(2002) 05 PAT CK 0080

In the Patna High Court

Case No : L.P.A. No. 412 of 2002

Administrator, Biscomaun and Another — APPELLANT

Vs

Ramadhar Sharma — RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Income Tax Act, 1961 — Section 44AB

Citation : (2002) 3 PLJR 46

Hon'ble Judges : Ravi S. Dhavan, C.J;Shashank Kr. Singh, J

Bench : Division Bench

Judgement

Ravi S. Dhavan, C.J.—In the matter relating to the affairs of the Bihar State Co-operative Marketing Union Limited (in short Biscomaun) for whatever the affidavit is worth as it has been filed today, it shows a deplorable and a callous state of affairs. Firstly, the Administrator appointed by the Court makes a statement that the present assessment is based on old and past records and whatever has been placed before the Court this is his personal evaluation. Clearly, the Administrator is submitting that with records not available the exact up-to-date market value on the as and liabilities of BISCOMAUN could be evaluated. According to the Administrator, on the assets as of date on the (sic) of whatever records were available to (sic) the assets of BISCOMAUN have been classified into three categories (a) cumbered properties of BISCOMAUN used at Rs. 139.98 crores (b) properties (sic) structed on government land comparison of Industrial Area Agriculture Farm records. Khasmahal (government land as government estates) and the saleable value constructions on these land being Rs. 695 crores (The value of land has not been evaluated) (c) constructions on block (sic) allotted by the government in agriculture marketing yard premises and on the large Agriculture Multi Purpose Societies (AMPS) the saleable value of construction about Rs. 27.408 crores. The total Assessee in this context may stand to Rs. 3,353 crores.

2. The Court has been informed that the liabilities of BISCOMAUN relating to

Salary, retiral benefits etc. may stand to Rs. 195,98,737/-. The amounts recoverable on the creditors, the State Government excluded, may amount to Rs. 06,08,299.73 crores. The audit balance (sic) of BISCOMAUN is available only up year 1990-91. The Administrator records the accounts position, the profit and or credit and debit, for the last 12 (sic) rs without audit does not reflect the direct assets and liabilities of COMAUN. He further submits that a (sic)led review on the files and papers reacted with the issues on which indebts or credit worthiness are to be Examination has been hampered without the record liven field survey of the properties are available. The Administrator further submits that what has been presented to the sort by the supplementary affidavit may at (sic) be taken for consideration on the (sic) of the records available and the personal assessment of officers, and there may be a possibility that there may be a variation on the assessment of assets and liabilities and this variation may range between 15% to 20%. The Administrator further submits that the State Government has not cleared its outstanding dues as rent to BISCOMAUN which may stand at Rs. 93,10,570.60. It is contended that a rehabilitation package of BISCOMAUN is under consideration of the government. The date of contemplation of this rehabilitation package is not given in the affidavit. Upon the enquiry of the Court the Additional Advocate General 1 informed that it is under consideration for the last four months.

3. Perhaps, the Administrator may be correct that he has not been able to lay his hands on the correct evaluation of assets and liabilities about this corporate body. At the bar a counsel who appears for other parties but in matters in which the BISCOMAUN is a party, placed before the Court an unaudited report u/s 44 AB of the income tax Act, 1961 relating to the year 1997-98. This section is about unaudited of accounts of certain persons carrying on business or profession. The counsel who presented this unaudited report is Mr. Navin Prasad Singh. This report is on record of this case. This report only fortifies that an audit was done for the year ending 31 March 1998 by the BISCOMAUN by engaging Chartered Accountants. A perusal of this report shows the liabilities prior to 31 March 1998 as Rs. 2,77,36,80,567.25. In the current year relating to the assessment of liabilities stood at Rs. 3,01,87,73,344.57. But the cash and bank balance with BISCOMAUN in the current year which was ending on 31 March 1998 stood as: Cash at Bank as per Schedule "F" Rs. 9,18,357.30, Cash at Depot Rs. 4,02,312.68 and remittance in transit Rs. 3,54,922.64. The activities of BISCOMAUN have come to a grinding halt but the information presented before the income tax department shows that any income of Rs. 28,02,35,221.08 has been offset by the expenditure. The details are as follows:

The Bihar State Co-Operative Marketing Union Limited, Patna, (BISCOMAUN)

Proforma Profit and Loss Account for the Year Ended 31st March 1998.

Particulars Amount

By Salary and Allow 16,97,40,000.00

" Bonus to staff 1,541.00

" Provident Fund 6,38,641.63

" Gratuity to staff 3,20,278.75

" Group Insurance 6,85,962.87

" T.A. to staff 1,68,152.94

" Printing and Stationary 77,634.67

" Postage and Telegram 18,695.50

" Trunk and Telephone 3,75,053.40

" Electric charge 43,34,201.60

" Repair and Maintenance 17,10,117.12

" Vehicle expenses 1,89,289.28

" Advertisement 1,39,419.40

" Legal expenses 1,44,235.90

" Licence Fee 50,741.00

" Interest A/C 9,30,31,344.45

" Insurance Charge 1,83,621.80

" Misc. Expenses 3,69,418.36

" Godown Rent 4,25,750.00

" Inspec. Charge 4,035.00

" Admin Charge 4,483.00

" E.D.L.I. 22,417.00

" Family Pension 3,26,855.00

" Depreciation 58,52,027.72

" Generator Expenses 11,20,229.69

" Rent and Taxes 3,01,047.00

" By Gross Profit 63,82,092.97

" Rent property 1,96,82,331.96

"Shortage and rly. Claim 2,11,754.68

"Divident received 28,928.55

"Misc. receipt 9,03,536.19

"Interest received 4,03,790.00

"Net loss Trans, to balance sheet 25,26,22,785.73

4. The affidavit of the Administrator Proforma Profit and Loss Account for the Year Ended 31st March 1998. gives another starting aspect. The Registrar of Co-operative Society occupies a rental space. The name of the tenant is shown as Deputy Chief Auditor (related to co-operative committee). The Auditor himself occupies a space on rent of BISCOMAUN. This Auditor does not audit the accounts and has not done so for the last 12 years. He also does not pay rent for the accommodation he occupies. Since the auditor will not audit, his arrears of rent will not be discovered so easily. This also goes for other tenants in the same building who are defaulters like him. All these tenants, mostly corporate bodies or government departments are enjoying free accommodation and bleeding BISCOMAUN.

5. The fact of the matter is that the Auditor Officer as a tenant owes BISCOMAUN rent of Rs. 6,71,683.00. Another tenant, the Bihar School Examination Board owes BISCOMAUN a rent of Rs. 24,75,186.00, Bihar State Labour Co-operative Union owes BISCOMAUN a rent of Rs. 6,27,735.50, Electronic System Punjab Ltd. owes BISCOMAUN a rent of Rs. 37,10,337.10 Fruit and Vegetable Grower Co-operative Committee owes a rent of Rs. 5,62,770.00, Bihar State Co-operative Transport Development and Finance Federation owes BISCOMAUN a rent of Rs. 5,81,400.00, Guest House, Piro at Bhojpur owes BISCOMAUN a rent of Rs. 1,81,399.00 and Bihar State Export Corporation owes BISCOMAUN Rs. 5,00,000.00 The statement of accounts between these eight tenants occupying the space of BISCOMAUN shows the outstanding rent of Rs. 93,10,510.60. The report of the Administrator filed also shows that there as properties of BISCOMAUN in practice every district of Bihar. The BISCOMAU has two properties as Guest Houses, on in Calcutta and other in Delhi.

6. With a corporate body whose act counts have not been audited since 1988 are two options open though this (sic) be the job of the Registrar, Co-operative Societies, either to wind it up or (sic) it. It is the obligation of the Registrar, Co-operative Societies to make an assessment as to which alternate should be taken, urgency has not been felt though COMAUN had its management superseded in 1988. This matter should be an opener for the State Government. The Co-operative societies in Bihar, large number them, stand superseded for a long time (sic) have not seen management as the law quires it by elected representatives.

7. The order of the Court dated 2 brought on record a situation that SCOMAUN as a corporate body is run-to galloping liabilities. This is accepted before the income tax department his report for 1997-98 filed before the income tax Officer says: "We have to report that the statutory Audit of Bihar state Co-operative Marketing Union Limited, Biscomaun Bhawan... which ought have been done by the Auditor''s of the operative Department of the Government of Bihar has not

been as yet". Net loss transferred to balance sheet is shown as Rs. 25,26,22,786.73. Current year liabilities of that year is shown as Rs. 25.34,31,439.76.

8. This corporate body is in a state of ad hocism whose accounts the government will not audit, its management is derless and superseded, and petty officials is had been made ad hoc administrator. This corporate body is in litigation in several cases before the High Court and Lower Courts. This affects the public justice them which is already pressured. Who (sic) the decisions which creates litigation (sic) already overflowing dockets at the (sic)? Thus, these litigations are the business of the High Court.

9. It is the business of the Court to enquire into this matter because the business of the society is now enveloping the dockets of the High Court in several cases, indicated as 189, as per list supplied by the Appellant.* A small case of pension not paid, an increment and promotion not considered or granted, engages the attention of the various divisions of the High Court for hours. A superseded management with ad hoc administrators embroils BISCOMAUN in litigation and this affects the High Court. Its affairs are, thus, the business of this Court. In the circumstances, this corporate body known as BISCOMAUN either must be revived or wound up unless it seriously sorts out its problems. If BISCOMAUN has assets which it can retrieve but will not do, then the Court comes into the picture in giving a direction to the Administrator to begin an exercise to have amounts which can be gathered, collected and credited to the account of this society. Clearly, today the situation is that there are tenants sitting within the headquarters buildings of BISCOMAUN and they do not pay rent. Let they be asked by the Administrator to pay the rent failing which they will be evicted and thereafter the Administrator will be free to ensure that the vacant floor areas are advertised so that BISCOMAUN gets a fair market rent which is prevalent in the market. Further, the entire matter can only be seen when a correct report comes. Today, even the Administrator acknowledges that whatever he contended is on the basis of the information as is available dating back to the year 1991-92.

10. Before the next report is filed the Administrator will locate a Chartered Accountant to audit the accounts of BISCOMAUN. It will be in the interest of the BISCOMAUN that the accounts are brought up-to-date. The Administrator will be absolutely free to have these accounts audited either from the Accountant General Bihar or from a Chartered Accountant in accordance with government instructions. The fuller report on the assets and liabilities may be filed before this Court within ten days.

11. Put up on 24.5.2002 in the supplementary list.

*(*) The list is part of the record and appended with this order.

