

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16990 of 2022

1. Bindeshwaree Singh Son of Nanak Singh, resident of village - Tetar Dih, Near Hanuman Mandir, P.S. Hasan Bazar, District - Bhojpur at Ara, Bihar - 802204.
2. Motilal Singh, Son of Rajgrih Singh, resident of A/5, Gandhi Vihar Police Colony, P.S. Phulwari, Anisabad, District - Patna, Pin - 800002.
3. Sushil Kumar, son of Gangadhar Prasad, resident of Police Station Road, Jagdishpur, near SBI. P.S. Jagdishpur, District - Bhojpur at Ara, Bihar, Pin 802158.
4. Ramakant Sinha, Son of Late Rajaram Sinha, resident of village - Gunja Dihri, P.O. Rupsagar, P.S. Nawanagar, District - Buxar, Bihar, Pin - 802129.
5. Arbind Kumar Singh, son of Jay Govind Singh, resident of village - Bhawrah, P.S. Nokha, District - Rohtas at Sasaram, Bihar, Pin - 802215.
6. Krishna Bihari Dubey, Son of Rajendra Dubey, resident of Ward No. 6, Dalmiya Nagar, P.S. - Dalmiya Nagar, District - Rohtas at Sasaram, Bihar, Pin - 821305.
7. Brajeshwar Dubey, Son of Gopal Dubey, resident of village - Dhakaich, P.O. Dhakaich, P.S. Duryaon, District - Buxar, Pin 802133.
8. Birendra Prasad Mishra, Son of Krishna Kumar Mishra, resident of village - Parsathua, P.S. Cochas, District- Rohtas at Sasaram, Bihar, Pin - 821108.
9. Chandeshwar Prasad Singh, Son of Muni Singh, resident of Village - Gopalpur, P.S. - Gopalpur, District - East Singhbhum, Jharkhand - 832303.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Finance, Government of Bihar, Patna.
3. The Additional Chief Secretary/Principal Secretary, Department of Co-operative, Government of Bihar, Patna.
4. The Bihar State Co-operative Marketing Union Limited through its Chairman, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
5. The Managing Director, Bihar State Co-operative Marketing Union Limited, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
6. The Finance Controller, Bihar State Co-operative Marketing Union Limited, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
7. The Secretary, Bihar State Co-operative Marketing Union Limited, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
8. The Account Officer, Bihar State Co-operative Marketing Union Limited, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.
9. The Special Officer (Establishment), Bihar State Co-operative Marketing Union Limited, BISCOMAUN Bhawan, West Gandhi Maidan, Patna.

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 17495 of 2022

Bipin Bihari Singh son of Late Rameshwar Singh, resident of Bimla Shree Apartment Home 202, Hirabag Chowk, Hazaribagh, P.S. and District Hazaribagh, presently C/o Gaya Prasad, Krishna Nagar (Kidwaipuri) near Lado Jewelers, P.S. Budha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna.
3. The Registrar, Cooperative Society, Bihar, Patna.
4. The Managing Director, Bihar State Cooperative Marketing Union (BISCOMAUN), Bihar, Patna.
5. The Employees Provident Fund Organization Enforcement Officer having its Regional Office at R. Block, Road No. 6, Patna-1.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 16990 of 2022)

For the Petitioner/s : Mr. Jeetendra Narayan, Advocate
For the Respondent/s : Mr. Manoj Kumar Ambastha, SC-26
Mr. Subodh Kumar, AC to SC-26
For the BISCOMAUN : Mr. Vikash Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 17495 of 2022)

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate
For the Respondent/s : Mr. Amit Prakash, GA-13
Mr. Ravi Bhardwaj, AC to GA-13
For the BISCOMAUN : Mr. Vikash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 22-07-2024

Heard the parties.

2. Considering the identical nature of grievance and the issue(s) involved in both the writ petitions, the same has been heard together with consent of the parties and disposed of by a common order.

3. The petitioners are retired employees of the Bihar



State Co-operative Marketing Union Limited (for brevity “the BISCOMAUN”). On being aggrieved by inaction of the BISCOMAUN and its officials in making payment of their post retiral dues, they invoked the prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India.

4. The petitioners sought a direction from this Court to ensure their post retiral benefit(s) in view of the decision of the Hon’ble Supreme Court in **Ashok Kumar Ram v. The State of Bihar and Others [Special Leave Petition (Civil) Diary No. (s) 6011 of 2018]** arising out of judgment dated 12.07.2017 in M.J.C. No. 5719 of 2013, passed by the learned co-ordinate Bench of this Court and in view of Memo No. 796 dated 02.02.2018 relating to scheme formulated for Employees of Board/Corporation/Society issued by the Department of Finance, Government of Bihar, Patna.

5. A preliminary objection was raised with regard to the maintainability of the writ petition in view of the various judgments rendered by the different Benches of this Court as well as the learned Division Bench of this Court in L.P.A. No. 983 of 2023 and other analgous cases. Heavy reliance has also been placed on a judgment passed by the Special Bench of this Court in the case of **Organiser Dehri CD & CM Union v.**



State of Bihar and Others [2014 (1) PLJR 695].

6. The learned counsel for the BISCOMAUN adverting to the judgments noted hereinabove, vigorously contended that the BISCOMAUN neither being a State under Article 12 of the Constitution of India nor discharging any public function, a writ petition under Article 226 of the Constitution is not maintainable.

7. The learned counsel for the BISCOMAUN also placed reliance on a judgment rendered by a Division Bench of this Court in the case of **The Chairman Bihar State Co-operative Marketing Union Employees Provident Fund Trustee Committee and Another v. Ram Swarth Singh and Others [LPA No. 119 of 2015]**. The learned Division Bench highlighting the dictum of the Special Bench of this Court in **Organiser Dehri CD & CM Union** (supra) held that a Body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. When the Rules contemplate contribution from the employer and employee, the BISCOMAUN is not performing a public function as such collection of Provident Fund Dues is not for the benefit of public or a section of public



but for its own employees; thus does not perform public function.

8. The learned Division Bench while holding that the invocation of jurisdiction against BISCOMAUN is not tenable, in paragraph-8 of its judgment observed as follows:

“8. The Special Bench in The Organizer, Dehri C.D. & C.M. Union Limited”s case (supra) returned a finding that BISCOMAUN is not performing any public duty or public function for and on behalf of the Government. The cumulative effect is that no deep and pervasive control nor public duty or public function is being performed by the BISCOMAUN and the writ application is not maintainable.”

9. The learned counsel for the BISCOMAUN further drew the attention of this Court to a decision rendered in **The Managing Director v. The State of Bihar and Others [L.P.A. No. 983 of 2023]** and other analogous cases, wherein the learned Division Bench of this Court has been pleased to set aside the order of the learned Single Judge and allowed the appeal by holding that *“the fact remains that by the judgment of the Special Bench cited above, there can be no writ issued against a Cooperative Society. We find absolutely no reason to sustain the impugned judgment of the learned Single Judge and*



we set aside the same, allowing the appeal and rejecting the MJC petition.”

10. In the afore-noted case, the employees of the BISCOMAUN placed heavy reliance on a judgment of the Hon’ble Apex Court in **Ram Chandra Singh**. However, the learned Division Bench with all respect to the pronouncement of the Apex Court held as follows:

“8. Be that as it may, we are of the opinion that the judgment of the Hon’ble Supreme Court does not, at all apply. We cannot discern the facts of the case from Annexure-13 judgment of the Hon’ble Supreme Court, in the Special Leave to Appeal which is produced at Annexure-13 in the writ petition. Ram Chandra Singh had filed the Special Leave Petition in which the State prayed before Hon’ble Supreme Court for making payment of the dues of the petitioner in twelve equal installments which was directed to be made in eight equal installments with interest @ 6 per cent per annum. There is no declaration of law in the judgment and it does not have the sheen of a binding precedent. Without reference to the facts, there cannot be a direction issued as was done by Hon’ble Supreme Court, which was on specific prayer made by the State to have a quietus to the issue. In such circumstances, neither the order of the Hon’ble Supreme Court nor the decision of the



Division Bench, in the writ petition filed by the petitioner himself, come to the aid of the petitioner.”

11. On the other hand, the learned counsel for the petitioner placed reliance on a judgment rendered by a Division Bench of this Court in **Rabindra Nath Mishra v. The State of Bihar and Others [L.P.A. No. 1024 of 2018]**, wherein the respondents were directed to make payment of post retiral dues of the petitioner along with the statutory interest. It is also contended that the amount of retiral dues of the petitioner is the property guaranteed under Article 300A of the Constitution of India and for that the petitioner has remedy under Article 226 of the Constitution of India.

12. Reliance has also been placed on a judgment rendered by the Hon'ble Supreme Court in **Tukaram Kana Joshi and Others through the Power of Attorney Holder v. M.I.D.C. and Others [Civil Appeal No. 7780 of 2012 arising out of SLP (C) NO. 2418 of 2012]**. It is also the contention of the learned counsel for the petitioner that different Benches of this Court in various cases have directed the BISCOMAUN to ensure payment of post retiral dues chronologically in accordance with the date of retirement of its employee(s).

13. This Court has carefully heard the rival



contentions of the parties on the point of maintainability of the writ petitions.

14. Having gone through the judgments/orders cited by the respective counsels, this Court finds that some of writ petitions were entertained by different Benches and certain directions were issued for payment of retiral benefits. But, admittedly, in those cases, the issue of maintainability was not addressed. Reliance of the petitioners on the order of the Hon'ble Supreme Court in the case of **Ashok Kumar Ram v. The State of Bihar and Others, Special Leave Petition (Civil) Diary No. (s) 6011 of 2018** is arising out of judgment and order dated 12.07.2017 passed in MJC No. 5719 of 2013, wherein the Hon'ble Supreme Court having found the direction of this Court to ensure payment of outstanding amount, directed the BISCOMAUN to pay the amount along with interest, failing which it will be a case of aggravated contempt.

15. With all respect to the order of the Hon'ble Apex Court, there was no issue with regard to the maintainability of writ petition against BISCOMAUN.

16. The judicial decorum obligate this Court to follow mandate(s)/verdict(s) of the superior court. The learned Division Bench of this Court as well as the Special Bench have in



unequivocal terms held that *the BISCOMAUN is not a State defined under Article 12 of the Constitution of India nor performing any public duty or public function for and on behalf of the government. The cumulative effect is that no deep and pervasive control nor public duty or public function is being performed by the BISCOMAUN and the writ application is not maintainable.*

17. In the aforesaid premise of the settled legal position, this Court has left with no option but to dismiss the writ petitions on the ground of it being not maintainable.

18. However, it is made clear that dismissal of the writ petitions will not stand in the way of the petitioners in moving any other appropriate forum.

19. Both the writ petitions stand dismissed with the liberty aforesaid.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23-07-2024
Transmission Date	

