GAHC020002992026

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/69/2026

SRI DINANATH PRASAD SHAH
S/O LATE B. SHAH, R/O LHOMITHI COLONY, HOUSE NO. 207, NEAR SITLA MANDIR, DIMAPUR, NAGALAND - 797112

VERSUS

THE STATE OF NAGALAND AND 8 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND, CHIEF SECRETARY OFFICE, NAGALAND CIVIL SECRETARIAT, KOHIMA, NAGALAND - 797001

2:THE COMMISSIONER OF STATE TAX
NEAR GHSS
LENGRIJAN
DIMAPUR
NAGALAND.

3:THE DEPUTY COMMISSIONER OF STATE TAXES
DIMAPUR ZONE
ZONAL OFFICE
NEAR GHSS
LENGRIJAN
DIMAPUR - 797112. NAGALAND

4:THE CERTIFICATE OFFICER
OFFICE OF THE DEPUTY COMMISSIONER OF STATE TAXES
DIMAPUR ZONE OFFICE
NEAR GHSS LENGRIJAN
DIMAPUR
NAGALAND - 797112

5:THE COMMISSIONER OF POLICE
BANK COLONY
HALF NAGARJAN
DIMAPUR
NAGALAND - 797112

6:THE DEPUTY COMMISSIONER OF POLICE (HQ)
DIMAPUR
NAGALAND
NAGALAND POLICE HEADQUARTERS
POLICE RESERVE HILL
KOHIMA
NAGALAND - 797001

7:THE DCP
DIMAPUR
LANDMARK COLONY
DIMAPUR
NAGALAND - 797112

8:M/S SEHBAH ENTERPRISES
DUNCAN BOSTI
DIMAPUR
NAGALAND - 797112

9:MR. IMNA YANGER IMCHEN
S/O LATE AKANGTEMJEN AO
RESIDING AT H/NO. 78
DUNCAN BOSTI
DIMAPUR
NAGALAND - 79711

Advocate for the Petitioner : D DAS SR. ADV., LUCY WEO,M SOLO

Advocate for the Respondent : GOVT ADV NL,

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

ORDER

05.05.2026

Heard Mr. D. Das, learned Senior Counsel assisted by Mr. R. Sarmah and Mr. I. Das, learned counsel for the petitioner. Also heard Mr. I. Imsong, learned Additional Advocate General for the State assisted by Mr. K. Angami, learned Government Advocate for the State respondent nos. 1 to 7.

2. In view of the nature of order proposed to be passed, the service of notice on respondent nos. 8 and 9 is dispensed with.

3. In brief, the case of the petitioner is that he is the Power of Attorney holder of Mr. Akangmeren Ao, who is the owner of M/s. Shebah Enterprises. The said M/s. Shebah Enterprises is a petroleum products dealer for Essar Oil Limited and operates a retail outlet. It is submitted by the learned Senior Counsel for the petitioner that in the year 2016, the principal, i.e., Mr. Akangmeren Ao had died. By referring to the contents of the Power of Attorney dated 08.08.2007, it is submitted that as per the said Power of Attorney, no financial or statutory liability whatsoever accrues to and/or becomes imposable upon the petitioner. It is further submitted that the legal representatives of the deceased principal did not reconstitute the dealership. Accordingly, it is submitted that on the death of the principal, the said Power of Attorney has lost its force. It is also submitted that on the strength of the said Power of Attorney executed on 09.08.2007, the liability to pay taxes, if any, did not rest upon the petitioner. It is further projected that in the meantime, the competent authority, i.e, the Assistant Commissioner of State Taxes, Ward – F, Dimapur issued a notice to the deceased principal namely, Mr. Akangmeren Ao, requiring the submission of the returns under the Nagaland (Sales of Patroleum, etc) Taxation Act, 1967.

4. It is submitted that no notice whatsoever was addressed to the petitioner requiring him to either file returns or pay any taxes or arrears. This was followed by a notice in Form 30 dated 13.10.2025, requiring the deceased principal to show cause notices as to why

warrant of arrest should not be issued. Such notices were issued on 13.10.2025, 06.02.2026, 03.03.2026 and 19.03.2026. Thereafter, the Certificate Officer, Office of the Deputy Commissioner of State Taxes, Dimapur Zone (respondent no.4) forwarded warrant of arrest in respect of the petitioner to the Commissioner of Police, Dimapur on 07.04.2026 and also requested the police authorities to provide assistance in the execution of the said warrant.

5. The learned Senior Counsel for the petitioner has submitted that the petitioner has come to know that pursuant to the show cause notice dated 19.03.2026, it has been projected as if the petitioner had appeared before the Deputy Commissioner, State Taxes, Dimapur Zone (respondent no. 3) and filed a representation dated 15.04.2026, seeking recall of the certificate proceedings. The said representation is stated to have been rejected by respondent no. 3 vide communication dated 20.04.2026. It is further submitted that the petitioner denies having made any such representation and accordingly, shall take appropriate steps in accordance with law.

6. It is submitted that the present writ petition has been filed on the ground that a warrant of arrest has been issued against the petitioner without service of any prior notice demanding taxes. It is further submitted that the said warrant has been issued without initiating any proceedings or issuing a show cause notice to the petitioner. Accordingly, the petitioner has prayed for setting aside and quashing of the warrant of arrest and for staying its operation. A further direction is also sought against the State respondents, restraining them from recovering any sales tax from the petitioner, as well as for setting aside the certificate proceedings.

7. In support of his submissions, the learned Senior Counsel for the petitioner has referred to Sections 4 to 7 of the Bengal Public Demand Recovery Act, 1913 and has also placed reliance on the judgment of the Supreme Court in *Biharilal Jaiswal and Others v. Commissioner of Income Tax and Others, (1996) 1 SCC 443*.

8. Per contra, the learned Additional Advocate General, opposing the reliefs sought in the writ petition, has submitted that the petitioner had duly appeared before the Deputy Commissioner, State Taxes and filed a show-cause reply. It is contended that the petitioner was actively managing the affairs of M/s. Shebah Enterprises and therefore, the action taken by the State authorities against the present petitioner is justified. It is further submitted that no interference is warranted with the warrant of arrest issued for recovery of dues by the Certificate Officer under the Bengal Public Demand Recovery Act, 1913.

9. The petitioner, in this case, has projected a peculiar facts and circumstances of the case. The petitioner denies having submitted any show cause reply and also disputes the service of any show cause notice, and further challenges the validity of the Power of Attorney, and it is contended that even if it is assumed that the petitioner was managing the affairs of the business, no financial liability can be fastened upon him merely on the basis of such Power of Attorney, particularly so, in view of the death of the principal in 2016, which, according to the learned Senior Counsel for the petitioner, renders the Power of Attorney invalid. Accordingly, taking note of the above facts and circumstances, the considered opinion of this Court is that, insofar as the demand raised in respect of the

petitioner, purportedly, against the proprietor of M/s. Shebah Enterprises, who is stated to be deceased, the ends of justice would be met by granting liberty to the petitioner to file an appropriate petition before the Certificate Officer under Section 9 of the Bengal Public Demand Recovery Act, 1913, denying his liability on all such grounds as have been urged in the present writ petition or on any other ground as the petitioner may be so advised.

10. Accordingly, it is provided as follows:

(i) Within ten days from the date of this order, the petitioner shall file a petition under Section 9 of the Bengal Public Demand Recovery Act, 1913 before the Certificate Officer in whose office the certificate has been issued or who is adjudicating the said certificate proceeding, raising all such grounds as he may deem fit and appropriate, including those urged in the present writ petition.

(ii) The Certificate Officer, while adjudicating the petition denying liability, shall not dismiss the application merely on the ground of delay on its presentation, and the same shall be decided on merits in accordance with law.

(iii) It is needless to say that in the event the petitioner is aggrieved by any order that may be passed by the Certificate Officer, it shall be open to the petitioner to avail such statutory remedies as may be available to him under law.

11. In order to facilitate the appearance of the petitioner before the Certificate Officer (respondent no.4), the operation of

unexecuted warrant of arrest, if any, issued and pending against the petitioner, namely, Dinanath Prasad Shah, by the Certificate Officer, Office of the Deputy Commissioner of State Taxes (respondent no. 4), shall remain stayed and shall not be given effect to for a period of ten days from the date of the final order that may be passed by the Certificate Officer.

12. Accordingly, the Commissioner of Police, Dimapur, Nagaland (respondent no. 5), to whom the warrant of arrest has been forwarded shall inform the concerned authorities to whom the warrant has been forwarded for bringing this order to their notice, so that it may not be executed as ordered herein before.

13. Accordingly, the petitioner shall produce a certified copy of this order before the Certificate Officer (respondent no. 4) and the Commissioner of Police, Dimapur, Nagaland (respondent no. 5), so as to bring this order to the notice of the said authorities.

14. It is clarified that this Court has not examined or adjudicated any of the issues raised in this writ petition. Accordingly, the Certificate Officer shall decide the matter independently and in accordance with law, without being influenced by any observation made in this order.

15. Accordingly, this writ petition is disposed of at the motion stage without issuance of any notice to the respondents.

JUDGE

Comparing Assistant