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**(2007) 07 PAT CK 0093**

**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**

The State of Bihar

**RESPONDENT**

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**Date of Decision : 26-07-2007**

**Acts Referred:**

**Citation : (2007) 07 PAT CK 0093**

**Final Decision : Dismissed**

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**Judgement**

V.N. Sinha, J.—These winding up petitions have been taken UD for consideration in the light of the request of the Hon"ble Supreme Court contained in order dated 18.5.2007, passed in I.A. Nos. 8 and 11 in writ petition (Civil) No. 488 of 2002.

2. M/S Bihar State Small Industries Corporation Ltd., Bihar, Patna, M/S Bihar State Pharmaceutical and Chemical Development Corporation Ltd., Bihar, Patna and M/S 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 Chairmen 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 of the directions of this Court, not only the political Chairmen were removed from the Board of Directors but the State Government, as a share-holder of the companies directed the companies to take a decision in respect of winding up, whereafter the Board of Directors of M/s. Bihar State Small Industries Corporation Ltd. took decision to wind up the company in their

meeting held on 16.5.1998 which decision was also endorsed by the shareholders in their annual general meeting held on 31.12.1998. Similar decisions were also taken in the case of M/S 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 has been given in the petition. In the case of M/s Bihar State Agro-Industries Development Corporation also the State Government, as a share-holder, took decision to wind up the Corporation, as is evident from paragraph 7 of Company Petition No. 16 of 1999.

3. 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 M/S 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 State of Bihar/Jharkhand but also at New Delhi, list whereof indicating valuation of the assets amounting to Rs. 5305 lacs and 4523.75 lacs has been placed on record as indicated in Annexure-2 to I.A. No. 5618 of 2006 filed in Company Petition No. 5/99. With reference to letter dated 18.9.2006 and 9.11.2006 issued by the Incharge Sales Manager of Ambapall Bihar Emporium, a unit of M/s Bihar State Small Industries Corporation Ltd. located at New Delhi, as contained in Annexures 3 and 3/1 of I.A. No. 5618 of 2006 it is submitted that the said Sales Imporium 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 I.A. No. 5618 of 2006 it is submitted that M/s 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, Bihar Reorganization Act, 2000 was enacted by the Parliament, where under existing State of Bihar was bifurcated into successor State 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 Reorganization Act, the aforesaid three Government companies became Inter State Corporations as they were included in Ninth Schedule of the Reorganization Act and in terms of the provisions of the Reorganization Act, on and from the appointed day the companies continued to function in the area in which they were functioning prior to the reorganization 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 Companies Act, 1956 or in any other law. With reference to the aforesaid Sections 46 and 65 of the Reorganization 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 Reorganization Act the Government companies included in Schedule 9 of the Bihar Reorganization Act should continue to function in the areas in which it was functioning immediately before the appointed date i.e. 15.11.2000 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 any direction has 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 Reorganization Act, 1960, it was further submitted by the counsel for the Workers" union that the aforesaid three companies by virtue of the provisions contained in the Reorganization 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.

7. In reply, learned Advocate General, with reference to Section 65 of the Bihar Reorganization 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 present Corporations are governed by Section 65 and not by Section 66 of the Bihar Reorganization 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 Division Bench of this Court in the case of The Bihar State Housing Board v. the State of Jharkhand (Supra) shall have no application. As regards Section 2 of the Inter State Corporations Act, 1957 it was submitted that in order to qualify as 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 proceeding 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 re-organization of the States. The words "of any other enactment relating to re-

organization of States" qualifies State Reorganization Act, 1956 and has to be read ejusdem generis, to the words "State Re-organization 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 States Reorganization Act or of any enactment relating to re-organization of States. It is, thus, apparent that in order to qualify as 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 States Re-organization Act, 1956 or of any other enactment relating to re-organization of States. Merely because, Bihar Re-organization 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 Inter State Corporations Act to amend the Schedule to bring any of the body corporate functioning in two or more States by virtue of Bihar Re-organization 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 Central Government Issued a notification amending the schedule with a view to bring within the fold of Inter State Corporation any body corporate functioning in two or more States by virtue of Bihar Re-organization 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 Bihar Re-organization Act, 2000. Therefore, on a conjoint reading of Section 2 read with Section 5, by no stretch of imagination, above referred three companies would be held to be Inter State Corporations.

8. Having heard counsel for the parties and having perused the provisions contained in Sub-section 4 of Section 46 and Section 1 of Section 65 and Section 66 of the Bihar Re-organization 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 of the Bihar Re-organization 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 any direction has 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 Reorganization Act, has to function in the areas in which they were functioning immediately before the appointed day until law is framed, agreement is reached between the successor States or directions are issued by the Central Government.

9. 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 Reorganization Act, 1960 as no sooner the aforesaid Government companies in terms of the provisions of the Bihar Reorganization 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.

10. The submission of the learned Advocate General that unless the Schedule of the Inter State Corporations Act, 1957 is amended by the Central Government by issuing a notification so as to include the Bihar Reorganization Act, the Government Companies included in Schedule-9 of the Reorganization Act cannot be treated as Inter State Corporations appears to be misconceived as Section 5 of the Reorganization Act, as amended by the Bombay Re-organization Act, 1960, is only an enabling provision to enable the Central Government to amend the Schedule of the Inter State Corporations Act, 1957 so as to include any other State Act in the Schedule of the Inter State Corporations Act, 1957 so that the companies which have been constituted under the State Act becomes 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 of the Reorganization 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 of 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 bill 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, Extra. Pt. II, S.2, P.400.

(Emphasis supplied)

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

12. 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.