

(2003) 03 PAT CK 0056
In the Patna High Court
Case No : L.P.A. No. 412 of 2002

Administrator and Another	Vs	APPELLANT
Ramadhar Sharma and Others		RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Citation : (2003) 2 BLJR 1168 : (2003) 3 PLJR 107

Hon'ble Judges : Ravi S. Dhavan, C.J.; P.K. Deb, J

Bench : Division Bench

Advocate : Amitabh Verma, IAS Administrator and Rakesh Kumar, for the Appellant; V.N. Sinha, G.P. 9, for the Respondent

Judgement

Ravi S. Dhavan, CJ.

1. Bihar State Co-operative Union Limited (BISCOMAUN) is a registered society under the Bihar Co-operative Societies Act, 1935. It is one of the largest society of its kind in east India, the Court is given to understand by State Counsel and the Secretary, Co-operative Societies, State of Bihar. It was established with assets of approximately 300 crores of rupees. No sooner it was established it was virtually grinding itself to a halt in its activities. The massive buildings which are its headquarters in Patna stand there as concrete structures but with no activity. It has employees on its rolls exceeding 2000. The society does not have the money to pay salary to its employees nor their post retirement benefits. BISCOMAUN is enveloped in litigation which the Court is given to understand is about 500 in number pending in different Courts. Of these, on a list given to the Court the number of cases pending at the High Court is mentioned in the appendix to the order dated 14 May, 2002. At that time 88 cases of BISCOMAUN were pending at the High Court in writ petitions, another 80 cases were pending as contempt actions against the officers of this Society and another 21 Letters Patent Appeals in addition. Clearly, a corporate body has got enveloped in the cancer of litigation.

2. When this Letters Patent Appeal was presented, the Court inquired why it was being maintained when the only order on it was that the Registrar Co-operative Societies shall hear both the parties and give a reasoned order. Such an order should not harm any one. But, as its filing was insisted upon the Court inquired as to who may have instructed on the filing of this appeal. BISCOMAUN is a superseded society and is functionally defunct for two decades. The High Court was told that the BISCOMAUN was without an Administrator. A gigantic Co-operative Society having assets of BISCOMAUN being left without an Administrator was in itself a matter of concern.

3. The matter was drawn to the attention of the Secretary, Co-operative Societies. He confirmed the apprehension of the Court that BISCOMAUN was without an Administrator. He reiterated the circumstances that BISCOMAUN was involved very badly in litigation. He further reiterated the circumstances that the activities of BISCOMAUN have virtually come to a grinding halt. He further brought to the notice of the High Court that the affairs of BISCOMAUN are such that the last audited balance sheet is of the year 1990-91, and income tax returns had not been filed on audited accounts. This was a strange case that accounts of BISCOMAUN had not been audited. The balance sheet had not been prepared for the last 12 years. Yet, the Registrar, Co-operative Societies was quietly taking the seat of a spectator in a match without players and was not moving to discharge his statutory obligation whatever it might be under the Act.

4. In the Companies Act, 1956 before the amendments, if such a state was presented under Sections 397 and 398 then a clear cut case was made out against the company for mis-management or oppression giving the creditors or shareholders the liberty to file a case for winding up at the High Court, the powers are now with the Company Law Board. The situation within BISCOMAUN is no different. These details are sufficiently noticed in the order of the Court dated 14 May, 2002, BISCOMAUN is an apex body. It was structured on public monies and there is a public accountability under the Bihar Societies Act, 1935. That the affairs of BISCOMAUN have come to a grinding halt is itself a scandal. It should have been the concern of the Registrar, Co-operative Societies to take whatever steps he was obliged to take when no accountability was shown by those who managed this society by avoiding regular audit, and filing of balance sheets every year.

5. BISCOMAUN leased its premises in Patna and elsewhere. The tenants, most of them avoided paying rent. The defaulters included State departments and State corporations. Audit was avoided on this score also. Public auditors were kept at bay. The net loss, on an informal accounting of the year ending 31 March 2002 was staggering at Rs. 25,26,22,785.73. In the circumstances as the Registrar, Co-operative Societies avoided and evaded his statutory obligation, the Court by an order dated 14 May 2002 appointed the Secretary, Co-operative Societies (Secretary, State of Bihar, an IAS Officer), to act as an Administrator on BISCOMAUN. It needs to be emphasized that an Administrator was functioning at

BISCOMAUN in any case, because co-operative societies in Bihar are superseded since 1988. This situation was no different than supersession of local self Government Self Government, a constitutional obligation for the State Government to ensure, was missing in Bihar until this Court repeatedly reminded the Government that it was a constitutional requirement. The elections to panchayats and municipalities took place last year and this year.

6. About co-operative societies the High Court again reminded the State Government that elections be held to the Co-operative societies and a schedule of elections be filed. It has been stated to the High Court that elections within Cooperative Societies will be held during summer of this year,

7. The affairs of BISCOMAUN were being run on the style of deficit financing. BISCOMAUN has lost its income and its management until the Administrator appointed by the High Court was a free for all affair. This co-operative society became a petty department of the State Government. Occupying property of BISCOMAUN without paying became a Government habit. No compensation was paid for the occupation. BISCOMAUN is a corporate society, a corporate body distinct from the State. But having superseded this society, with elected, representation missing, between politicians and bureaucrats, all had a field day. This corporate society was run as a corporation sole but without responsibility to any one. The Registrar, Co-operative Societies himself a bureaucrat shirked his responsibility to audit when over him or next to him an Administrator appointed by the Government agreed, not to disagree, if audit was avoided.

8. Now something needs to be said to the credit of the present Administrator, Secretary Co-operatives, Mr. Amitabh Verma, IAS appointed by the High Court. The first thing which he did was to identify the idling assets. The bad and defaulter tenants, occupying the premises and not paying damages for use and occupation of the property of BISCOMAUN. The present Administrator sent notices to these defaulter occupiers. As he took his authority as an Administrator under orders of the High Court he received positive responses. Within a couple of months he collected approximately Rs. 3 crore.

9. He also discovered that certain departments of the Government, for instance the Police Department had unauthorisedly occupied the premises of BISCOMAUN in different districts. At another place a sub-Divisional Officer is a unauthorised occupant. These circumstances were brought to the notice of the Court by a report of the Administrator, State Counsel, on instructions from the Administrator/ Secretary also submitted that the premises are in misuse as in private use also. One of the premises unauthorisedly occupied was a house. State Counsel also informed on instructions that the SDO, who is otherwise a Rent Controller, has violated the law, and continues with unauthorised occupation. As he would not pay for his unauthorised use and occupation he was put under notice. The notice was not replied to. The matter was left to be sorted out between the Secretary, Co-operatives and the Secretary Home. The police department seemed to be

taking an issue but was finding it difficult to defend the circumstance that the premises of a co-operative society was being utilised and yet no compensation was being paid for use and occupation. In the case of BISCOMAUN, the auditor himself was defaulted. This was the Registrar, Co-operative Societies. When the auditor commits as default there are only few options left, except to refer the matter to the auditor of auditors referred to in the Constitution. These are matters of public finances of public bodies. In the present case since the auditor himself has defaulted in discharging his statutory obligation the only option was to send the matter for seeking guidance of the authority whose job it is to ultimately audit the financial affairs of public bodies. It was on the suggestion of the Administrator/Secretary Co-operatives and the State Counsel appearing for him, with demand notices which had been sent to defaulters, unauthorised occupiers, and even defaulting law and order keeping agencies and a rent controller, that the matter be sent for the advise of the Accountant General. Arrears and unpaid damages for use and occupation by unauthorised occupiers is liable to audit in any case. It is accepted on record, the Court was told by State Counsel that the Registrar Co-operatives, has in any case not caused an audit of BISCOMAUN, a situation for which there is no explanation, a collusive circumstances. The Chief Secretary on his earlier appearance could not explain the Registrar, Cooperatives not carrying out the audit. He also suggested audit by the Accountant General, which is the normal course. Thereafter, whatever the Accountant General may indicate, even as an interim measure the amount ought to be deposited subject to finalisation on audit and assessment by tax authorities. The Chief Secretary present agreed to the situation. He was, otherwise, at a loss to explain unaudited financial affairs even when a State appointed administrator was Inchargepn this superseded Society. The Accountant General scaled down the demand of the Administrator from Rs. 2 crore 36 lacs to 1 crore 46 lacs of which 49 lacs has been paid by the Police Department.

10. The Police Department is an unauthorised occupier functioning under the Home Ministry. The default by the previous Administrators and the Registrar Cooperative Societies as to not to audit the accounts and finances of the Society are aspects within the Government. In one case the Accountant General noticed that the occupation by the Police Department was such that they have virtually blocked the egress and ingress of the staff of one cold storage with the result that the cold storage itself was closed down (report of the Accountant General dated 6-1 -2003). It needs to be recorded that the present Secretary, Co-operatives acting as an Administrator under orders of the Court has taken control of the Society and has been making efforts for the resurrection of the Society so that it generates its activity and economy both. On reports filed, regardless what has happened in the past, positive signs were being indicated that the idling property of BISCOMAUN has been put on rent afresh bringing income to BISCOMAUN. Most important is the attention of the Administrator/Secretary, Co-operatives that approximately 2000 employees may be rendered unemployed. Of the 2000 staff 500 cases are pending in Courts embroiling BISCOMAUN in litigation.

11. The litigation which is pending is no solution unless BISCOMAUN generates its economy, failing which it is unlikely that the staff will either receive their salary or pension. In the meantime it is on record that the Supreme Court issued notice to the State of Bihar that one year's salary of the staff of BISCOMAUN will be paid by the State of Bihar.

12. These in brief are the circumstances which have afflicted BISCOMAUN. Logically, under the law, regard being had to the state of affairs the only order which ought to have been passed was a winding up order. With the affairs of BISCOMAUN not having seen audit for more than a decade and activities and production closed, the Society may fall into an irretrievable abyss. The Court realising that the equity of about 2000 work force was involved in this co-operative society and it is matter of life and liberty for these employees of BISCOMAUN, resuscitation of this Society, to make it functional, could only be a plan. This plan cannot work unless the Government and staff, both join to work a plan.

13. Amidst proceeding and the submissions being made by Secretary, Cooperative, Government of Bihar, and during reports being filed by him and with State Counsel, Mr. V.N. Sinha, G.P. 9 present along with him, the proceedings were interjected by a junior State Counsel and the Court was informed that one department of the Government has filed a SLP at the Supreme Court. This is the police department. The Court was further informed that the Administrator, BISCOMAUN, Secretary Cooperative, Government of Bihar has been made a party respondent along with BISCOMAUN. This is virtually a case having been filed by the State against State. Learned State Counsel, G.P. 9 present indicated to the Court that facts have been concealed from the Supreme Court. He further stated that before filing nor as of date, the Secretary, Co-operatives who is incharge of the affairs of Co-operatives who is incharge of the affairs of Co-operative Societies generally and incharge of BISCOMAUN specially was neither informed nor consulted. The Secretary, Government Pleaded 9 submitted, proposes to take up this matter with the Government. In this regard, the Law Secretary will need to advise the Government with three decisions of the Supreme Court Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, : Oil & Natural Gas Commission v. Collector of Central Excise and Ors. 1992 (2) SCC 432 : Nair Service society Ltd. v. K.C. Alexander, and one of the Patna High Court 2003 (1) BLJR 493 : State of Bihar and Ors. v. Janardan Rai and Anr., noticing two earlier decisions of the Supreme Court, Litigation within the State and between State departments must be discouraged.

14. One thing is clear that in these proceedings at the High Court there was no issue or lis between any party. Any proceeding recorded was by consent of those who appeared, including the Chief Secretary and Secretary Co-operative who do represent the Government. But, if between the departments of the Government they cannot see eye to eye with each other then this is a bad situation to be considered within the Government itself. Suffice it to say that these proceedings

which have been pending at the High Court now need to be consigned.

15. The Court needs to record that the Secretary, Co-operatives as an Administrator appointed by the High Court, on the basis of the regular reports filed by him has done a commendable job in making efforts to resuscitate and resurrect BISCOMAUN.

16. The proceedings recorded by the High Court were taken in the realm of public law as public monies, unaudited financial affairs and the lives of 2000 staff are at stake. The letters patent appeal was filed by BISCOMAUN itself of which the Secretary, Co-operative was made an Administrator by orders of the Court.

17. If the Government has the will, commitment and determination to resuscitate and revive BISCOMAUN it will have to do on its own strength and on its own legs.

18. In so far as this Letters Patent Appeals itself is concerned, on merits, this Court does not find that there is any error in the order of the learned Judge who had merely required the Administrator, Co-operative Society to pass a reasoned order after hearing both the parties. No party can complain of a direction as given in the writ petition that any order before it is passed must record reasons upon parties being heard.

19. A copy of this order be sent to the Law Secretary, Bihar.

20. Consigned.