

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2633 of 2014

Binod Kumar Pandey @ Binod Pandey S/O Late Ayodhaya Pandey Resident Of
Village- Jagdishpur, P.S.- Barbigha, District- Shekhpura

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary, Department Of Finance,
Government Of Bihar, Old Secretariat, Patna
2. The Managing Director, Bihar State Co-Operative Marketing Union Ltd. Patna,
Biscoman Bhawan Patna
3. The Chairman, Bihar State Co-Operative Marketing Union Ltd. Patna,
Biscoman Bhawan, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 3710 of 2014

Shobhi Paswan Son Of Late Naurangi Paswan Resident Of Mohalla- Maheshpur,
P.S.- Menhdiganj And District- Patna

.... Petitioner/s

Versus

1. Bihar State Co-Operative Marketing Union Ltd., Through Its Chairman,
BISCOMAUN, Patna
2. Managing Director, Bihar State Co-Operative Marketing Union Ltd.,
BISCOMAUN Bhawan, Patna
3. Secretary, Bihar State Co-Operative Marketing Union Ltd., BISCOMAUN
Bhawan, Patna
4. Chief Of Accounts, Bihar State Co-Operative Marketing Union Ltd.,
BISCOMAUN Bhawan, Patna
5. Account Officer, Bihar State Co-Operative Marketing Union Ltd.,
BISCOMAUN Bhawan, Patna
6. Special Officer, (Establishment), Bihar State Co-Operative Marketing Union
Ltd., BISCOMAUN Bhawan, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 2391 of 2015

Mosmat Shakuntla Devi W/o Late Rajendra Kumar Ray, Resident of Mohalla -
Uttari Mandiri, Bapu Nagar, P.O. - G.P.O. P.S. - Budha Colony, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative, Government

of Bihar, New Secretariat, Patna.

2. The Bihar State Co-operative Society Marketing Union Ltd (BISCOMAUN) through the Managing Director, BISCOMAUN Bhawan, Patna.
3. The General Manager, ICDP, Madhubani.
4. The State Monitoring Officer, Monitoring Cell Integrated Co-operative Development Project, Deep Narayan Singh Kshetriya Sahkari Prabandh Sansthan Pariyar, Patna-23.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1089 of 2015

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Awadhesh Kumar son of late Shivnarayan Prasad Singh Resident of village-
Gobindpur, P.O-Baikathpur, P.S- Khusro, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Bihar, Patna.
2. The Registrar Co-operative Societies, New Secretariat, Patna, Bihar
3. The Secretary, Department of Co-operative, Govt. of Bihar, Patna.
4. The Managing Director, Bihar State Co-operative Marketing Union Ltd., BISCOMAN Bhawan, Patna, Bihar.
5. The Secretary, Bihar State Co-operative Marketing Union Ltd., BISCOMAN Bhawan, Patna, Bihar.
6. The Chairman, Bihar State Co-operative Marketing Union Ltd., BISCOMAN Bhawan, Patna, Bihar.
7. The Chief Account Officer, Bihar State Co-operative Marketing Union Ltd., BISCOMAN Bhawan, Patna, Bihar.
8. The Finance Controller, Bihar State Co-operative Marketing Union Ltd., BISCOMAN Bhawan, Patna, Bihar.
9. The Account Officer, Bihar State Co-operative Marketing Union Ltd., BISCOMAN Bhawan, Patna, Bihar.
10. The Special Officer (Establishment) Bihar State Co-operative Marketing Union Ltd. BISCOMAN Bhawan, Patna, Bihar.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1297 of 2015

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1. Krishnanad Singh son of late Rambilash Singh Resident of village - Narma, P.O. - Mohiuddinpur, P.S. - Fatuha, District - Patna.
2. Ramnandan Prasad Singh son of late Chandrabhan Singh Resident of village - Sheikhpul Sithaura, P.O. - Sithaura, P.S. - Rajgir, District - Nalanda.
3. Jamuna Prasad son of late Dukhi Ram Resident of Village - Nalanda, P.O. - Nalanda, P.S. - Nalanda, District - Nalanda.
4. Nirmala Sinha Wife of late Satrudhan Singh Resident of village - Hathiyawan, P.O. - Hathiyawan, P.S. - Sheikhpura, District - Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Registrar Co-operative Societies, New Secretariat, Patna, Bihar.
3. The Secretary, Department of Co-operative, Govt. of Bihar, Patna.
4. The Managing Director, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
5. The Secretary, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
6. The Chairman, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
7. The Chief Account Officer, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
8. The Finance Controller, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
9. The Account Officer, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
10. The Special Officer (Establishment), Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 6819 of 2014

Gopal Shankar Singh, Son Of Late Sachidanand Singh, Resident Of Village- P.O.- Sonpur (Narvas), District- Chapara.

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Department Of Co-Operative, Government Of Bihar, Patna
2. Registrar Co-Operative Society, Bihar, Patna
3. Bihar State Co-Operative Marketing Union Limited, BISCOMAUN Bhawan, Patna Through Its Secretary.
4. Managing Director, Bihar State Co-Operative Marketing Union Limited, BISCOMAUN Bhawan, Bihar, Patna
5. Finance Officer, BISCOMAUN, Bihar, Patna
6. Senior Regional Officer, BISCOMAUN, Muzaffarpur

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 14598 of 2014

Subhendra Jha S/o Late Umapati Jha R/o Village - Hanuman Nagar, P.O. - Bhaur, P.S. - Pandaul, District - Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Cooperative Department, Patna.
2. The Chairman, BISCOMAUN, Patna.
3. The Managing Director, BISCOMAUN, Patna.
4. The Administrator, BISCOMAUN, Patna.
5. The Board of Directors, BISCOMAUN, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6297 of 2014

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Arun Kumar Verma S/O Late Dinesh Chandra Verma Resident Of House No. U/455, Lohia Nagar Colony, P.S. - Kankarbagh, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Co-Operative Department, Government Of Bihar, Patna
3. The Chairman, Bihar State Co-Operative Marketing Union Ltd., Patna
4. The Managing Director, Bihar State Co-Operative Marketing Union Ltd., West Of Gandhi Maidan, Patna
5. The Finance Controller/Chief Of Finance, Bihar State Co-Operative Marketing Union Ltd., West Of Gandhi Maidan, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2241 of 2015

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1. Rajendra Prasad Singh Son of Late Sukhdeo Prasad Singh, Resident of Village - Maur, P.O. - Maur, P.S. - Barbigaha, District - Sheikhpura.
2. Umesh Prasad Singh Son of Late Dev Narain Singh, Resident of Village - hathiyawan, P.O. - Shekhpura, P.S. - Hathiyawan, District - Sheikhpura.
3. Suresh Sharma Son of Late Laddu Singh, Resident of Village - Kamta, P.O. - Kamta, P.S. - Shekhpura, District - Sheikhpura.
4. Chandraket Singh Son of Late Kartik Sfinh, Resident of Village - Narawa, P.O. -Mohidunpur, P.S. - Fatuha, District - Patna.
5. Surendra Prasad Singh Son of Late Alakhdeo Singh, Resident of Village - Hathiyawan, P.O. - Shekhpura, P.S. - Hathiyawan, District - Sheikhpura.
6. Surendra Singh Son of Late Tarni Singh, Resident of Village - Hathiyawan, P.O. - Hathiyawan, P.S. - Sheikhpura, District - Sheikhpura.
7. Janardan Prasad Singh Son of Late Sita Ram Singh, Resident of Village - Hathiyawan, P.O. - Hathiyawan, P.S. - Sheikhpura, District - Sheikhpura.
8. Birendra Singh Son of Late Jwala Singh, Resident of Village - Hathiyawan, P.O. - Hathiyawan, P.S. - Sheikhpura, District - Sheikhpura.
9. Shivkant Prasad Son of Late Narain singh, Resident of Village - Kamta, P.O. - Purankama, P.S. - Sheikhpura, District - Sheikhpura.
10. Bijay Singh Son of Late Ramavatar Singh, Resident of Village- Hathiyawan, P.O. - Hathiyawan, P.S. - Sheikhpura, District - Sheikhpura.
11. Jang Bahadur Singh Son of Late Boudhu Singh, Resident of Village - Baruna,

- P.O. - Baruna, P.S. - Ariyari, District - Sheikhpura.
12. Narendra Prasad Singh Son of Late Ramchandar Singh, Resident of Village - Hathiyawan, P.O. - Hathiyawan, P.S. - Sheikhpura, District - Sheikhpura.
13. Jitendra Kumar Singh Son of Late Ramchandra Singh, Resident of Village - Rupas, Tola - Chedi Singh, P.O. - Athamalagola, P.S. - Athamagola, District - Patna.
14. Srikant Singh Son of Late Amir Singh, Resident of Village - Bhasingpur, P.O. - Bangpur, P.S. - Parwalpur, District - nalanda.
15. Narendra Kumar Son of Late Ramlakhan Singh, Resident of Village - Masnadpur, P.O. - sahjahanpur, P.S. - Sahjahanpur, District -Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Bihar, Patna.
2. The Registrar Co-operative Societies, New Secretariat, Patna, Bihar.
3. The Secretary, Department of Co-operative, Govt. of Bihar, Patna.
4. The Managing Director, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
5. The Secretary, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
6. The Chairman, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
7. The Chief Account Officer, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna Bihar.
8. The Finance Controller, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
9. The Account Officer, Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna, Bihar.
10. The Special Officer (Establishment) Bihar State Co-operative Marketing Union Ltd., Biscoman Bhawan, Patna Bihar.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2356 of 2015

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Sri Nagendra Lal, son of late Pradyumna Lal, Resident of Village Bharauli (Bharhulli), Kora, P.O. Korra, P.S. Singhwara, Dist. Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
4. The Principal Secretary, Co-operative Department, Govt. of Bihar, Patna.
5. The Managing Director, Bihar State Co-operative Marketing Union Ltd. (BISCOMAUN), West Gandhi Maidan, Patna.
6. The Finance Controller, Bihar State Co-operative Marketing Union Ltd. (BISCOMAUN), West Gandhi Maidan, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 593 of 2015

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Om Prakash Singh Son of late Govind Singh Resident of village- Chauwari, P.O.-
Kochas, P.S.- Kochas, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Food Corporation (BISCOMAUN) Bihar, Patna.
3. The Chairman, Board of Directors-cum-Appellate Authority, Biscomaun, Patna.
4. The Director, Biscomaun, Patna.
5. The Managing Director, Biscomaun, Patna.
6. The Administrator, Biscomaun, Patna.
7. The Executive Director, Biscomaun, Patna.
8. The Senior Regional Officer, Biscomaun, Patna.
9. The Registrar, Co-Operative Society, Bihar, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 690 of 2015

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Birendra Singh Son of Late Nageshwar Singh Resident of Village Mano, P.S -
Suryagarh, District - Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Managing Director, BISCAMAN, Patna.
3. The Accounts Officer, BISCAMAN, Patna.
4. The Senior Regional Officer, BISCAMAN, Bhagalpur.
5. The Assistant Store Manager BISCAMAN, Lakhisarai.

.... Respondent/s

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Appearance :

(In CWJC No. 2633 of 2014)

For the Petitioner/s : Mr. Vipin Kumar, Adv

For the Respondent/s : Mr. Manoj kr. Ambastha GP-14

For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 3710 of 2014)

For the Petitioner/s : Mr. Mohammed Abu Haidar, Adv

For the Respondent/s : Mr. L.PIK. Rajgriha, AC to AAG-4

For the BISCOMAUN : Mr. Kumar Mishra, Adv.

(In CWJC No. 2391 of 2015)

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Adv

For the Respondent/s : Ms. Kumari Amrita, GP10

For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 1089 of 2015)

For the Petitioner/s : Mr. Vinay Mistry, Adv
 For the Respondent/s : Mr. Mr. Kamlesh Prasad, AC to SC2
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 1297 of 2015)

For the Petitioner/s : Mr. Vinay Mistry, Adv
 For the Respondent/s : Mr. Vinay Kirti Singh, GA3
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 6819 of 2014)

For the Petitioner/s : Mr. Arbind Kumar Singh, Adv
 For the Respondent/s : Mr. Arvind Kumar-2, SC17
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 14598 of 2014)

For the Petitioner/s : Mrs. Anju Mishra, Adv
 For the Respondent/s : Mr. J.P.Karn, AAG4
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 6297 of 2014)

For the Petitioner/s : Mr. Siddhartha Prasad
 For the Respondent/s : Mr. Ashok Kumar, SC-11
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 2241 of 2015)

For the Petitioner/s : Mr. Mrigank Mauli, Adv
 For the Respondent/s : Mr. Raj Nandan Prasad, SC9
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 2356 of 2015)

For the Petitioner/s : Mr. Vikas Kumar, Adv
 For the Respondent/s : Mr. Avinash Kumar, SC30
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 593 of 2015)

For the Petitioner/s : Mr. Rajeev Ranjan Sinha, Adv
 For the Respondent/s : Mr. Shivendra Kishore, AAG7
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

(In CWJC No. 690 of 2015)

For the Petitioner/s : Mr. Jai Prakash Singh, Adv
 For the Respondent/s : Mr. Kundan Bhadur Singh SC-22
 For the BISCOMAUN : Mr. Ishwwari Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 10-02-2015

Heard learned counsel for the parties.

2. All these writ applications, at the instance of the employees of the BISCOMAUN, having regard to the grievance relating to their service condition including payment of salary and/or retirement benefit, have been sought to be opposed by the learned



counsel for the BISCOMAUN by raising a preliminary objection that such writ applications will not be maintainable in view of the law laid down by the judgment of this Court in the case of **Harendra Narain Banker Vs. State of Bihar and others**, reported in **1985 PLJR 1078** and Full Bench Judgment of this Court in the case of **Rajendra Prasad Sah & Ors vs the State of Bihar & Ors** reported in **2000 (4) PLJR 273** as well as in the case of **Organizer , Dehri C.D. & C.M. Union Limited vs The State of Bihar & Ors**, reported in **2014(1) PLJR 695**.

3. In this regard learned counsel for the respondents have also placed reliance on a large number of unreported judgments being:-

- (i) order dated 17.01.2011 in C.W.J.C No. 20735 of 2010 (Abdul Wahid vs the State of Bihar & Anr and its analogous cases),
- (ii) order dated 21.01.2011 in C.W.J.C No. 1250 of 2011(Saudagar Sah vs the State of Bihar & Anr),
- (iii) order dated 17.05.2011 in C.W.J.C No. 8862 of 2011 (Ram Awdhesh Dubey vs Bihar State Cooperative Marketing Union Ltd. & Anr),
- (iv) order dated 13.07.2011 in C.W.J.C No. 5611 of 2011 (Lok Nath Tiwari vs the State of Bihar & Anr),

(v) order dated 23.09.2014 in C.W.J.C No. 16253 of 2014

(Madan Mohan Tiwari vs State of Bihar & Ors),

(vi) order dated 23.09.2014 in C.W.J.C No. 16342 of 2014

(Shiv Kumar Tiwari vs State of Bihar & Anr),

(vii) order dated 11.11.2014 in C.W.J.C No. 1307 of

2011(Rameshwar Rai vs Bihar State Cooperative Marketing Union Ltd., & Anr)

(viii) order dated 13.11.2014 in C.W.J.C No. 83 of 2014

(Lavdesb Prasad Singh vs the State of Bihar & Anr),

(ix) order dated 13.11.2014 in C.W.J.C No. 686 of 2014

(Baij Nath Prasad vs State of Bihar & Anr),

(x) order dated 13.11.2014 in C.W.J.C No. 24303 of 2013

(Dasharath Prasad vs Bihar State Cooperative Marketing Union Ltd., & Anr)

(xi) order dated 24.09.2014 in C.W.J.C No. 2651 of

2011(Raghunath Singh vs the State of Bihar & Anr),

(xii) and order dated 22.01.2015 in C.W.J.C No. 823 of

2015(Ranjit Kumar vs Bihar State Co-operative Marketing Union Ltd., & Anr)

to contend that this Court has consistently gone to hold that BISCOMAUN on account of being registered Co-operative Society under Bihar Co-operative Society Act, is not a “State” within the

meaning of Article 12 of the Constitution of India and the writ petitions filed against it, will not be maintainable.

4. Learned counsel for the petitioners in reply have firstly sought to contend, by taking a plea that the five Judges Special Bench in the case of *Organizer, Dehri C.D. & C.M. Union Limited (supra)* did not decide the issue as with regard to maintainability of the writ application conclusively and whatever was held by the Special Bench, was of a writ petition against the order passed by the Administrator while BISCOMAUN was under supersession. Apart from the aforementioned submission, reliance has also been placed by them on the judgment of the Apex Court in the case of :-

(i) **Devendra Kumar Singh vs Administrator, Bihar Coop Mkt. Un. Ltd. & Anr**, reported in **2006 (3) PLJR 70 SC**.

(ii) **Madhur Rajak & Anr vs State of Bihar and Anr** reported in **2007 (2) PLJR 814**.

(iii) **Bihar State Co-operative Marketing Union Limited (BISCOMAUN) through its Secretary and Anr vs Mahesh Prasad Sharma & Anr**, reported in **2011 (3) PLJR 440**

(iv) **K.K Saksena Vs. International Commission on Irrigation & Drainage & Ors.** reported in **2015(1) PLJR 238 (SC)**.

and also on an unreported Judgment of learned Single Judge dated

10.04.2014 passed in C.W.J.C No. 3498 of 2005 (Jivendra Jha vs Bihar State Co-operative Marketing Union).

5. In the considered opinion of this Court, once it is an admitted fact that BISCOMAUN is a society registered under the Bihar Co-operative Society Act and that not only earlier Division Bench of this Court in the case of *Harendra Narain Banker (supra)* even Full Bench judgment in the case of *Rajendra Prasad Sah (supra)* had also held BISCOMAUN not to be a “State” within the meaning of Article 12 of the Constitution of India. In this regard, paragraph nos. 12 to 14 of the Full Bench judgment of this Court in the case of *Rajendra Prasad Sah (supra)* becomes relevant and is quoted hereinbelow:-

“12. At this stage, it is very important to bear in mind that the Biscomaun itself underwent a very basic change in its legal status. As its name suggests, it is a co-operative society registered under the Bihar Co-operative Societies Act, 1935 and its management used to be vested in a managing committee, as provided under Section 14 of the Co-operative Societies Act. On 31.7.1988 its managing committee was superseded under Section 41 of the Act and an Administrator was appointed in its place to carry on the business of the Society. Before the supersession of the managing committee and appointment of an Administrator in its place, the Biscomaun was held to be neither an authority nor an instrumentality or agency of the State. It followed, therefore, that it was not amenable to the writ jurisdiction of this Court (See Harendra Narain Banker Vs. State of Bihar and others, 1985 PLJR 1078).

13. However, in Nand Kishore Rai Vs. State of Bihar, 1988 PLJR 1065 a bench of this Court considered the legal position after the managing committee of a Co-operative Society was superseded and a Special Officer was appointed in its place. It took the view that the Special Officer, appointed to manage the affairs of the Society, must be held to be an authority within the meaning of Article 12 of the Constitution who would be amenable to the writ jurisdiction of this Court.

14. This position has been consistently followed by this Court in the case of Biscomaun as well, that is to say, before the supersession of its managing committee on 30.7.1988 it was a co-operative society not being an authority or an instrumentality or

agency of the State and was, therefore, not amenable to the writ jurisdiction of this Court but after 31.7.1988 the Administrator appointed in place of the managing committee has been held to be an authority within the meaning of Article 12 of the Constitution and his actions are, therefore, subject to judicial review by this Court."

6. From the reading of the Full Bench judgment of this Court in the case of *Rajendra Prasad Sah (supra)*, it would be very much clear that the writ petition will not be maintainable against BISCOMAUN, save and except, when BISCOMAUN is under supersession and is being under the control of the State Government and its officials. Thus, there being no ambiguity in the law laid down by the Full Bench of this Court in the case of *Rajendra Prasad Sah (supra)*, it is not open for any other smaller bench of this Court including me to take a different view, inasmuch as, this Court is bound by the decision of the Full Bench Judgment. As a matter of fact, this Court is also party to a Division Bench judgment dated 16.03.2010 passed in L.P.A No. 490 of 2010, (*Chinta Devi vs the State of Bihar and Ors*) wherein, the dismissal of the writ petition by learned single judge on the ground that it was not maintainable in view of the judgment of the Full Bench in the case of *Rajendra Prasad Sah (supra)* was approved.

7. Learned counsel for the respondents are also justified in placing reliance on an order of this Court dated 17.01.2011 in a batch of writ applications against BISCOMAUN being C.W.J.C



No. 20735 of 2010 (Abdul Wahid vs State of Bihar & Ors and its nine analogous cases) wherein, once again the writ petitions against BISCOMAUN were held to be not maintainable in view of the law laid down by the Full Bench judgment of this Court in the case of *Rajendra Prasad Sah (supra)*.

8. Reliance placed by the respondents on the judgment of the Division Bench in the case of *Madhur Rajak (supra)* is also wholly misplaced, inasmuch as, in paragraph no. 6 thereof, it was clarified that as and when, the BISCOMAUN would be under supersession, the writ petition being directed against the order of the functionaries of the State Government will be maintainable. That, however, is not the case in hand because when these writ petitions have been filed, BISCOMAUN admittedly was not under supersession. As noted above, the relief in these writ applications, is only a direction to the authorities of the BISCOMAUN to pay the post retrial benefits to the writ petitioners and therefore, it cannot be said that any part of cause of action relates to the period when BISCOMAUN was under supersession.

9. Similarly, the reliance placed on the case of *Madhur Rajak (supra)* is also of no avail, inasmuch as, attention of this Court was not brought to the notice of the learned Single Judge as with regard to the law settled by the Full Bench in the case of *Rajendra*



Prasad Sah (supra) and in fact from the reading of the judgment of *Madhur Rajak (supra)*, it also becomes clear that the issue of maintainability of the writ application on account of BISCOMAUN not being “State” within the meaning of Article-12 of the Constitution of India was neither raised nor decided. Thus, the judgment of the learned Single Judge of this Court in the case of *Madhur Rajak (supra)* will be also of no avail.

10. The reliance placed by the learned counsel for the petitioners on the judgment of the Apex Court in the case of *Devendra Kumar Singh (supra)* is also wholly misplaced, inasmuch as, it is evident that the action and order of the administrator-BISCOMAUN was made subject matter of the writ petition and therefore, the writ petition and the consequential Special Leave Petition was rightly entertained.

11. As a matter of fact, a five Judges Bench, of this Court had gone into the whole issue in the case of *Organizer, Dehri C.D. & C.M. Union Limited (supra)* at a great length. The view in paragraph no. 67, reads as follows:-

“67. That being so. I would answer the reference in the following terms :-

(i) Even though the nature of a private Co-operative, which is otherwise not State within meaning of Article 12 of the Constitution, it does not change by appointment of a Special Officer or an Administrator making Co-operative a “State” within the meaning of Article 12, but the very fact of appointment of Special Officer or Administrator in terms of section 41(1), 41(2), 41(3) or section 41(5) makes the Special Officer/Administrator an “authority” under Article 12 of the Constitution, thus, amenable to writ jurisdiction and his action has to be consistent with Part-III Rights of the Constitution

being a statutory authority. If such officer is a government servant then he is "State" per se.

*(ii) The Division Bench judgment of this Court in case of **Nand Kishore Rai** (supra) and the Full Bench judgment of this Court in case of **Rajendra Prasad Sah** (supra) are correct and do not require reconsideration."*

12. The aforesaid view of the Special Bench has been consistently followed in the aforesaid unreported judgments, all of whom are based on the findings of the Special Judge Bench on the law laid down by the Five Judge Special Bench in the case of *Organizer, Dehri C.D. & C.M. Union Limited (supra)*. When the Special Bench has approved also the Full Bench judgment of this Court in the case of *Rajendra Prasad Sah (supra)* nothing remains for speculation that a writ petition against the action or the order of the BISCOMAUN will not be maintainable save and except in only one situation namely when the BISCOMAUN is under supersession, that, however, is not the position in the present cases and in fact none of the learned counsel for the petitioners have suggested that any of the order or action challenged in these set of writ petitions involve the administrator appointed in the BISCOMAUN.

13. That apart the reliance placed by learned counsel for the petitioners on the judgment of the Apex Court in the case of *Devendra Kumar Singh (supra)*, is wholly misconceived, inasmuch as, this Court would find that in the connected writ petition and consequently in the S.L.P before the Apex Court, the order and the

action of the administrator of the BISCOMAUN, under supersession had been gone into and decided. That in fact is well permissible in view of the judgment of the Special Bench in the case of *Organizer, Dehri C.D. & C.M. Union Limited (supra)*.

14. As a matter of fact, when the petitioners accept that BISCOMAUN is not under supersession and the action was/or do not involve the Administrator appointed by the State Government in BISCOMAUN, their reliance on the judgment of *Devendra Kumar (supra)* is obviously misplaced. For the same reason the reliance placed on the Division Bench judgment in the case of *Mahesh Prasad (supra)* is also wholly misplaced as would be clear from the reading of paragraph no. 6, wherein, the question of maintainability of the writ petition was gone into even without making reference to the Full Bench judgment in the case of *Rajendra Prasad Sah (supra)*. Such view of the Division Bench therefore, cannot bind this Court in the light of the law laid down by the Full Bench in the case of *Rajendra Prasad Sah (supra)* and the Five Judges Special Bench in the case of *Organizer, Dehri C.D. & C.M. Union Limited (supra)*.

15. As a matter of fact, reliance placed on the judgment of the Apex Court in the case of *K.K. Saksena (supra)* again seems to be wholly out of context and misplaced, inasmuch as, in paragraph no. 46 thereof, the question of maintainability of the writ petition was

gone into by holding as follows:-

“46. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule namely: (i) when the employee is a public servant working under the Union of India or State; (ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and (iii) when such an employee is ‘workmen’ within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act. In the first two cases, the employment ceases to have private law character and ‘status’ to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal.”

16. As would be evident the case of the petitioners does not fall in “Category-I”, inasmuch as, the petitioners are not public servant working under the Union of India or State Government. Secondly, the petitioners cannot be held to be an employee or body which is “State” within the meaning of Article-12 of the Constitution of India nor even they can be placed under third category of being working under the Industrial Disputes Act and raising dispute regarding termination by invoking the machinery under the Industrial Disputes Act.

17. Finally, the view taken by learned Single Judge in the case of *Jivendra Jha (supra)* being contrary to the law laid down by the Full Bench in the case of *Rajendra Prasad Sah (supra)*, cannot be treated to be binding precedent for me specially when I am party to a Division Bench judgment dated 16.03.2010 passed in L.P.A No. 490

of 2010, (Chinta Devi vs the State of Bihar and Ors) by following the law laid down by the Full Bench of this Court in the case of *Rajendra Prasad Sah (supra)*.

18. As a matter of fact, the following observation of the learned Single Judge in the case of *Jivendra Jha (supra)* reads as follows:-

“7. Plea of maintainability of this writ application has also been raised on the ground that the BISCOMAUN is not a State within the meaning of Article 12 of the Constitution of India. This issue has recently been decided by special Bench of this Court in the judgment dated 07.02.2014 passed in L.P.A. No. 1005 of 2011 (The Organizer, Dehri C.D. & C.M. Union Limited Fazalganj, Sasaram Vs The State of Bihar) and, therefore, this objection is overruled.”

is patently in teeth of the law laid down by the five Judges Special bench in the case of Organizer, Dehri C.D. & C.M. Union Limited (supra), inasmuch as, the entire discussion in the Special Bench as culminated in para 67 can give no two impression that a writ application against the BISCOMAUN will not be maintainable and for that reason the Special Judge Bench had also affirmed the earlier view of the Full Bench in the case of Rajendra Prasad Sah (supra).

19. Learned counsel for the petitioners led by Mr. Vikash Kumar and also supported by Mr. Sidharth Prasad and Mr. Abu Haidar, learned counsel for the petitioners have however sought to distinguish the aforesaid judgment of the Special Bench by taking a plea that what was decided therein was only the terms of reference as



with regard to maintainability of the writ application against an order passed by the Administrator while the BISCOMAUN was under supersession. They have also sought to distinguish the judgment of the Special Bench by placing reliance on a judgment of the Apex Court in the case of *Devendra Kumar Singh (supra)* and an unreported order of this Court dated 22.4.2011 in LPA No. 794 of 2010 and a recent judgment of the Apex Court in the case of *K.K. Saksena (supra)*. As a last shot, an order dated 10.4.2014 has been produced before this Court passed by the learned Single Judge in CWJC No. 3498 of 2005 (*Jivendra Jha Vs. Bihar State Co-operative Marketing Union & Ors.*) to contend that the learned Single Judge has himself gone to hold that as per the judgment of the Special Bench, the writ application will be maintainable.

20. On the other hand, learned counsel for the BISCOMAUN has produced a series of orders passed by various Single Judges holding that after the judgment of the Special Bench, writ application will not be maintainable against BISCOMAUN.

21. In the considered opinion of this Court, maintainability of the judicial discipline by Single Judge is the first and foremost basic principle of law. Comity of Court in a multi judge's court should not lead to adventurism. Here in the present case, the law being not settled, the matter was referred to the Special Bench



to examine the ratio of the two judgments, one of the Division Bench in the case of *Nand Kishore Rai (supra)* and a Full Bench judgment in the case of *Rajendra Prasad Sah (supra)*. The Special Bench ultimately having made a threadbare discussion has gone to hold that the BISCOMAUN is not a State within the meaning of Article 12 of the Constitution of India.

22. Mr. Sidharth Prasad has proceeded by saying that since the view of the Special Bench of BISCOMAUN not being a State within the meaning of Article 12 of the Constitution of India is not assailed by the petitioners, the writ application will still be maintainable because the writ petition can be maintained even against the private body.

23. The difficulty for this Court would be that the BISCOMAUN itself was the subject matter of consideration of the Full Bench judgment in the case of *Rajendra Prasad Sah (supra)* which related to an employee of the BISCOMAUN. When the Special Bench by way of majority view had approved the judgment of ratio of the Full Bench, it necessarily follows that the Special Bench had also upheld the law laid down by the Full Bench that the BISCOMAUN was not a State within the meaning of Article 12 of the Constitution of India and no writ petition was maintainable.

24. Thus having given some anxious consideration, this

Court keeping in view the law laid down by the Full Bench of this Court in the case of **Akhauri Krishna Kumar Sinha vs Mundrika Prasad** reported in **1986 PLJR 1118**, as also in the case of **Harshad Shantilal Mehta vs Custodian & Ors** reported in **1998(5) SCC 1**, must hold that a Single Judge being bound by the judgment of the larger bench could not have taken a different view. As noted above, right from the first case of *Harendra Narain (supra)* in the last 30 years, this Court has always taken a consistent view and has ultimately concluded in the judgment of the Special Bench in the case of *Organizer, Dehri C.D. & C.M. Union Limited (supra)* that a writ petition against BISCOMAUN will not be maintainable, which again has been followed without exception in almost all the cases. Thus, for the reasons indicated above, this Court has to necessarily held that BISCOMAUN is not “State” within the meaning of Article-12 of the Constitution of India and no writ would lie against it.

25. That being so, all these writ petitions are held to be not maintainable and are, accordingly, dismissed.

(Mihir Kumar Jha, J)

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