

**(2011) 01 PAT CK 0023**  
**In the Patna High Court**  
**Case No : CWJC No's. 20735 of 2010**

|                                                                      |            |
|----------------------------------------------------------------------|------------|
| Abdul Wahid son Late Anaruddin Pradhan and Others                    | APPELLANT  |
| Vs                                                                   |            |
| The State of Bihar and Bihar State Co-Operative Marketing Union Ltd. | RESPONDENT |

**Date of Decision :** 17-01-2011

**Acts Referred:**

Bihar Co-operative Societies Act, 1935 — Section 14, 41  
Constitution of India, 1950 — Article 12

**Citation :** (2011) 2 PLJR 978

**Hon'ble Judges :** Ramesh Kr. Datta, J

**Bench :** Single Bench

**Advocate :** Md. Abu Haidar, for All, for the Appellant; Vikas Kumar, for All, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ramesh Kr. Datta, J.—Heard learned Counsels for the Petitioners and learned Counsel for the BISCOMAUN.

2. In all these matters the writ Petitioners claim certain reliefs against the BISCOMAUN.

3. Learned Counsel for the BISCOMAUN raises a preliminary objection to the maintainability of the writ petition stating that admittedly the BISCOMAUN is not under supersession and is being run by a Managing Committee and therefore it being a co-operative society not under supersession, it cannot be considered as State under Article 12 of the Constitution of India as laid down by a Full Bench of this Court in the case of Rajendra Prasad Sah and Anil Kumar Ojha Vs. State of Bihar and Others, .

4. Learned Counsel for the Petitioners, on the other hand, submits that this Court has been issuing direction in its writ jurisdiction in numerous cases to BISCOMAUN and thus for the said technical reason, the writ petitions should not

be thrown out. In support of the same he relies upon various decisions annexed by him as also the judgment of the Supreme Court in the case of Devendra Kumar Singh v. The Administrator, Bihar State Co-operative Marketing Union Limited and Anr. 2006 (3) PLJR (SC)70. It is submitted by learned Counsel that the Apex Court had in the aforesaid case entertained the appeal against the writ petition.

5. Learned Counsel for the Petitioners also relies upon a Division Bench judgment of this Court in a batch of LPAs in the case of Hari Nandan Prasad etc. v. State of Bihar and Ors., in which by order dated 17.11.2005 despite reference to the aforesaid Full Bench decision, directions were issued to the authorities of BISCOMAUN in a similar situation to pay the retiral dues holding that the BISCOMAUN is discharging a public duty and in such situation, it would not be proper on the part of the Respondents to deny retiral dues.

6. On a consideration of the aforesaid submissions, it would be appropriate to refer to what has been laid down by the Full Bench in the case of Rajendra Prasad Sah (supra), paras 12 to 14 of which are quoted below:

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 Cooperative Societies Act, 1935 and its management used to be vested in a managing committee, as provided u/s 14 of the Co-operative Societies Act. On 31.7.1988 its managing committee was superseded u/s 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 and Ors., 1985 PLJR 1078).

13. However, in Nand Kishore Rai v. 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.

7. It is evident from the aforesaid decision of the Full Bench that the consistent position followed by this Court in the case of BISCOMAUN before the supersession of its managing committee is that it was a co-operative society not being an authority or instrumentality or agency of the State and therefore, was not amenable to the writ jurisdiction of this Court and only after supersession and appointment of Administrator/Special Officer in place of managing committee, it has been held to be an authority within the meaning of Article 12 of the Constitution of India, making its action subject to judicial review by this Court.

8. There being No. ambiguity in the law laid down by the Full Bench, according to this Court, it is not open to any other smaller Bench of this Court to take a view different from the same. This Court is bound by the decision of the Full Bench.

9. So far as the Apex Court decision in Devendra Kumar Singh's case (supra) is concerned, it is evident that the Administrator, BISCOMAUN was a Respondent in that case and thus the writ petition and the SLP against it were rightly entertained.

10. The admitted position being that the BISCOMAUN is at present being managed by the managing committee, and is not under supersession, the mere fact, as urged by the Petitioner, that the managing director is appointed by the State Government, does not change the situation as that was the position even earlier when the Full Bench in Rajendra Prasad Sah's case (supra) and the other Benches of this Court had laid down the aforesaid proposition consistently.

11. In the above circumstances, all these writ petitions are not maintainable. They are, therefore, dismissed.