

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11849 of 2021

=====

Prakash Kumar Son of Late Ram Babu Kunwar, Resident of At-Ward No.8,
Kunwar Dhekahan, P.O.-Dhekahan, Police Station-Kesaria, District-East
Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Managing Director, BISCOMAUN, Biscomaun Bhawan, West Gandhi Maidan, Patna-800001
4. The District Manager, State Food Corporation, Gopalganj.
5. The Regional Provident Fund Officer, Employees Provident Fund Organization, R Block, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate.
For the BISCOMAUN	:	Mr. Ashish Giri, Advocate.
		Ms. Riya Giri, Advocate.
For the Respondent EPFO:		Mr. Anand Kumar Ojha, Advocate.
For the Respondent/s	:	Mr. Upendra Pratap Singh, AC to SC 4.

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 29-11-2022

Heard Mr. Alok Kumar, learned counsel for the petitioner, Mr. Ashish Giri, learned counsel for the respondent BISCOMAUN, duly assisted by learned counsel Ms. Riya Giri, Mr. Anand Kumar Ojha, learned counsel for the respondent EPFO and Mr. Upendra Pratap Singh, learned AC to SC 4 for the State.

At the outset, learned counsel for the BISCOMAUN raises preliminary objection with regard to maintainability of the



writ application in view of the judgment rendered by the Special Bench of this Court, in the case of “**Organiser Dehri CD & CM Union Vs. State of Bihar & Ors.**” reported in **2014 (1) PLJR 695**, whereby, learned Special Bench held that the writ is not maintainable against the co-operative societies even if it runs by an administrator, who might be a Government servant, in case of non-existence of managing committee.

In fact in a similar matter, where the wife(s) of the deceased employees preferred writ petitions for payment of death-cum-retiral benefits of their late husband(s), the learned Coordinate Bench of this Court further in the case of “**Anita Kumari Vs. State of Bihar & Ors.**”, along with **Shahbaz Begam Vs. State of Bihar & Ors.**” reported in **2016 (1) PLJR 315** 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 of India and therefore, the present writ petition is not maintainable against the respondent BISCOMAUN.

It would be apt to quote para 7, 8 and 13 of the said judgment, which is as follows:

“7. 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 (supra) even Full Bench



judgment in the case of Rajendra Prasad (supra) had also held BISCOMAUN not to be a “State” within the meaning of Article 12 of the Constitution of India, there would be no difficulty in accepting the preliminary objection of the respondents as with regard to the writ petitions being not maintainable. 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 v. State of Bihar, 1985 PLJR 1078).”

8. 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 v. the State of Bihar) 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.

13. 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 and had laid down the law in following words : -

“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.”

In view of the aforesaid settled legal position this court finds substance in the preliminary objection raised by the learned counsel for the respondent BISCOAUN.

At this stage, learned counsel for the petitioner seeks permission to withdraw this writ application, with a liberty to avail other remedies available under the law.

In view of the prayer made on behalf of the petitioner, the present writ application stands disposed of, with the aforesaid liberty.

(Harish Kumar, J)

manoj/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.12.2022.
Transmission Date	NA

