

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14833 of 2015

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Bihar State Co-operative Marketing Union Ltd. in short, BISCOMAUN (Bihar & Jharkhand), having its office at Biscomaun Bhawan, West- Gandhi Maidan, P.S.- Gandhi Maidan, Patna- 800001, Town & District- Patna, through its Manager Director.

... .. Petitioner/s

Versus

1. The State of Bihar, through its Chief Secretary, Government of Bihar, Patna.
2. The Finance Commissioner, Government of Bihar, Patna.
3. The Principal Secretary, Co-operative Department, Government of Bihar, Patna.
4. The Registrar, Co-operative Societies, Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16673 of 2018

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Based on the letter of Mr. Sachidanand Singh, Convenor, BISCOMAN, Anti Corruption Front Dated 06.08.2018

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Deptt. of Agriculture, Cooperation and Farmers Welfare, Patna.
3. The Secretary, Deptt. of Labour & Employment, Patna.
4. Bihar State-Co-operative Marketing Union Limited (BISCOMAUN) through its Managing Director.
5. Employees' Provident Fund Organization through its Enforcement Officer having its Regional Office- R-Block, Road No.6, Patna-800 001.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 14833 of 2015)

For the Petitioner/s	:	Mr. Y. V. Giri, Senior Advocate Mr. Ashish Giri, Advocate
For the State	:	Mr. Anjani Kumar, AAG-4 Mr. Shailendra Kumar, Advocate
For the EPFO	:	Mr. R. S. Pradhan, Senior Advocate Mr. Jai Prakash Verma, Advocate

(In Civil Writ Jurisdiction Case No. 16673 of 2018)

For the Petitioner/s	:	Mr. P. K. Shahi, Senior Advocate Mr. S. S. Sundaram, Advocate
For the State	:	Mr. Anjani Kumar, AAG-4 Mr. Shailendra Kumar, Advocate
For the BISCOMAUN	:	Mr. Y. V. Giri, Senior Advocate Mr. Ashish Giri, Advocate
For the EPFO	:	Mr. Rajiv Kr. Verma, Senior Advocate Mr. Prashant Sinha, Advocate

For the Intervenors

in I.A. No.7819 of 2018 : Mr. P. K. Shahi, Senior Advocate



Mr. S. S. Sundaram, Advocate

For the Intervenors

in I.A. No.8025 of 2018 :

Mr. Nikhil Kr. Agrawal, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-10-2018

1. As both these petitions are interconnected, they are decided and disposed of together by this common order.

1.1. Civil Writ Jurisdiction Case No.14833 of 2015 has been preferred by the petitioner- Bihar State Co-operative Marketing Union Limited (hereinafter referred to as the 'BISCOMAUN') for an appropriate writ/order commanding and directing the respondents-State authorities to pay a sum of Rs.1,79,36,21,272/- to the petitioner on account of loss incurred to the petitioner during the long period of supersession for about 15 years (from August, 1988 to May, 2003) of the Board of Directors of BISCOMAUN (petitioner) for better management of the BISCOMAUN and for overcoming financial crunch.

1.2. Civil Writ Jurisdiction Case No. 16673 of 2018 is registered as *suo motu* Public Interest Litigation on the basis of a letter written by the retired employee of the BISCOMAUN in which it was stated that retired employees of the BISCOMAUN are not paid their provident fund and other retiral dues.



2. Now, so far as writ petition being Civil Writ Jurisdiction Case No.14833 of 2015 preferred by the BISCOMAUN claiming Rs.1,79,36,21,272/- from the State Government and other authorities is concerned, it is the case on behalf of the petitioner that till July, 1988, BISCOMAUN was smoothly and efficiently functioning and managing the affairs under the elected Board of Directors. However, the State Government in its Department of Co-operative with ulterior motive superseded the Board of Directors of BISCOMAUN by Notification issued vide Memo No.2289 dated 30th July, 1988 and appointed an Administrator to manage the affairs of the BISCOMAUN. It is the case on behalf of the petitioner that supersession of the Board of Directors of the BISCOMAUN as well as other institution continued for a pretty long time for about 15 years, i.e. from August, 1988 to 22nd May, 2003. It is the case on behalf of the petitioner that during this, the Administrator appointed by the State Government was managing the affairs of the BISCOMAUN. The State Government took over the management of the BISCOMAUN and managing affairs through senior IAS officers, who were appointed as Administrators. It is the case on behalf of the petitioner that the State Government directly controls the administration of a Co-operative Society



during the period of supersession by appointing Administrator and, therefore, as such the State Government is liable for the losses etc. caused to the Society during the supersession of the Board of Directors of the Co-operative Society.

2.1. It is the case on behalf of the petitioner that during the aforesaid period of 15 years during which the elected Board of Directors was superseded by the State Government, the financial position of the BISCOMAUN deteriorated day by day and all the units of the BISCOMAUN were closed; the staffs were not paid their salary. The BISCOMAUN which was running in profit up to July, 1988, huge loss of about 62.45 Crores was incurred during the period of supersession for which the State Government is liable to compensate to the petitioner. The petitioner has calculated and claimed the loss under different heads as under:-

(a) Assets available as on 30.06.1988- 44.47 Crores.

(b) Amount of loss - 62.65 Crores

(c) Amount of salary dues - 72.24 Crores

Total (44.47+ 62.65+72.24=179.36 Crores)

2.2. Sri Y.V.Giri, learned Senior Advocate, appearing on behalf of the BISCOMAUN submitted that if the aforesaid amount of Rs.179.36 Crores is paid to the petitioner -BISCOMAUN, in that case, the BISCOMAUN can make the payment of the



provident fund/deposit the same with the Department due and payable to the employees/retired employees of the BISCOMAUN for which now the office of the Provident Fund Commissioner has initiated the proceedings.

2.3. Making the above submissions and relying upon some of the observations made by the Division Bench of this Court in the case of **Administrator, BISCOMAUN & Anr Vs. Ramadhar Sharma & Ors**, reported in **2003 (3) PLJR 107**, it is requested to admit/allow the present petition.

3. A counter is filed on behalf of the respondents-State denying the allegations made in the petition. It is stated that on account of the mismanagement by the Board of Directors of BISCOMAUN, the State Government superseded it in the year 1988 and appointed the Administrator for managing the affairs of the BISCOMAUN. It is further stated that even during the period of suspension, the loss further came to be reduced. It is submitted that even otherwise by petition under Article 226 of the Constitution of India, the petitioner-Society cannot ask for the compensation as the same is disputed very seriously.

3.1. It is further submitted that even this Hon'ble Court in its order dated 31.05.2007 observed that if the BISCOMAUN is unable to pay salary to its employees within three months, the



Registrar, Co-operative Societies must start winding up of BISCOMAUN. It is submitted that the said order was assailed by the BISCOMAUN by way of LPA No.778 of 2007, which came to be dismissed by the Division Bench.

3.3. Making the above submissions, it is requested to dismiss the above petition.

4. Now, so far as the *suo motu* Public Interest Litigation registered being Civil Writ Jurisdiction Case No.16673 of 2018 is concerned, it appears that now, the office of the Provident Commissioner has initiated the proceedings and even otherwise Sri P. K. Shahi, learned Senior Advocate has appeared on behalf of the person, who wrote a letter to the Chief Justice, on the basis of which the *suo motu* writ petition is registered and, therefore, the Court is of the opinion that they will be in a position to initiate the independent proceedings and, therefore, the present Public Interest Litigation is required to be disposed of leaving the parties to initiate appropriate proceedings before the appropriate Court/ appropriate Forum.

4.1. Learned Advocate Sri Nikhil Kumar Agrawal appearing on behalf of the applicants of I.A. No.8025 of 2018 has submitted that because of the action taken by the Provident Fund Commissioner, their salaries are withheld.



4.2. Sri Y. V. Giri, learned Senior Advocate, appearing on behalf of the BISCOMAUN has also filed I.A. No.7761 of 2018 challenging the action taken by the office of the Provident Fund Commissioner seizing the bank accounts of the BISCOMAUN.

5. Heard learned counsel appearing on behalf of the respective parties at length.

6. Now, so far the reliefs sought in Civil Writ Jurisdiction Case No.14833 of 2015 is concerned it is filed by the BISCOMAUN claiming Rs.1,79,36,21,272/- by way of loss/compensation alleging *inter alia* that because of the mismanagement of the Administrator for the period from August, 1988 to 22nd May, 2003 and during the period of supersession of the BISCOMAUN, the State is liable to pay/compensate the same to the BISCOMAUN. However, it is required to be noted and even it can be seen from the order passed by the Division Bench of this Court in the case of **Administrator, BISCOMAUN** (supra) that because of the mismanagement by the elected body of the BISCOMAUN and the BISCOMAUN was thus running into loss, the State Government was compelled to pass an order of supersession. Even the activities of the BISCOMAUN had virtually come to a grinding halt. Thereafter, as such pursuant to the order passed by the Division Bench of this Court, in fact, the



Administrator was appointed. The Division Bench in the aforesaid order also observed that the affairs of the BISCOMAUN were being run on the style of deficit financing. The BISCOMAUN has lost its income and its management until the Administrator appointed by the High Court was a free for all affair.

6.1. It is true that the Division Bench made observations against the Government Department also. But by that itself, the petitioner- BISCOMAUN shall not be entitled to any amount of loss, more particularly, the amount claimed in the petition by way of compensation towards the loss for the period between August, 1988 to 22nd February, 2003. Even for the loss/compensation claimed, the particulars which are referred to above, the State Government cannot be directed to pay/compensate the same and that too in exercise of the powers under Article 226 of the Constitution of India. From the material on record, it appears that during the period of supersession, the huge amount was invested by the State Government, however, all efforts failed to revive the BISCOMAUN at the relevant time until the Administrator appointed by the High Court took the charge of the administration and management of the BISCOMAUN.



6.2. Under the circumstances and in view of the above, the petitioner is not entitled to the reliefs claimed in the writ petition being CWJC No.14883 of 2015.

7. As observed hereinabove, Civil Writ Jurisdiction Case No.16673 of 2018 was registered as a *suo-motu* Public Interest Litigation petition on the basis of the letter written by one retired employee, who is now able to appear through his counsel, who has filed interlocutory application in the present proceedings and considering the fact that now, even the Provident Fund Department have already initiated the proceedings, we are of the opinion that the *suo motu* writ petition be disposed of leaving the parties to take recourse to law.

8. In view of the above and for the reasons stated above, the writ petition being Civil Writ Jurisdiction Case No.14833 of 2015 stands dismissed. All connected interlocutory applications stand disposed of. It will be open for the BISCOAUN and/or any other affected parties to initiate appropriate proceedings before the appropriate Court/appropriate Forum challenging the action of the office of Provident Fund Commissioner and as and when the same is initiated, the same be considered in accordance with law and subject to compliance of the provisions of the Provident Fund Act.



9. In view of the above and for the reasons stated above, Civil Writ Jurisdiction Case No.16673 of 2018 stands disposed of leaving the parties to initiate appropriate proceedings before the appropriate Court/appropriate Forum. All connected interlocutory applications stand disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.10.2018
Transmission Date	

