(2004) 01 PAT CK 0044

In the Patna High Court

Case No : CWJC No. 939 of 2003

Bihar State Forest Development Corporation APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 15-01-2004

Acts Referred:

Citation : (2004) 01 PAT CK 0044

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner-Corporation has assailed the validity of the resolution of the State of Jharkhand dated 23.3.2002, contained in Annexure 8, establishing the Jharkhand State Forest Development Corporation Limited and the certificate of incorporation of the said Corporation issued by the Registrar of Companies, Jharkhand on 27 March, 2002 vide Annexure 9.

2. The petitioner-Corporation is incorporated under the provisions of the Companies Act vide Registration No. 1193 dated 10.2.1975 with an authorised capital of Rs. Five hundred lacks, out of which the share of the State of Bihar is 51% and 49% is of the Government of India. According to the petitioner, in almost all the States of Union of India such Corporations were established as per the recommendation of the National Commission on Agriculture with objects to : (i) accelerate and increase forest production and productivity; (ii) contribute to better utilisation of forestry products including timber, fuelwood, climbers, herbs, fruits and seeds, leaves and any product of the forest; (iii) contribute to the development of industries based on forest products; and (iv) increase the availability of supplies of forest products whether major or minor.

3. The Corporation besides other activities prepared its infrastructure for conducting the trade of Kendu leaves efficiently and in pursuance thereof created Circle Offices, Divisional Offices and Range Offices throughout the erstwhile State of Bihar. The purpose of creation of the Corporation was not only for commercial or business activities, rather its main purpose was to perform all its activities in a

scientific and skilled manner for systematic extension and development of forest, to control environmental pollution and to maintain ecological balance and protect the same and at the same time by this activities, to create employment among the rural and weaker sections of people living in concerned area. The Corporation in its 86th Board''s meeting dated 10.8.2000 approved shifting of its Head Office at Ranchi subject to approval of the State Government, vide Annexure A to Annexure 6.

4. However in the year 2000 the Parliament (sic) Bihar Reorganisation Act, 2000 and in pursuance thereof a new State to be known as "State of Jharkhand" was created comprising the territories of the existing State of Bihar, namely, Bokaro, Chatra, Deoghar, Dhanbad, Dumka, Garhwa, Giridih, Godda, Gumla, Hazaribagh, Koderma, Lohardaga, Pakur, Palamu, Ranchi, Shahebganj, Singhbhum (East) and Singhbhum (West) districts with effect from 15th November, 2000 and thereupon the said territories ceased to form part of the existing State of Bihar, as per the provisions contained in Section 3 of the said Act. Part VII of the said Act contains the provisions as to certain Corporations and Section 65 is the provision with respect to certain companies specified in the Ninth Schedule to the Act, which includes the petitioner-Corporation, namely, the Bihar State Forest Development Corporation Limited. It is stated that after the bifurcation of the two States, the petitioner-Corporation conducted its trade of Kendu Leaves and other minor forest produce in the season 2001 in the entire areas under its control irrespective of the fact that major portion of forest area had fallen in the State of Jharkhand and the petitioner Corporation continued making payment of salary to its employees working in different circles, divisions and ranges falling in the State of Jharkhand and the State of Jharkhand facilitated the petitioner-Corporation to continue its trade as per the provisions of Section 65 of the Act creating an impression that the State of Jharkhand will not interfered in the functioning of the petitioner-Corporation till the assets and liabilities between the two States or until a specific direction is issued by the Government of India.

5. The State of Bihar sent proposal to the Chairman for division of assets and liabilities vide letter No. 793 dated 5.3.2002 (Annexure 7), but instead of responding to it, the State of Jharkhand created a separate Jharkhand State Forest Development Corporation Ltd. vide impugned resolution (Annexure 8) and later got certificate of incorporation also vide Annexure 9.

6. By the impugned resolution (Annexure 8) the State of Jharkhand unilaterally declared that the immovable properties of the petitioner-Corporation situated in the area of Jharkhand State stand passed in the Jharkhand State Forest Development Corporation Ltd. which, according to the petitioner, is non est in the eye of law being in the teeth of Section 65 of the Act.

7. It is stated that since the entire forest area of erstwhile State of Bihar was notified as one unit until and unless the process of division of assets and liabilities is completed and a fresh notification is issued declaring the forest areas lying in the Jharkhand State as a separate unit, the Jharkhand State Forest

Development Corporation Ltd. has no legal right to deal with the trade of Kendu leaves in derogation to the provisions of Section 65 of the Bihar Reorganisation Act, 2000 as well as the provision of the Bihar Kendu Leave (Control of Trade) Act, 1973 and rules made thereunder vide Gazette notification S.O. 966 dated 8.8.1989. It is further stated that the respondent Jharkhand State Forest Development Corporation Ltd. is keeping lion''s share of the assets of the Corporation and has arbitrarily started realising revenue from the forest area concerned but not sharing the liabilities of the Corporation proportionately. The petitioner Corporation with its headquarter at Patna is burdened with the payment of salary and other liabilities of staff only because of non-co-operational attitude of the respondent Government of Jharkhand. It is stated that the bifurcation process of the petitioner Corporation has not taken place, yet the respondent-Corporation has undertaken the trade of Kendu leaves and other minor forest produce and exploiting the resources of income from the forest area and not taking the liabilities of establishment cost in proportion to the working forest area of the petitioner-Corporation which has gone into the State of Jharkhand.

8. Facing with this situation, the petitioner Corporation has sought intervention of this Court by issuing appropriate writ or direction to the concerned respondents restraining them not to interfere in their activities till the bifurcation process of assets and liabilities is completed.

9. An intervention petition, bearing I.A. No. 704 of 2003, has been filed by the Bihar State Forest Development Corporation Ltd. Employees Union through its President, General Secretary of the Union and other employees'' members reiterating that even after the partition of the State of Bihar, the petitioner Corporation is entitled to person its business in the entire region of both the State till its complete partition between both the States. It is alleged that due to creation of Jharkhand State Forest Development Corporation Ltd. the employees of the petitioner-Corporation have been facing injustice and uncertainty in different manners as 85% of the working area and assets in ail respects have been usurped by the State of Jharkhand. It is contended that the bare perusal of the impugned resolution (Annexure 8) shows that the very inception of the Jharkhand State Forest Development Corporation Ltd. is contrary to the legal provision and it puts question mark on the role of Registrar of Companies in grating registration to the same. In fact, the intervenors are aggrieved by the aforementioned action of the State of Jharkhand as well as by steps taken by the State of Bihar to close down or to liquidate the petitioner Corporation along with other 21 Boards/Corporations.

10. A counter-affidavit has been filed on behalf of the State of Jharkhand, The Secretary, Department of Environment and Forest, Government of Jharkhand and the Chief Conservator of Forests-cum-Managing Director, Jharkhand State Forest Development Corporation Ltd. (respondent Nos. 2, 3 and 4 respectively) in which it is stated that the Bihar Kendu Leaves (Control of Trade) Act, 1973,

which has been adapted by the State Jharkhand, was enacted to provide complete control on transaction of Kendu leaves right from its collection or tippling it from the trees, till its disposal to the consumers. The said Act is to prevail over the general provisions of the Indian Forest Act. It is stated that the bare perusal of the provisions of the Act clearly show that the State Government has been conferred with all powers for regulating and conducting the business of Kendu leaves and u/s 4 the Government may appoint agent for the purpose of purchase and sale of Kendu leaves on its behalf. It is stated that the petitioner-Corporation was appointed as agent, vide Annexure A, and was conducting Kendu leaves business within the territory of the State of Bihar in that capacity but after bifurcation of the State of Bihar with effect from 15.11.2000 and creation of Jharkhand State, the areas falling within the territorial jurisdiction of the State of Jharkhand ceased to be within the territorial jurisdiction of the State of Bihar and as such it has got no authority or jurisdiction to conduct any business within the territorial jurisdiction of the State of Jharkhand until conferred upon them and, according to the said respondents, the power conferred by virtue of notification (Annexure A) upon the petitioner Corporation is limited only up to the extent of territory of the State of Bihar on or after 15th November, 2000 or latest till the State of Jharkhand constituted its own agent as per law as stated earlier. Thus, according to the said respondents, the petitioner has got no right or jurisdiction to carry on trade of Kendu leaves upon the lands of the State of Jharkhand on or after 15.11.2000.

11. There appears to be no dispute on facts except on the question of response to the request regarding division of assets and liabilities about which it is stated that the answering respondents are making concerted efforts for early division of assets and liabilities and in support thereof have given various correspondences as Annexure-E onwards. The said respondents also are of the same view that an early settlement of distribution of assets and liability are extremely essential so as to enable them to work as per their own capital and choice and that the matter can be resolved by making amicable settlement so that neither of the State should be trusted with the extra liabilities of the employees. They have denied any violation of Section 65 of the Reorganisation Act. According to the said respondents, since the notification has been issued by the State of Jharkhand, the Hon''ble Jharkhand High Court has got the territorial jurisdiction to the adjudicate any dispute raised by any of the parties more so since the forest lands in question fall within the territorial jurisdiction of Hon''ble Jharkhand High Court.

12. A rejoinder to the said counter-affidavit has been filed on behalf of the petitioner, with which I do not consider the necessity of dealing herein as the question involved in the present writ petition are mainly two fold, namely (i) as to whether this Court has jurisdiction to entertain this writ petition and (ii) respondent Nos. 2 to 4 can usurp and interfere with the property and power of the petitioner Corporation on the face of the provisions contained in Sections 65 and 66 of the Reorganisation Act.

13. No counter-affidavit has been filed on behalf of the Central Government (respondent No. 1)

14. Learned counsel for the petitioner contended that in view of the provisions contained in Sections 65 and 66 of the Reorganisation Act, the State of Jharkhand has no authority to pass the impugned resolution (Annexure 8) creating Jharkhand State Forest Development Corporation Limited until the division of interests and shares of existing State of Bihar in the company among the successor States is complete or the Central Government issues directions under Sub-section (1) of Section 65, which admittedly has not been done. Learned counsel for the petitioner has further contended that despite direction vide order dated 9.5.2003 by the Apex Court in the case of Kapila Hingorani Vs. State of Bihar, to the Central Government to take a decision as regards division of assets and liabilities of the Government companies/public sector undertakings in terms of the provisions of the State Reorganisation Act, 2000, the Central Government has not bothered to comply with the same uptill now and this has created a situation that on account of which the functioning of the petitioning-Corporation has virtually come to standstill on creation of the respondent-Corporation by the impugned resolution.

15. Learned counsel appearing for the intervenors, while supporting the contention advanced on behalf of the petitioner, contended that the employees of the petitioner-Corporation have been facing injustice and uncertainty in different manners as 85% of the working area and assets in all respects have been usurped by the State of Jharkhand.

16. Mr. Mahto, learned Senior Counsel appearing for the respondent-Jharkhand State Forest Development Corporation Ltd. has submitted that after enactment of the Reorganisation Act, the State of Jharkhand adapted Bihar Kendu Leaves (Control of Trade) Act, 1973 to provide control on transaction of Kendu Leaves right from its collection or stippling it from the trees till its disposal to the consumers. Bare perusal of the said Act would show that the State Government has been conferred with all powers for regulating and conducting business of Kendu Leaves and u/s 4, the Government is competent to appoint its agent for the said purpose. He contended that the State of Jharkhand constituted its own agent by virtue of the said provision by creating the respondent-Corporation as after bifurcation of the State of Bihar with effect from 15.11.2000 and creation of Jharkhand State, the areas falling within the territorial jurisdiction of the State of Jharkhand ceased to be within the territorial jurisdiction of the State of Bihar and, as such, the State of Bihar has got no authority or jurisdiction to conduct any business within the territorial jurisdiction of the State of Jharkhand until conferred upon them. Thus, according to him, the power conferred by virtue of the notification (Annexure A) upon the petitioner-Corporation is limited only up to the extent of territory of the State of Bihar on or after 15th November; 2000 or latest till the State of Jharkhand constituted its own Agent as per the said law.

17. Mr. Sharma, learned counsel appearing for the State of Jharkhand, while

supporting the contention advanced on behalf of the respondent-Corporation, contended that Section 65 cannot curtail the Legislative power of the State of Jharkhand to frame/adapt law and to appoint its own agent for the area which ceased to be within the territorial jurisdiction of the erstwhile State of Bihar and fell within the jurisdiction of the Jharkhand State after bifurcation of the two States by virtue of enactment of the Reorganisation Act with effect from 15.11.2000. He further contended that this Court does not have jurisdiction to entertain this writ petition challenging the notification of the State of Jharkhand.

18. I am unable to accept the said submission of the learned counsel for the Corporation. In view of the fact that the matter relates to interpretation of the provisions of the Bihar Reorganisation Act, 2000 dealing with both the States, it cannot be said that this Court does not have jurisdiction more so when the right given to the petitioning-Company u/s 65 of the said Act to continue to function in the areas in which it was functioning immediately before the appointed day, until otherwise provided for in any law, or in any agreement among the successor States, or any direction issued by the Central Government has been sought to be interfered with by the impugned order/certificate giving rise to the cause of action for them to enforce such right. The Union of India has not filed any counter-affidavit and Mr. Jha, learned counsel appearing for the Union of India has not been able to show that the Central Government has issued any direction by virtue of which the petitioning-Company cannot continue to function in the areas in which it was functioning immediately before the appointed day.

19. Now considering the question as to whether the respondent Nos. 2 to 5 by issuing the impugned resolution have interfered with the property and power of the petitioning-Corporation, this Court does not find substance in the submission of the learned counsel for the respondents. It is true that by virtue of the provisions contained in Section 85 of the Reorganisation Act, the appropriate Government is competent to adapt laws made before the appointed day before the expiration of two years from that day with modification whether by way of amendment or repeal, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

20. Learned counsel for the respondents, including Mr. Sharma, learned counsel appearing for the State of Jharkhand has failed to produce any decision to show that the Bihar Kendu Leaves (Control of Trade) Act, 1973 has ever been adapted by the State of Jharkhand despite opportunity granted vide order dated 9.12.2003. There cannot be any dispute that after formation of the Jharkhand State under the Reorganisation Act with effect from 15.11.2000, the area falling within the territorial jurisdiction of the State of Jharkhand ceased to be within the territorial jurisdiction of the State of Bihar by virtue of Section 4 of the said Act but the said provision cannot be read in isolation to create power/authority in the State of Jharkhand with respect to matters falling in such area. The said

provision will have to be read along with all other relevant provisions such as Part VI dealing with apportionment of assets and liabilities and Part VII dealing with the provisions as to certain Corporation/Companies etc. and in the present case, Sections 65 and 66 of Part VII, which provides that notwithstanding anything contained in the foregoing provisions of Part VII, each of the companies specified in the Ninth Schedule to this Act shall, on and from the appointed day and until otherwise provided for in any law, or in any agreement among the successor States, or in any direction issues by the Central Government, continue to function in the areas in which it was functioning immediately before the day ; and the Central Government may, from time to time, issue such directions in relation to such functioning as it may deem fit, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law. Under Sub-section (2) any direction issued under Sub-section (1) in respect of a company referred to in that sub-section is to include directions-(a) regarding the division of the interests and shares of existing State of Bihar in the Company among the successor States; (b) requiring the reconstitution of the Board of Directors of the Company so as to give adequate representation to both the successor States.

21. Section 66 provides that "(1) Save an otherwise expressly provided by the foregoing provisions of this Part, where any body corporate constituted under a Central Act, State Act or Provisional Act for the existing State of Bihar or any part thereof has, by virtue of the provisions of Part II of this Act, become an inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate. (2) Any directions issued by the Central Government under Sub-section (1) in respect of any such body corporate shall include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect subject to such exceptions and modifications as may be specified in the direction."

22. Thus, bare perusal of Section 84 shows that the provision of Part II of the Reorganisation Act which deals with formation of-Jharkhand State as well as the provision regarding the territorial division shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Bihar before the appointed day.

23. Thus, there is no substance in the contention of Mr. Mahto and learned counsel appearing for the State of Jharkhand that after bifurcation, the State of Bihar has got no authority/jurisdiction to conduct any business within the territorial jurisdiction of the State of Jharkhand by virtue of the provisions

contained in the Bihar Kendu Leaves (Control of Trade) Act, 1973. In fact, the division of territories within the two States under Part II of the Act is not to effect any change in the territories to which any such law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Bihar before the appointed day. Moreover, Section 65 makes it clear that the Company like the petitioner, which is included in the Ninth Schedule of the Act, is to continue to function in the areas in which it was functioning immediately before the appointed day until otherwise provided for in any law or in any agreement among the successor States or any direction issued by the Central Government.

24. Learned counsel for the respondents have failed to refer to any law or agreement among the Successor States or any direction issued by the Central Government providing that the petitioner-Corporation shall cease to function in the area in which it was functioning immediately before the appointed day and shall be confined only to the area of the State of Bihar after bifurcation.

25. Learned counsel for the Corporation has ventured to submit that in view of the definition of "Law" as provided in Section 2(f) of the Reorganisation Act, the State of Jharkhand is fully competent to pass the impugned resolution by virtue of the power conferred upon it u/s 85 and thus, according to him, Section 65 shall not or come in the way of confining the functioning of the petitioner-Corporation only within the territorial jurisdiction of the State of Bihar after bifurcation.

26. I am unable to appreciate the said submission of the learned counsel. No doubt, as per the definition of "Law" in the Reorganisation Act it includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Bihar. The impugned resolution cannot be said to have the force of law. Moreover, Section 65 further provides that the companies specified in the Ninth Schedule shall continue to function in the areas in which it was functioning immediately before the appointed day until otherwise provided and besides this, the Central Government has been vested with the power to issue direction in respect of such Company regarding the division of interests and shares of the existing State of Bihar and in the company among the successor States.

27. Thus, in my opinion, until the division of interests and shares of the existing State of Bihar in the company among the successor States is determined by the Central Government, the companies specified in the Ninth Schedule shall continue to function in the areas in which it was functioning immediately before the appointed day notwithstanding anything to the contrary contained in the Companies Act or in any other law. This Court thus finds that the impugned resolution, contained in Annexure 8, and the certificate of incorporation pursuant

to it, vide Annexure 9, are clearly in the teeth of Section 65 read with Section 84 of the Reorganisation Act.

28. In the result, the writ application is allowed. The impugned resolution, contained in Annexure 8, and the certificate, contained in Annexure 9, are hereby quashed. Respondent Nos. 2 to 5 are restrained from interfering with the functioning of the petitioning-Corporation over the areas in which it was functioning immediately before the appointed day until appropriate provision with respect to it is made and division of interests and shares of the existing State of Bihar in the company among the successor States is decided by the Central Government, In the facts and circumstances, there shall be no order as to costs.

