till now. Now by a letter as contained in Annexure-6 the present Block Development Officer wrote to the Subdivisional Officer-cum-Certificate Officer, Dumraon that the petitioner and others had defalcated about Rs. 7,84,234/- being money meant for distribution as scholarship. They had apparently defalcated the amount and as such the same should be recovered as a public demand, on basis whereof the present proceedings being Certificate Case No. 2/2004-05 was registered before the Certificate Officer, Dumraon and notices have been issued to the petitioner, which has brought the petitioner before this Court challenging the validity of the said proceedings on the ground that the demand as sought to be realised is not a public demand.

3. Reliance has been placed on judgments of this Court since reported in Narendra Narayan Singh Vs. State of Bihar and Others, , Synco Industries Vs. State Bank of Bikaner and Jaipur and Others, & Bhavnesh Mohanlal Amin and Another Vs. Nirma Chemicals Works Ltd. and Another, for the proposition that unless the money due is a public demand the proceedings cannot be instituted much less carried on.

4. On the other hand, learned counsel for the State has referred to the judgment in the case of Md. Sattar Vs. State of Bihar and Others, for the proposition that in such matters writ jurisdiction should not be allowed to be invoked.

5. 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 Section 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."

6. 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.

7. 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.

8. 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.

9. In view of the aforesaid facts and circumstances, I am left with no option but to quash the said Certificate proceedings as against the petitioner for the reasons given above. This writ application is, accordingly, allowed.