
(2007) 07 PAT CK 0135

In the Patna High Court

Bihar State Small Industries Corporation Ltd., Bihar State
Pharmaceutical and Chemical Development Corporation Ltd.
and Bihar State Agro-Industries Development Corporation

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-07-2007

Acts Referred:

Citation : (2007) 07 PAT CK 0135

Final Decision : Dismissed

Judgement

V.N. Sinha, J

1. These winding up petitions have been taken up for consideration in the light of the request of the Hon'ble Supreme Court contained in order dated 18 May 2007, passed in IA Nos. 8 and 11 in Writ Petition (Civil) No. 488 of 2002.

2. Bihar State Small Industries Corporation Ltd./Bihar, Patna, Bihar State Pharmaceutical and Chemical Development Corporation Ltd., Bihar, Patna and Bihar State Agro-Industries Development Corporation, Patna, were incorporated as a State Government company within the meaning of Section 617 of the Companies Act with their registered offices situate at Patna in the State of Bihar. As the financial condition of the aforesaid three Government companies as also other Government companies became precarious and they were unable to discharge their routine liability, such as payment of salary and wages to their employees, a Full Bench of this court in the case of Manikant Pathak and Others Vs. State of Bihar and Others, directed the State Government companies unable to pay salaries/wages to its employees within a period of four months to remove political chairman from their board of directors and further to initiate action for winding up of the companies. None of the aforesaid Government companies were in a position to generate resources to meet the expenses of salary and wages. Consequently, in compliance with the directions of this court, not only the political chairmen were removed from the board of directors but the State Government, as a shareholder of the companies, directed the companies to take

a decision in respect of winding up, whereafter the board of directors of Bihar State Small Industries Corporation Ltd., took a decision to wind up the company in their meeting held on 16 May 1998, which decision was also endorsed by the shareholders in their annual general meeting held on 31 December 1998. Similar decisions were also taken in the case of Bihar State Pharmaceutical and Chemical Development Corporation Ltd., as has been stated in paragraph 9 of the Company Petition No. 13 of 1999 but no details thereof have been given in the petition. In the case of Bihar State Agro-Industries Development Corporation also the State Government, as a shareholder, took decision to wind up the Corporation, as is evident from paragraph 7 of Company Petition No. 16 of 1999.

3. The learned Advocate General appearing in support of the aforesaid three winding up petitions submitted that in view of the aforesaid precarious financial condition prevailing in the three Government corporations it is in public interest that the three corporations be wound up by taking proceedings under the Companies Act as it is neither feasible nor practical for the Government companies to function.

4. Various workers as also the employees' union of Bihar State Small Industries Corporation Ltd., by filing objection petitions, have opposed the prayer to wind up the aforesaid three Government companies as according to them the companies have assets not only in the existing States of Bihar and Jharkhand but also at New Delhi, the list whereof indicating valuation of the assets amounting to Rs. 5,305 lakhs and Rs. 4,523.75 lakhs has been placed on record as indicated in annexure 2 to IA No. 5618 of 2006 filed in Company Petition No. 5 of 1999. With reference to letter dated 18 September 2006, and 9 November 2006, issued by the in charge sales manager of Ambapali Bihar Emporium, a unit of Bihar State Small Industries Corporation Ltd., located at New Delhi, as contained in annexures 3 and 3/1 of IA No. 5618 of 2006 it is submitted that the said sales emporium is earning profit as also meeting the part of the salaries of other employees and with reference to the averments made in the objection petitions including IA No. 5618 of 2006, it is submitted that Bihar State Small Industries Corporation Ltd., is viable and ought not to be wound up.

5. In this connection it is further submitted that during the pendency of these petitions, the Bihar Reorganisation Act, 2000, was enacted by Parliament, whereunder the existing State of Bihar was bifurcated into the successor States of Bihar and Jharkhand which came into existence with effect from the appointed day. In terms of Sub-section (4) of Section 46 and Sub-section (1) of Section 65 of the Bihar Reorganisation Act, the aforesaid three Government companies became inter-State corporations as they were included in the Ninth Schedule to the Reorganisation Act and, in terms of the provisions of the Reorganisation Act, on and from the appointed day the companies continued to function in the area in which they were functioning prior to the reorganisation of the State until otherwise provided in any law or in any agreement among the successor States or in any direction issued by the Central Government notwithstanding anything to

the contrary contained in the Companies Act, 1956, or in any other law. With reference to the aforesaid Sections 46 and 65 of the Reorganisation Act, learned Counsel for the workers" union submitted that the winding up petitions be dismissed, as in terms of Sub-section (4) of Section 46 and Section 65 of the Bihar Reorganisation Act, the Government companies included in Schedule 9 to the Bihar Reorganisation Act should continue to function in the areas in which they were functioning immediately before the appointed date, i.e., 15 November 2000, until otherwise provided for in any law or in any agreement amongst the successor States or in any direction issued by the Central Government. According to him, till date neither a law has been enacted nor any agreement has been reached between the successor States nor has any direction been issued by the Central Government to dissolve the companies. In the circumstances, the Government companies should continue to function in the areas in which they were functioning immediately before the appointed date. In this connection they placed reliance on the Division Bench judgment in the case of *The Bihar State Housing Board and Another Vs. The State of Jharkhand and Others*, and also in the case of *The State of Jharkhand and Others Vs. Bihar State Forest Development Corporation and Others*, paragraph 18.

6. With reference to Sections 2 and 3 of the Inter-State Corporations Act, 1957, as amended by the Bombay Reorganisation Act, 1960, it was further submitted by counsel for the workers" union that the aforesaid three companies by virtue of the provisions contained in the Reorganisation Act have become inter-State corporations and if the State Government is of the view that the corporations be dissolved the State Government may frame a scheme for dissolution and forward the scheme to the Central Government for its approval and until such scheme is framed and placed for consideration before the Central Government, the present winding up petition should be dismissed. In reply, the learned Advocate General, with reference to Section 65 of the Bihar Reorganisation Act submitted that, as the companies in question were functioning on the appointed day, those companies shall continue to function even after the appointed date and the successor State of Bihar has every right to apply for winding up, as according to him the present corporations are governed by Section 65 and not by Section 66 of the Bihar Reorganisation Act since the present corporations are Government companies u/s 617 of the Companies Act and not statutory companies under any statute and according to him law laid down by the Division Bench of this court in the case of *The Bihar State Housing Board and Another Vs. The State of Jharkhand and Others*, shall have no application. As regards Section 2 of the Inter-State Corporations Act, 1957, it was submitted that in order to qualify an inter-State corporation, it postulates two ingredients to be fulfilled. The first ingredient is that it must be a body constituted under any of the Act included in the Schedule. The second ingredient is that the company should be functioning in two or more States immediately preceding appointed day. The Acts under which different bodies have been constituted is envisaged in Section 2 of the Act as specified in the Schedule itself. Subsequent amendment in Section 2 of the Act

introduced in the year 1960 does not in any manner change the basic requirement of the Act. It only adds any other enactment relating to reorganisation of the States. The words "of any other enactment relating to reorganisation of States" qualifies States Reorganisation Act, 1956 and has to be read ejusdem generis, with the words "States Reorganisation Act, 1956". As a canon of interpretation of statute, when a word or language of statute is clear, it has to be read as such. Section 2 is unambiguous in its language. It reads that any body corporate constituted under any of the Acts specified in the Schedule and...."and" in Section 2 cannot be read as "or". It means that the body corporate has to be constituted under any of the Act specified in the Schedule. Besides, it has to be functioning in two or more States by virtue of Section 109 of the States Reorganisation Act or of any enactment relating to reorganisation of States. It is, thus, apparent that in order to qualify as an inter-State corporation, a body corporate must be constituted under any of the Acts specified in the Schedule and besides that, it must be functioning in two or more States by virtue of Section 109 of the States Reorganisation Act, 1956, or of any other enactment relating to reorganization of States. Merely because the Bihar Reorganisation Act, 2000, has come to be enacted would not change the text and texture of Section 2 of the Inter-State Corporations Act. It only enables the Central Government to issue a notification u/s 5 of the Inter-State Corporations Act to amend the Schedule to bring any of the body corporates functioning in two or more States by virtue of the Bihar Reorganisation Act, 2000, or any other Act. He further pointed out that any other interpretation to be assigned to Section 2 would render Section 5 nugatory. With reference to Section 5 of the Inter-State Corporations Act, it was submitted that the Central Government is empowered to amend the Schedule. If the Central Government issued a notification amending the Schedule with a view to bring within the fold of the Inter-State Corporations Act any body corporate functioning in two or more States by virtue of the Bihar Reorganisation Act, 2000, it may do so and it is only when such notification is issued that such body corporate would be covered u/s 2 and not otherwise. It is further submitted that it is not in dispute that no notification has been issued in Section 5, after the Bihar Reorganisation Act, 2000. Therefore, on a conjoint reading of Section 2 read with Section 5, by no stretch of imagination, the above referred three companies would be held to be inter-State corporations.

7. Having heard counsel for the parties and having perused the provisions contained in Sub-section (4) of Section 46 and Sub-section (1) of Section 65 and Section 66 of the Bihar Reorganisation Act, I am of the view that any Government company, be it a company constituted u/s 617 of the Companies Act or a statutory corporation, by virtue of its inclusion in Schedule 9 to the Bihar Reorganisation Act becomes an inter-State corporation and has to function notwithstanding the provisions contained in the Companies Act until a law is enacted or agreement is reached between the successor States or directions are issued by the Central Government. In the present case, neither the law has been enacted nor the agreement has been reached between the successor States nor

has any direction been issued by the Central Government. In the circumstances, according to this court, notwithstanding the provisions contained in the Companies Act, the aforesaid Government companies, by virtue of the provisions contained in Sub-section (4) of Section 46 and Sub-section (1) of Section 65 of the Bihar Reorganisation Act, have to function in the areas in which they were functioning immediately before the appointed day until a law is framed, an agreement is reached between the successor States or directions are issued by the Central Government.

8. My aforesaid views are further reinforced in the light of the provisions contained in Sections 2 and 3 of the Inter-State Corporations Act, 1957, as amended by the Bombay Reorganisation Act, 1960, as no sooner the aforesaid Government companies in terms of the provisions of the Bihar Reorganisation Act became inter-State corporations the companies have to continue functioning until they are dissolved by framing scheme by the State Government with due approval of the Central Government. The submission of the learned Advocate General that unless the Schedule to the Inter-State Corporations Act, 1957, is amended by the Central Government by issuing a notification so as to include the Bihar Reorganisation Act, the Government companies included in Schedule 9 to the Reorganisation Act cannot be treated as inter-State corporations appears to be misconceived as Section 5 of the Reorganisation Act, as amended by the Bombay Reorganisation Act, 1960, is only an enabling provision to enable the Central Government to amend the Schedule to the Inter-State Corporations Act, 1957, so as to include any other State Act in the Schedule to the Inter-State Corporations Act, 1957, so that the companies which have been constituted under the State Act become inter-State corporations. In the instant case, the Government companies have become inter-State corporations by virtue of Sub-section (4) of Section 46 and Sub-section (1) of Section 65 read with Schedule 9 to the Reorganisation Act, which is a Central Act and beyond the purview of Section 5 of the Inter-State Corporations Act and was not required to be included in the Schedule to the Inter-State Corporations Act, 1957. In this connection, I would refer to Clause (3) of the Statement of Objects and Reasons accompanying the bill to amend the Inter-State Corporations Act, 1957, as it is now well-settled that though the Statement of Objects and Reasons accompanying legislative bills cannot be used to determine the true meaning and effect of the substantive provisions of a statute, it is permissible to refer to the Statement of Objects and Reasons accompanying a bill for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. Reference in this connection may be made to the case of *Narain Khamman Vs. Parduman Kumar Jain*, paragraph 12. Clause (3) of the Statement of Objects and Reasons of the Inter-State Corporations Act, 1957, reads hereunder:

3. Eleven State Acts are specified in the Schedule to the Bill on the basis of information supplied by the State Governments. Since it is possible that this list

may not be complete, it is proposed in Clause 5 of the Bill to empower the Central Government to include in the Schedule by means of a notification any other State Act under which a corporate body is now functioning in more than one State as a result of the States Reorganisation Act. "Gazette of India, 1957, Extry. Pt. II, Section 2, page 400.

(emphasis supplied) Here Italicized for emphasis.

9. In view of my discussions above, the Bihar Reorganisation Act, 2000, being a Central Act was not required to be brought within the Schedule to the Inter-State Corporations Act by exercising the enabling powers contained in Section 5 of the said Act.

10. In the circumstances, the winding up petitions filed to wind up the aforesaid three Government companies, Bihar State Small Industries Corporation. Ltd., Bihar State Pharmaceutical and Chemical Development Corporation Ltd., and Bihar State Agro-Industries Development Corporation are dismissed.