

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 4423 of 2014

IN

Civil Writ Jurisdiction Case No. 11263 of 2007

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Parmanand Rai, aged about 67 years, Son of Late Deyali Rai, resident of Biscomaun Colony, Police Station-Alamganj (Patnacity), District-Patna.

.... Petitioner

Versus

1. The State of Bihar through Registrar Cooperative Societies, Bihar, Patna namely Sri Hukum Singh Meena.
2. The Bihar State Cooperative Marketing Union Ltd, West Lawn, Patna through its Managing Director namely Sri Satrugan Kumar Choudhary.
3. The Managing Director, Bihar State Cooperative Marketing Union Ltd West lawn, Patna namely Sri Satrugan Kumar Choudhary.

.... Opposite Parties

with

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Civil Review No. 391 of 2016

IN

Civil Writ Jurisdiction Case No. 11263 of 2007

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1. The Bihar State Co- Operative Marketing Union Ltd., West Gandhi Maidan, Patna through its Managing Director
 2. The Managing Director, Bihar State Co-operative Marketing Union Ltd, West Gandhi Maidan, Patna
 3. The In-charge, Finance Controller, Bihar State Co-operative Marketing Union Ltd., Patna
 4. The Special Officer (Administration) Bihar State Co-operative Marketing Union Ltd, West Gandhi Maidan, Patna

.... Petitioners

Versus

1. The State of Bihar through Registrar, Co-operative Societies, Bihar, Patna
2. The Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner (Pension), R Block, Road No.- 6 Patna
3. Parmanand Rai S/o Late Depali Rai R/O Biscomaun Colony, P.S. Alamganj, Patna City, Town & District- Patna

.... Opposite Parties

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Appearance :

(In MJC No.4423 of 2014)

For the Petitioner/s : Mr. Anil Singh, Adv.

For the Respondent/s : Mr. Anjani Kumar, Adv.

(In C. REV. No.391 of 2016)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.

Mr. Ishwari Singh, Adv.



Mr. Ashish Giri, Adv.
For the Writ Petitioner : Mr. Anil Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
C.A.V. JUDGMENT
Date: 19-08-2017**

1. Petitioner in C.W.J.C. No. 11263 of 2007 filed M.J.C. No. 4423 of 2014 on 24.11.2014, when the order dated 28.02.2014 passed by this court in C.W.J.C. No. 11263 of 2007 was not complied with by the opposite parties in M.J.C. No. 4423 of 2014, for initiation of contempt proceeding against the opposite parties of M.J.C. No. 4423 of 2014. The notices were issued to opposite parties in M.J.C. No. 4423 of 2014 and they appeared and filed their show cause in which at para-4 they accepted that the aforesaid order of this court was partially complied with. However, during pendency of aforesaid M.J.C. No. 4423 of 2014, the opposite parties in M.J.C. No. 4423 of 2014 on 29.08.2016 filed Civil Review No. 391 of 2016 for modification and review of part of order dated 28.02.2014 passed in C.W.J.C. No. 11263 of 2007. The above stated M.J.C. No. 4423 of 2014 as well as Civil Review No. 391 of 2016 were heard together and accordingly common order is being passed.

2. Here, I would like to mention some relevant facts of C.W.J.C. No. 11263 of 2007. Petitioner in C.W.J.C. No. 11263 of 2007 filed the above stated writ petition under Article 226 of



Constitution of India for issuance of commands to respondents to the aforesaid writ petition for making payment of his post retiral dues. The case of the petitioner in C.W.J.C. No. 11263 of 2007 was that he was appointed as Stenographer in Bihar State Co-operative Marketing Union Limited, Patna (in short “BISCOMAUN”) and having completed 58 years of age superannuated from his service on 30.11.2006 but his full retiral dues was not paid and thereafter, he filed the C.W.J.C. No. 11263 of 2007. In the aforesaid writ petition, BISCOMAUN and other respondents appeared and filed their counter affidavits. The above stated writ petition was disposed of vide order dated 28.02.2014 by this court directing the respondents of the aforesaid writ petition to take steps for payment of arrear of salary of writ petitioner from April 1997 to November 2006 when turn of the writ petitioner comes in chronological manner. This court also directed the respondent no. 3 of the writ petition to decide the dispute of earned leave if the aforesaid dispute is raised by the writ petitioner before him. Furthermore, this court directed the respondent no. 3 of the aforesaid writ petition/concerned respondents to recalculate the interest on principal amount of Rs. 1,89,936/- notionally making deduction in instalments in each and every month and after proper calculation return the remaining amount to the petitioner and also to calculate the statutory interest on Gratuity and Group Insurance till



the date of its realization and payment. Furthermore, the respondent no. 3/concerned respondents were directed to make payment of provident fund of the writ petitioner along with employer's share from April 1997 to March 2004 and April 2006 to November 2006 after deducting the share of the writ petitioner's contribution from his salary for the aforesaid period.

3. The review petitioners want modification and review of the aforesaid order dated 28.02.2014 passed in C.W.J.C. No. 11263 of 2007 on the ground that as per prevailing provision and accepted practice in BISCOMAUN interest on Gratuity and Group Insurance amount is calculated and paid up to the date of superannuation of an employee and if in compliance of order of this court interest on Gratuity and Group Insurance is paid to the writ petitioner till the date of its realization, the same will open flood gate for all the employees of the BISCOMAUN and it will put heavy burden upon the BISCOMAUN. The second ground of the review petition is that in view of judgment reported in 2000(4) PLJR 273, the BISCOMAUN is not the State and, therefore, writ petition against the BISCOMAUN is not maintainable.

4. Learned counsel appearing for the petitioners in Civil Review No. 391 of 2016 submitted that in plethora of decisions, it has already been held that BISCOMAUN does not come under the



definition of State and, therefore, writ petition under Article 226 of the Constitution of India is not maintainable. Learned counsel appearing for the petitioner in Civil Review No. 391 of 2016 cited decision of **Harendra Narain Banker vs. State of Bihar and others reported in 1985 BBCJ, 650** wherein their Lordships held that *“The BISCOMAUN is not an instrumentality of the State and hence is not a State within the meaning of Article 12 of the Constitution as the BISCOMAUN does not enjoy any monopoly status which is State conferred or State protected and BISCOMAUN is sovereign and its management vest in the Managing Committee and, therefore, no writ lies against it.”* He also cited Full Bench decision of this court reported in **2000(4) PLJR 273 (Rajendra Prasad Sah and others vs. State of Bihar and others)** wherein their Lordships while referring the decisions of **Harendra Narain Banker vs. State of Bihar and others (Supra)** as well as **Nand Kishore Rai vs. State of Bihar reported in 1988 PLJR 1065** held that *“After supersession of Society and after appointment of Administrator under Section 41 of Co-operative Societies Act, the BISCOMAUN is an authority within the meaning of Article 12 of the Constitution who would be amenable to the writ jurisdiction.”* He also cited decision of **Anita Kumari and others vs. State of Bihar through Managing Director, BISCOMAUN and others reported in 2016(1) PLJR 315** in which a co-ordinate Bench of this court having considered the various decisions rendered by this court held that *“BISCOMAUN is a Society registered under the Bihar Co-*



operative Society Act and not a State within the meaning of Article 12 of the Constitution and, therefore, writ petition is not maintainable against the BISCOMAUN.” He also cited **Special Bench Decision of this court passed in the case of the Organizer, Dehri C.D. and C.M. Union Limited vs. State of Bihar and others reported in 2014(1) PLJR 695** wherein the Special Bench of this Court held that *“The Division Bench judgment of this court in the case of Nand Kishore Rai (Supra) and the Full Bench Judgment of this Court in the case of Rajendra Prasad Sah (Supra) are correct and do not require reconsideration.”*

5. On the basis of aforesaid decisions, learned counsel appearing for the petitioners in Civil Review No. 391 of 2016 submitted that when writ petition bearing C.W.J.C. No. 11263 of 2007 was not itself maintainable, this Court had no jurisdiction to issue direction to the respondents in the writ petition passing impugned order dated 28.02.2014 and, therefore, the impugned order dated 28.02.2014 passed in the C.W.J.C. No. 11263 of 2007 should be reviewed and recalled.

6. Learned counsel for the petitioners in Civil Review No. 391 of 2016 further submitted that no doubt, the maintainability of C.W.J.C. No. 11263 of 2007 was never challenged earlier before this court but a question of law can be raised at any stage and, therefore, it cannot be said that the question of maintainability is being raised for the first time. In support of his contention, he referred



decision of **Rajendra Shankar Shukla and others vs. State of Chhattisgarh and others** reported in (2015) 10 SCC 400 wherein their Lordships having relied upon the decision of **V.L.S. Finance Limited vs. Union of India** reported in (2013) 6 SCC, 278 held that *“A pure question of law can be raised at any stage before the court.”*

7. Learned counsel for the petitioners in Civil Review No. 391 of 2016 further submitted that the BISCOMAUN is a Co-operative Society registered under Bihar Co-operative Societies Act, 1935 and, therefore, writ petitioner ought to have challenged the action of BISCOMAUN before the Registrar of Co-operative Societies as laid down in the Act as well as Regulation of the Society itself and, therefore, in that view of the matter also writ petition filed by the writ petitioner was not maintainable before this court.

8. On the other hand, learned counsel appearing for the opposite party in review petition refuted the above stated submissions arguing that admittedly, writ petition bearing C.W.J.C. No. 11263 of 2007 was filed in the year 2007 and order was passed in the said writ petition on 28.02.2014 and after that the writ petitioner filed M.J.C. No. 4423 of 2014 on 24.11.2014. He further submitted that petitioners in review filed review petition on 29.08.2016 i.e. more than after two and half years of passing order in writ petition and moreover, in M.J.C. No. 4423 of 2014, review petitioners accepted this fact that



impugned order dated 28.02.2014 has partly been complied with by them and, therefore, the review petitioners has no right to say at this stage that the C.W.J.C. No. 11263 of 2007 was itself not maintainable and this court had got no jurisdiction to pass the impugned order. He further submitted that moreover, this court in several other cases entertained writ petitions which were filed by retired employees of the BISCOMAUN for issuance of direction to BISCOMAUN to make payment of their retiral dues but except in the present case, the BSICOMAUN has not raised objection in any other writ petitions regarding maintainability of those writ petitions. In support of his contention, he referred several unreported judgments and orders passed by this court and particularly, an unreported judgment delivered by Division Bench of this Court in **Hari Nandan Prasad and others vs. State of Bihar and others** passed in L.P.A. Nos. 745, 975, 976, 977, 1231, 1238 and 1239 all of 2004 wherein Their Lordships held as follows:-

“We have heard learned counsel for the parties and we are of the view that it is not necessary at all to go into that question for the simple reason that that it is an admitted position that the appellants are the employees of the BISCOMAUN (Co-operative Societies registered under the Societies Registration Act). It is also an admitted position that the BISCOMAUN is discharging a public duty and in such a



situation it will not be proper on the part of the respondents to deny the payment of retiral dues. It is a different matter that because of the financial crunch, the payment is made in instalments or according to the year of retirement of the employees and it is for the BISCOMAUN to decide taking into consideration its financial position, but denying the claim of the appellants on a technical ground, in our view, does not appeal to us.”

9. Learned counsel for the opposite party in review also submitted that BISCOMAUN admittedly, discharge the public duty and time to time funds are allotted to BISCOMAUN by the State Government lending financial help to the BISCOMAUN and, therefore, it cannot be said that the BISCOMAUN does not come under the definition of State as enshrined under Article 12 of the Constitution of India. In support of his contention, he referred decision of **Board of Control for Cricket in India and others vs. Cricket Association of Bihar and others reported in (2015) 3 SCC 251** wherein the Hon’ble Apex Court at para-22 of the aforesaid judgment held that *“Article 12 of the Constitution of India gives an inclusive definition to the expression “State” but the question whether or not BCCI is “State” within the meaning of Article 12 of the Constitution may not make any material difference to the case at hand in view of the admitted position that the respondent BCCI does discharge several important public functions which make it amenable to the writ jurisdiction of the High Court under Article 226 of*



the Constitution of India.” Learned counsel submitted that principle as laid down by the Hon’ble Apex Court of this country in the above stated decision is applicable in the case of BISCOMAUN also and, therefore, even if it assumed that the BISCOMAUN does not come under the definition of State as mentioned under Article 12 of the Constitution, then also, the action of BISCOMAUN is amenable under Article 226 of the Constitution of India. He also relied upon decision of **Braj Kishore Prasad and others vs. State of Bihar and others reported in 2007(3) PLJR 281** and submitted that in the aforesaid case, a Single Bench of this court entertained the writ petition filed on behalf of several retired employees of BISCOMAUN and directed the BISCOMAUN to ensure the payment of retiral dues of retired employees as the State Government has 99.5 % share out of total share capital of BISCOMAUN amounting to rupees five hundred crores and the aforesaid direction was given by the learned Single Judge of this court in that judgment taking into account some direction issued by Hon’ble Supreme Court in case of Central/ State Agencies vide order dated 18.02.2003 passed in Civil Appeal No. 8580 of 1994 (**Chief Conservator of Forest, Government of A.P. vs. The Collector and others**).

10. Having heard the rival contentions of both the parties, I went through the records. It is an admitted position that



review petition was filed after near about two and half years of passing impugned order dated 28.02.2014 in writ petition bearing C.W.J.C. No. 11263 of 2007. It is also an admitted position that question of maintainability of writ petition bearing C.W.J.C. No. 11263 of 2007 is raised for the first time in review petition and neither the aforesaid plea was taken in the counter affidavit filed on behalf of the BISCOMAUN in C.W.J.C. No. 11263 of 2007 nor in the show cause filed in M.J.C. No. 4423 of 2014. However, it is admitted case of the BISCOMAUN that the impugned order dated 28.02.2014 passed in C.W.J.C. No. 11263 of 2007 has partly been complied with after passing order dated 28.02.2014 in C.W.J.C. No. 11263 of 2007.

11. The part III of Constitution of India deals with fundamental rights whereas part IV of Constitution of India deals with directive principles of State Policy. The fundamental rights as enshrined in part III of Constitution of India can only be enforced against the State and the definition of the State has been given under Article 12 of the Constitution of India. There are two modes for enforcement of fundamental rights enshrined in part III of Constitution of India. First, by approaching the Supreme Court directly under Article 32 of Constitution of India and second, by approaching the High Court under Article 226 of Constitution of India but there is distinction between Article 32 and Article 226 of



Constitution of India. Under Article 32 of Constitution of India only fundamental rights enshrined in part III of Constitution of India can be enforced against the State only whereas under Article 226 of Constitution of India not only fundamental rights enshrined in part III of Constitution of India can be enforced against the State but the directions, orders or writs can be issued against any person or authority not only for enforcement of any right conferred by part III of the Constitution of India but also for any other purposes.

12. However, the Division Bench and Full Bench of this Court have already held in the decisions as referred above in this judgment that the BISCOMAUN does not come under the definition of State and, therefore, I am bound to accept the aforesaid decision of Division Bench and Full Bench of this court but in my view, even if it assumed that the BISCOMAUN is not a State in the terms of Article 12 of Constitution of India, then also, writ petition filed under Article 226 of Constitution of India for getting retiral dues is maintainable against the BISCOMAUN because the BISCOMAUN discharges public duty and gets nature of sovereignty by a statute and, therefore, it is legal duty of the BISCOMAUN to pay the retiral dues of its employees and if BISCOMAUN violates its duty, the aggrieved employee has right to approach this court directly under Article 226 of Constitution of India for redressal of his grievance.



13. It is admitted case that the point of maintainability has been raised for the first time in review petition and in my view, the BISCOMAUN has no right to raise this point in review petition particularly, in the circumstance, when BISCOMAUN waived the said right at the time of hearing of writ petition bearing C.W.J.C. No. 11263 of 2007.

14. No doubt, legal point can be raised at any stage but in review jurisdiction, the court has very limited power and review of its own order is permissible only when the error is apparent on the face of the record itself. The court has no power to make meticulous enquiry while exercising the power of review and no order can be reviewed in guise of exercising the power of appeal.

15. So far as the prevalent practice of the BISCOMAUN to calculate the interest on Gratuity and Group Insurance till the date of retirement is concerned, in my view, the said principle applies in those cases where the payment of Gratuity or Group Insurance amount is made within time i.e. on the due date but the said principle shall not apply in those cases where delayed payment is made and, therefore, on the aforesaid ground also, I do not find any ground to review my previous order dated 28.02.2014 passed in C.W.J.C. No. 11263 of 2007

16. On the basis of aforesaid discussions, I do not find



any ground to interfere into the impugned order dated 28.02.2014 and accordingly, Civil Review No. 391 of 2016 stands rejected.

17. The office should place M.J.C. No. 4423 of 2014 under appropriate heading.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	AFR
CAV DATE	23.11.2016
Uploading Date	21.08.2017
Transmission Date	N.A.

