

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.5387 of 2009

1. Ramashish Prasad, son of Late Ram Kishun Singh, resident of village-Sabalpur, P.O. & P.S.-Rajgir, District-Nalanda.
2. Dharm Nath Shahi, Son of Late Rajgirihi Shahi, resident of village-Paterha, P.S.-Mahrajanj, District-Siwan.

Petitioners.

VERSUS

1. The State of Bihar through the Secretary, Department of Cooperative, Government of Bihar, New Secretariat, Patna.
2. The Registrar, Cooperative Society, Bihar, Patna.
3. The Special Officer, Bihar State Cooperative Marketing Union Ltd. (BISCOMAUN), BISCOMAUN Bhawan, Patna.
4. The Managing Director, Bihar State Cooperative Marketing Union Limited (BISCOMAUN), BISCOMAUN Bhawan, Patna.

-Respondents.

 Counsels for the Petitioner : Mr. Navin Prasad Singh.
 Mr. Narayan Singh.
 Counsel for the BISCOMAUN : Mr. Vikas Kumar
 Counsel for the State : Mr. Anis Akhtar, A.C. to A.A.G.-10.

04 22.06.2009

The State Government, in the Department of Cooperative, took a decision on 15.05.2006 to enhance the age of superannuation of employees of Cooperatives to 60 years. This decision of the State Government is annexed as Annexure-A to the Counter affidavit of the Bihar State Cooperative Marketing Union Limited (hereinafter referred to as BISCOMAUN). This policy decision has been taken in terms of Section 66 B of the Bihar and Orissa Cooperative Societies Act 1935. This decision has been communicated to BISCOMAUN, which is a Cooperative Society within the meaning of the Act and registered under the said Act. The Board of Directors in their meeting dated 02.11.2007 took a decision being agenda item no. 6, whereby they decided to enhance the age of superannuation of its employees in consonance with the decision of the State Government to 60 years.

BISCOMAUN has filed a counter affidavit. In the said counter affidavit, it is not denied nor any facts have been pleaded to show that the said decision of the Board of Directors of BISCOMAUN has in any manner been modified by the State Government much less the authority of the State Government to modify such a decision of the Board of Directors. Thus, the fact is that the decision of the Board of Directors so far as BISCOMAUN is concerned has attained finality. Neither under the Act nor under the Rules framed thereunder such a decision is subject to superintendence or review or approval of the State Government. Once such a decision by a competent Board has been taken then the BISCOMAUN has to implement the same and in implementing the said decision it cannot ignore the decision itself.

Learned counsel for the BISCOMAUN relies on a Division Bench judgment of this Court in the case of *Bihar State Co-operative Milk Producers Federation Limited & Ors. Vs. The State of Bihar & Ors. since reported in 2009 (1) PLJR 356*. The facts of that case are clearly distinguished in this case. Apparently pursuant to the decision of the State Government, the Managing Director of that Co-operative (not its Board of Directors) made a recommendation for increasing the age of superannuation to 60 years. The matter having been taken up by Board of Directors of the said Co-operative, it rejected the recommendation of the Managing Director. This rejection was subject matter of challenge by an employee. The writ Court allowed the writ application and directed for implementation of the recommendation of the Managing Director. In Letters Patent Appeal the Division Bench held that once the

Board of Directors rejected the recommendation of the Managing Director then there was no cause to enforce the decision on the Co-operative in question. The competent authority to take decision in the matter was the Board of Directors of the Co-operative, which had refused to extend the age of superannuation. These facts are totally different.

In the present case, the Board of Directors of BISCOMAUN in a validly constituted meeting decided to extend the age of superannuation to 60 years in relation to its employees. It is not in dispute that the Board of Directors is the authority to take such a decision, which is neither subject to approval of the State Government nor revisable by the State Government or the Registrar Co-operative. The decision being final and not having been varied till date has to be implemented and there is no escape from it. The authority, as relied and referred to above, has no application to the present writ application.

In view of facts as noted above, the writ petition is allowed with a direction to BISCOMAUN, which is under supersession, to implement the decision of the Board of Directors taken earlier, as noted above.

Trivedi/

sd/-
(Navaniti Prasad Singh, J.)

COPYING IN PROGRESS

Navaniti Prasad Singh
24/6/09
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For Joint Registrar (J)
Patna High Court
Authorised U/s 76 Act I of 1872
24/6/09