

(2010) 08 PAT CK 0063
In the Patna High Court
Case No : LPA No. 1075 of 2004

Industrial Development Bank of India (erstwhile Industrial
Development Bank of India)

APPELLANT

Vs

Rajesh Bhatia and Others

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0063

Judgement

S.K. Katriar, J.—This appeal under Clause-10 of the Letters Patent of the High Court of Judicature at Patna has been preferred by Respondent No. 1, Industrial Development Bank of India (hereinafter referred to as "IDBI"), of C.W.J.C. No. 286 of 2004*, the Appellant herein, which was allowed by order dated 22.9.2004, whereby the Appellant was directed to release the admissible amount in favour of Bihar Industrial Technical Consultancy Ltd. (hereinafter referred to as the "BITCO"), for payment of the post-retirement dues of the Petitioner.

2. A brief statement of facts essential for disposal of this appeal may be indicated. BITCO is a Government Company within the meaning of Section 6(13) of the Companies Act, 1956. At the relevant point of time, in June 1986, IDBI held shares to the extent of at least 51% in BITCO. IDBI had issued advertisement which had been published in the national dailies on 10.6.1977 (Annexure-1), inviting applications from eligible candidates for appointment to various posts. Respondent No. 1 had submitted his application for appointment as Consultant, Grade-I (Technical). It appears from Annexures-2 to 4, which are of dates between May 1978 to June 1978, IDBI had called Respondent No. 1 for interview and had formally selected him for appointment on the post in question. By letter dated 27th July, 1978 (Annexure-5), BITCO had issued letter of appointment. The writ Petitioner, Respondent No. 1 herein, joined the post in question on 17.10.1978, in its Patna office. Respondent No. 1 was promoted twice, the second promotion was to the post of Senior Consultant (Technical) Grade-I, on 5.7.1982. While functioning as such, he submitted his resignation which was accepted w.e.f. 16.6.1986, and a portion of his post-retirement

benefits were paid to him, but was not paid the following post-retirement benefits:

- (i) Gratuity along with statutory interest,
- (ii) Leave Encashment for 32 days and
- (iii) Difference of interest on provident Fund accumulation with statutory interest.

3. In spite of repeated approaches, these benefits were not paid to him, leading to the present C.W.J.C. No. 286 of 2004*. which has been allowed by the impugned order. It has been held that IDBI had all pervasive control over BITCO. One third member of the Board of Directors of BITCO had to be appointed by IDBI. Its Board of Directors, Chairman, and Managing Director had to be nominated by IDBI. IDBI failed to nominate its nominees to Board of Directors, Chairman, and Managing Director for a long length of time which gave rise to huge problems in BITCO, and caused irreparable injury to the organization. The IDBI is liable to meet the deficits of BITCO for the losses in its working. The learned Single Judge has further noted that the dues of Respondent No. 1 herein are admitted, and are fit to be allowed. The writ petition was, therefore, disposed of with the following directions:

The writ application is, thus, allowed. The Respondent-IDBI is directed to release the admissible amount for payment to the Petitioner of his retiral dues in favour of the Respondent-company, subject to adjustment to be made in future against their share within one week and the Respondent-company shall pay the same to the Petitioner within three days of the receipt of the fund from the IDBI, failing which the erring authorities shall be liable to pay a cost of Rs. 5,000/- (five thousand) from their pockets and the Petitioner will be at liberty to file two pages affidavit for revival and initiation of action.

4. While assailing the validity of the impugned order, learned Counsel for the Appellant submits that it cannot be held liable for payment of dues to Respondent No. 1. In his submission, IDBI and BITCO are separate legal identities and, therefore, the liabilities of BITCO cannot be fastened on IDBI. He relies upon the decision in the case of Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, (Paras-21 & 22).

5. On the other hand, learned Counsel for Respondent No. 1 submits that the entire working of BITCO was paralyzed on account of the acts of omission and commission of IDBI, particularly its omission to nominate its nominees include the Chairman and Managing Director on the Board of Directors. He further submits that, at the relevant point of time, IDBI had admittedly held at least 51% shares and is, therefore, liable in all ways, and had complete and all pervasive control over the affairs of BITCO. He has taken us through the provisions of the Articles of Association. He relies upon the judgment of a Division Bench of this Court in the case of Ashok Kumar Singh v. Bihar Industrial and Technical Consultancy Organisation Limited and Ors. 1997 (2) PLR 66.

6. We have perused the materials on record and considered the submissions of the learned Counsel for the parties. Articles 103(3), 180 and 181 of the Association are relevant in the present context which are reproduced hereinbelow:

103(3): As long as the IDBI holds not less than 40% of the subscribed capital of the Company, the IDBI shall be entitled to appoint upto one-third of the total number of Directors of the Company and shall be entitled to remove any or all of them from that office and to appoint any other person(s) thereto from time to time. The Directors so appointed shall not be liable to retire by rotation. Out of the Directors so appointed, the IDBI may designate one as the Chairman and the same or one other as the Managing Director of the Company.

180: Notwithstanding anything contained in any of these Articles, so long as the IDBI holds not less than 40% of the subscribed capital of the Company, the IDBI may, from time to time, issue such directives as it may consider necessary in regard to the conduct of the business of the Company of Directors thereof, and in like manner may vary and annul any such directive. The Directors shall give immediate effect to the directives so issued.

181: The Chairman shall reserve for the approval of the IDBI any proposals to or decisions of the Board of Directors in respect of any matter which, in the opinion of the Chairman, are of such importance as should be reserved for such approval.

7. It is evident on perusal of these provisions that so long IDBI holds not less than 40% shares of the subscribed capital of the Company, it shall be entitled to appoint upto one-third of the total number of Directors of the Company, including the power of removal to any or all of them from the office, and will also be empowered to appoint the Chairman and Managing Director of the Company. It is further evident from a perusal of the materials on record that IDBI completely failed to take action in nominating its persons on the Board of Directors, as a result of which the office of Chairman & Managing Director remained vacant for a long length of time, which had paralysed the functioning of BITCO. It is further evident that, so long IDBI holds not less than 40% of the subscribed capital of the Company, its direction shall be binding on the company, and also be entitled to annul any direction of the Board of Directors or its Director. The admitted position is that the IDBI held not less than 51% on the relevant date. IDBI had thus complete and all pervasive control over the affairs of BITCO at the relevant point of time. It is thus evident that, as has been found by the learned Single Judge, that this substantially contributed to the deterioration and the destruction of BITCO.

8. It is further evident that Respondent No. 1 resigned from the services from BITCO on 16.6.1986, and his aforesaid dues have remained unpaid on the own volition of the IDBI and BITCO. In the peculiar facts and circumstances of the present case, we are of the view that the IDBI is liable to make payment of the dues of Respondent No. 1. The learned Single Judge has directed that BITCO

shall make payment of the dues to the writ Petitioner within three days of the receipt of the fund from the IDBI. In view of the changed circumstances, and lapse of inordinately long time since the date of resignation, we shall modify the operative portion of the impugned order. On account of the conduct of IDBI, the circumstances have been made oppressive against Respondent No. 1, who is facing hardship.

9. In the result, this appeal is dismissed. The Appellant is directed to forward to Respondent No. 1 by means of demand draft, his entire dues which shall carry interest @ 6% w.e.f. 16.6.1986, till the date of payment along with a chart of calculation. This Court will be pleased if the demand draft is forwarded to Respondent No. 1 within a period of three months from today.

Birendra Prasad Verma, J.

I agree