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**(2015) 10 PAT CK 0045**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case Nos. 15818 of 2011 and 5576 of 2008

Anita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 15-10-2015

**Acts Referred:**

Constitution of India, 1950 — Article 12

**Citation :** (2016) 1 PLJR 315

**Hon'ble Judges :** Mihir Kumar Jha, J

**Bench :** Single Bench

**Advocate :** Sudarshan Sharma, for the Appellant; Tej Bahadur Singh, AAG, Advocates for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Mihir Kumar Jha, J—Heard learned counsel for the parties.

2. The prayer of the petitioner in C.W.J.C. No. 5576 of 2008 reads as follows:-

"That this is an application for issuance of an appropriate writ, order or direction to the Respondents concerned for payment of retrial dues of the husband of the petitioner who was working as night guard in Bihar State Cooperative Marketing Union Limited (BISCOMAUN) at Sitamarhi and died in harness on 24.4.2003."

3. The prayer of the petitioner in C.W.J.C. No. 15818 of 2011 reads as follows:-

"That this application is directed on behalf of aforesaid petitioner for issuance of appropriate writ, order or direction as the case may for payment of post retrial dues of her husband Surendra Prasad Singh alongwith dues, salary, who died on-5.9.2007 while was serving as the Asstt Depot Manager Biscoman Respondent No. 2."

4. As would be evident, the relief has been sought in both these writ applications against the Bihar State Cooperative Marketing Union Limited (BISCOMAUN), which is admittedly a society registered under the Bihar Cooperative Societies

Act.

5. At the outset, learned counsel for the petitioners have raised preliminary objection as with regard to maintainability of the writ application. In this regard, reliance has been placed by him on the judgment of the Special Bench of this Court in the case of Harender Narain Banker Vs. The State of Bihar and Others, (1985) PLJR 1078 and Full Bench Judgment of this Court in the case of Rajendra Prasad Sah and Anil Kumar Ojha Vs. State of Bihar and Others, (2000) 3 LLJ 222 : (2000) 4 PLJR 273 as well as in the case of The Organizer, Dehri C.D. and C.M. Union Limited Vs. The State of Bihar and Others, AIR 2014 Patna 67 : (2014) 4 CTC 481 : (2014) 1 PLJR 695 .

6. Learned counsel for the petitioners in reply have placed reliance on a Division Bench Judgment of this Court in the case of Bihar State Co-operative Marketing Union Limited (BISCOMAUN) through its Secretary and Anr. Vs. Mahesh Prasad Sharma & Anr., reported in 2011 (3) PLJR 440 , as well as on a judgment of learned Single Judge in the case of Madhur Rajak and Another Vs. State of Bihar and Others, (2007) 114 FLR 607 : (2007) 2 PLJR 814 .

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 Harender 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 Harender Narain Banker Vs. The State of Bihar and Others, (1985) PLJR 1078 ).

13. However, in Nand Kishore Rai and Others Vs. The State of Bihar and Others, (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."

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 vs. the State of Bihar and Ors) 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.

9. Learned counsel for the respondents are also justified in placing reliance on an order of this Court dated 17.01.2011 in a batch of writ applications against BISCOMAUN being C.W.J.C. No. 20735 of 2010 (Abdul Wahid vs. State of Bihar & Ors. and its nine analogous cases) wherein, once again the writ petitions against BISCOMAUN were held to be not maintainable in view of the law laid down by the Full Bench judgment of this Court in the case of Rajendra Prasad Sah (supra).

10. Reliance placed by the learned counsel for the petitioners on the judgment of the Division Bench in the case of Mahesh Prasad Sharma (supra) is also wholly misplaced, inasmuch as, in paragraph No. 6 thereof, it was clarified that as and when, the BISCOMAUN would be under supersession, the writ petition being directed against the order of the Administrator, a functionary of the State Government will be maintainable. That, however, is not the case in hand because when these writ petitions have been filed, BISCOMAUN admittedly was not under supersession. As noted above, the relief in these writ applications, is only a direction to the authorities of the BISCOMAUN to pay the post retrial benefits to the writ petitioners and therefore, it cannot be said that any part of cause of action relates to the period when BISCOMAUN was under supersession.

11. Similarly, the reliance placed on the case of Madhur Rajak (supra) is also of

no avail, inasmuch as, attention of this Court was not brought to the notice of the learned Single Judge as with regard to the law settled by the Full Bench in the case of Rajendra Prasad Sah (supra) and in fact from the reading of the judgment of Madhur Rajak (supra), it also becomes clear that the issue of maintainability of the writ application on account of BISCOMAUN not being "State" within the meaning of Article-12 of the Constitution of India was neither raised nor decided. Thus, the judgment of the learned Single Judge of this Court in the case of Madhur Rajak (supra) will be also of no avail.

12. The reliance placed by the learned counsel for the petitioners on the judgment of the Apex Court in the case of Devendra Kumar Singh Vs. Administrator, Bihar Coop. Mkt. Un. Ltd. and Another, (2006) 3 LLJ 9 : (2006) 4 SCALE 577 : (2006) 11 SCC 144 : (2007) 1 SCC(L&S) 429 : (2006) 1 SCR 282 Supp : (2007) 1 SLJ 162 , is also wholly misplaced, inasmuch as, it is evident that the action and order of the administrator-BISCOMAUN was made subject matter of the writ petition and therefore, the writ petition and the consequential Special Leave Petition was rightly entertained.

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."

14. Thus, when five Judges Special Bench, of this Court has also approved the Full Bench Judgment in the case of Rajendra Prasad Sah (supra), there would be hardly any occasion for this Court sitting singly to make any further judicial adventure. Consequently, it is held that both the writ petitions are not maintainable and are, accordingly, dismissed.

15. Before parting with, it is made clear, that nothing said in this order, however, shall come in the way of the petitioners in approaching the competent authority including the Registrar of the Co-operative Societies for adjudication of the claim of the petitioners and in fact if it is done so, the same shall be decided on their

own merits.