
(2001) 09 PAT CK 0042

In the Patna High Court

Case No : L.P.A. Nos. 753 and 938 of 2001

Jharkhand State Housing Board and Others

APPELLANT

Vs

The State of Bihar and Others
 The Bihar State
Housing Board and Another Vs The State of Jharkhand and
Another

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0042

Judgement

1. All the parties at the Bar consent to and agree that this matter needs to be resolved. Plainly the issue is that there appears to be a lis which is the result of the division of Bihar in pursuance of the Bihar Reorganization Act, 2000 and that some of the activities of the companies which were situated in Bihar continue to have activities in the state of Jharkhand assets not excluded. Bifurcation of activities and assets are the issues.

2. A writ petition was brought by the Bihar State Housing Board, a company being an inter-State body corporate within the meaning of the Act, aforesaid. This Court is not going into the merits of the issue at present. Suffice it to say that all parties at the Bar agree that issues are identifiable and are about assets and liabilities on who is to retain how much and where and perhaps the restructure of the management board of the company. Counsel for the parties also accept that it does appear that between one State and another State and the erstwhile Corporation, a body corporate having the attribute of "an inter-State body Corporate" has been permitted by law "on and from the appointed day, continue to function and operate in those areas in respect to which it was functioning and operating immediately before that day". The law also enjoins that this functioning may be" 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". Parties and their attorneys also accept that any directions issued by the Central Government in respect of such inter-State 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".¹

3. The Court is reminded of two decisions of the Supreme Court in the matters of Oil and Natural Gas Commission and Anr. v. Collector of Central Excise. These are (a) 1992 (61) ELT 3 (SC) and (b) Oil and Natural Gas Commission and Another Vs. Collector of Central Excise,

4. This Court is reproducing certain passages from each of the decisions of the Supreme Court:

3. This Court has on more than one occasion pointed out that public Sector undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigation. Court's time is not to be consumed by litigations which are carried on either side at public expenses from the source. Notwithstanding these observations, the present cases appear to be an instance of total callousness. The letter of October 3, 1988, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level.

4. The Cabinet Secretary is called upon to handle this matter personally and report to this Court within four weeks as to why this litigation is being conducted when the two sides are a public sector undertaking and the Union of India. The report of the Cabinet Secretary should be supported by an affidavit of a responsible officer. The matter be placed again before us on October 11, 1991 1992 (61) ELT 3 (SC)

Then:

1. We are happy to find that the Cabinet Secretary has taken the appropriate initiative as indicated in our order dated 11-9-1991 and has reported to us that the dispute between the Government Department and the public sector undertaking of the Union of India has been settled. In that view of the matter no further action is necessary on the petition.

2. In his report the Cabinet Secretary has stated:

I would also like to state that the Government respects the views expressed by this Honourable Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in Court by spending money on fees on counsel, court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual

consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated.

3. We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

5. The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1-1-1992.

6. Our direction may be communicated to every High Court for information of all the courts subordinate of them. Oil and Natural Gas Commission and Another Vs. Collector of Central Excise,

5. In short the spirit of the decisions is that these matters should at best be sorted out between the two State Government on the functions of the inter-State corporation in (sic) being able to carry on its activities in the new State of Jharkhand.

6. It will not be proper for the Court to require parties to submit on the resolution of issues between them before the Court. The Court notices that in Section 65, Sub-section (2), the incorporated bodies mentioned in the Ninth Schedule has also been referred to as "a company". Not to be ignored is the reference to expressions like "reconstitution, reorganization, amalgamation or dissolution". There seems to be a similarity with like synonymous expressions under Chapter V of the Companies Act, 1956 on Arbitration, Compromises, Arrangements and Reconstruction. The only difference is that if such disputes related to a company registered under the Companies Act, the High Court was the forum to consider reconstitution, reorganization, amalgamation or winding up. Under the Bihar Reorganization Act, 2000, of companies referred to in the Ninth Schedule, all parties accept that the issues may be resolved upon directions issued by the Central Government.

7. One of the contentions raised on behalf of the Housing Board in the Jharkhand State is, to the effect, that Ministry of Home Affairs, Government of India vide its letter dated 27 June 2001 (Annexure A) has written to the Chief Secretary, Bihar, in the matter relating to the assets of Bihar State Housing Board and its division between the successor State. It has been contended that the Chief Secretary has not replied to the Government of India. Both the Bihar State Housing Board and the Jharkhand State Housing Board have filed Letters Patent Appeals against the decision of the learned Judge of CWJC No. 8735 of 2000 The Bihar State Housing Board and Anr. v. State of Jharkhand and Ors. The Jharkhand State Housing Board is a party Respondent in the writ petition.

8. All the parties unanimously indicate and consent that in the spirit of the orders of the Supreme Court, attention of which was drawn by the Court to the parties, the attention may be drawn of the respective Chief Secretaries of the two States and of the Government of India so that process of a solution to the issues in terms of letter of 27 June 2001 may be continued. It is, thus, that the Court called upon the Advocate General, Bihar and for his attention to the issues between the parties.

9. Learned Advocate General, Bihar stated that in so far as taking instruction on the aspect whether the State of Bihar has replied to the letter of the Government of India dated 27 June 2001 is concerned he would need to take instructions and that he would report to the Court, on Tuesday next.

10. Simultaneously, he will draw the attention of the Chief Secretary, Bihar that this is a matter which ought to be resolved between the two State Governments and the matter be referred to the Central Government within the meaning of Part VII and particularly Sections 65, 66, 68 and 69 of the Bihar Reorganization Act 2000. All parties have recorded consent on this order.

11. On the report of the Advocate General Bihar, in the context of the letter dated 27 June 2001, from the Government of India, place for orders on Tuesday next, 18 September 2001.