
(2004) 09 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 286 of 2004

Rajesh Bhatia

APPELLANT

Vs

Industrial Development Bank of India and Others

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Citation : (2004) 4 PLJR 524

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Shivendra Kishore, for the Appellant; D.K. Sinha and Sheela Sharma for the IDBI and Mr. Manik Vedsen for BITCO, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner, who was in the service of the Bihar Industrial and Technical Consultancy Organisation Ltd. (in short "BITCO"), which is a subsidiary of the Industrial Development Bank of India (in short "IDBI"), resigned from the service on 16.6.1986 and thus became entitled for gratuity alongwith the statutory interest, leave encashment for 32 days and difference of interest on provident fund accumulation with statutory interest. Prayer in the writ petition is for payment of the said dues. The liability with respect to payment of gratuity has been admitted by the respondent-BITCO in Annexure 9 issued on 23rd May, 1991 and with respect to gratuity, provident fund and leave encashment, the liability is admitted by them in Annexure 15 issued on 20th September, 1993. However, in the counter affidavit the respondent-BITCO has expressed their helplessness in discharging its liability in the absence of Board of Directors. It is stated that the overall control of the Company vests with the IDBI (respondent no. 1) which holds 49.25% shares of the Company.

2. Learned counsel appearing for the BITCO submitted that because of inaction of the IDBI in nominating the Directors and appointing the Chairman and Managing Director, the Company has not been able to discharge its liability. It is

further stated that both because of the decline in industrial and other commercial activities in the State as well as the inherent nature of work of the Company, the Company started incurring losses and as per the Memorandum of Association shareholders of the Company including the IDBI met deficits as per Clause II (B)-19 "A" Articles of Association. However, after 1987 the shareholders of the Company did not give their share of the deficit, except that the IDBI gave ad hoc grants/loan/aids till the year 2000, which were inadequate to meet deficits and, as such, the liabilities of the Company have increased from year to year. According to the petitioner, earlier the IDBI released fund for deposit of the provident fund amount considering the losses incurred by the Company.

3. A counter affidavit has been filed on behalf of the IDBI, in which it is admitted that pursuant to the objectives mentioned in sub-paragraph (i) of paragraph 3, BITCO was also promoted by the IDBI alongwith other Banks and Financial Institutions. However, it is stated that the BITCO, being a Company registered under the Companies Act, 1956, is an independent legal entity having its common seal and governed by the Board of Directors pursuant to the provisions of its Memorandum and Articles of Associations. It is, however, admitted that the IDBI at present is holding 49.25% of the share capital of BITCO and, according to them, BITCO is not a subsidiary of IDBI. It is also admitted that the petitioner has been appointed and selected by the IDBI for BITCO but, according to them, he was an employee of BITCO itself and IDBI has no role in the payment of salary, gratuity, pension and other benefits of the petitioner.

4. Mr. Sinha, learned counsel appearing for the IDBI submitted that in the facts and circumstances aforementioned, the IDBI has unnecessarily been dragged into the litigation and the relief prayed for against the said respondent is not maintainable. He further submitted that in a similar case, bearing CWJC No. 3265 of 2004, in which the petitioners of the said case were the employees of the BITCO and they claimed their salary which has not been paid to them for last many years, the name of IDBI was deleted from the array of the respondent, vide order dated 29.3.2004 (Annexure B), obviously because no liability of IDBI was found for payment of salary of the employees of BITCO.

5. Learned counsel for the petitioner and respondent BITCO have submitted that the provisions contained in Article 104(3)(a) of the Articles of Association of the BITCO show that the entire power vests in the IDBI to nominate its members in the Board of Directors, constituting the Board of Directors and appointing the Managing Director without which the Company cannot function. Further it is submitted by them that the said provision would show that for every decision the approval of the IDBI is essential.

6. Learned counsel for the IDBI has referred to Article 3 of the Articles of Association, which provides that all the rights and powers conferred by these Articles on the IDBI shall be exercised and the references to the IDBI shall have application only after it becomes a member and only so long as it continues to be a member with not less than 51% of the subscribed capital of the Company.

7. However, according to the learned counsel for the respondent BITCO, 51% has been reduced to 40% and in the present case, admittedly, IDBI possesses share of 49.25%. Apart from this, learned counsel for the respondent-BITCO contended that Article 3 only provides for all the rights and powers to be exercised by the IDBI and under its various provisions contained in Articles 135 to 180 it is the IDBI who has to take initiative for constitution of the Board of Directors, appointment of Chairman and Managing Director and entire functioning of the Company. Learned counsel submitted that unless the aforementioned requirement is discharged by the IDBI, the respondent BITCO is not in a position to function much less to pay the admissible dues of the petitioner in the Company.

8. I find substance in the submission of the learned counsel for the respondent-BITCO. Bare perusal of the provisions contained in Article 135 onwards show that the entire power to constitute the Board of Directors and appoint Chairman and Managing Director of the respondent-Company vests in the IDBI. From the facts on record this Court finds that the respondent-IDBI has completely failed to discharge its duty as per the Articles of Association which has led to denial of proper functioning of the Company and payment of dues of the employees.

9. It appears that under Article 19A incorporated vide decision taken at 2nd Annual General Meeting held on 28th June, 1977, the Company is entitled to receive voluntary contributions, grants donations and other moneys from members of the Company or from others for meeting deficits or losses in the working of the Company or for any other purpose and pursuant to the said provision, the IDBI, which is a major shareholder, has made the deficit from time to time. Thus, in the facts and circumstances aforementioned, where the IDBI has failed to discharge its duty, in my opinion, they are liable to meet the deficit for losses in the working of the Company. 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.