(2005) 01 PAT CK 0052

In the Patna High Court

Case No : CWJC No. 4014 of 2004

Aniket Kumar Sahni and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 11-01-2005

Acts Referred:

Citation : (2005) 1 BLJR 236 : (2005) 2 PLJR 5

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Pashupati Pd. Sinha, for the Appellant; Yogendra Mishra and Jitendra Kr. Rai, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard Mr. Pashupati Prasad Sinha, counsel for the petitioners, Mr. Jitendra Kumar Rai, J.C. to G.P. VI Mr. Yogendra Mishra, counsel for respondent No. 5.

2. This writ application is directed against the order dated 14.2.2004 (Annexure-1) passed by the Anchal Adhikari, Manigachhi, by which he has cancelled the settlement of 51 Jalkars made in favour of petitioners'' society without assigning any reason and without issuing any show cause notice. Subsequently the settlement of said Jalkars have been made in favour of respondent No. 5.

3. Petitioners is a Fisherman co-operative society know as Manigachhi Anchal Matsyajivi Seva Swablambi Sahkjari Samiti Ltd. registered under the provisions of Bihar Self Supporting Co-operative Societies Act, 1996. It''s area of operation is to the extent of entire Manigachhi Anchal. Manigachhi Bikas Prakahand Matsyajivi Sahyog Samiti Ltd. Manigachhi Ltd. (respondent No. 5) is another society registered under Co-operative Societies Act, 1935 and its area of operation is also throughout Manigachhi Anchal. 51 Jalkars situated within the area of operation of petitioners as well as respondent No. 5 was going to be

settled. Out of 51 Jalkars 31 Jalkars were to be settled for 1.10.2003 to 30.9.2004. 12 Jalkars were to be settled for 2003-2005 (1.10.2003 to 30.9.2006) and 8 Jalkars were to be settled for 2003 to 2005 (1.10.2003 to 30.9.2005). Respondent No. 5 being the Block Level Co-operative Society registered under 1935 Act claimed priority in the matter of settlement of Government sairat as per the Government circular (Annexure-B) to the counter affidavit filed by respondent No. 5, since the respondent No. 5 was defaulter of Rs. 373,397/- of Revenue Department and Rs. 2,64,981/- of Fisheries Department, he was not eligible for settlement of Jalkars in his favour. Several notices were issued by the Fisheries and Revenue Department to respondent No. 5 to deposit the amount due since 1987-88 and 1988-1989 even then no payment was made by the respondent society. In this circumstances 51 Jalkars were settled in favour of the petitioners society by Anchal Adhikari, Manigachhi on 23.10.2003. In pursuance of settlement petitioners deposited a sum of Rs. 45,525/- on 23.10.2003 through different receipts (Annexure-5 series). Subsequent to the settlement in favour of the petitioners respondent No. 4 represented before the Collector, Darbhanga on 3.11.2003 for settlement of 51 Jalkars in his favour. Respondent No. 5 being the registered society, under the Act of 1935 claimed preference in case of the settlement of Government sairat. The Collector, Darbhanga vide letter No./.288 dated 7.2.2004 directed Anchal Adhikari to review the settlement and if respondent No. 5 pays the defaulted amount the settlement should be made in his favour. In compliance of the same Anchal Adhikari, Manigachhi reviewed the settlement and asked respondent No. 5 vide letter No. 251 dated 11.1.2004 to deposit the entire outstanding dues at a time. The respondent No. 5 deposited part of the amount of Rs. 3,00068/- on 13.2.2004 and on that basis the settlement made in favour of the petitioners society dated 23.10.2003 was cancelled.

4. It has been submitted by the counsel for the petitioners that the State Government has issued circulars that no settlement should be made in favour of co-operative society unless the society pays the entire dues of remission pending against it. It has been decided by this Court as well as that before settlement of jalkars full amount covered under the remission should be realised. The authorities concerned in clear violation of the Government circular as well as the decision of this Court settled the jalkars in favour of respondent No. 5 as admittedly the society was defaulter on the date of settlement and the settlement has been made in favour of respondent No. 5 on the basis of subsequent deposit of the amount which is not sufficient for removing the disqualification of the society for the purpose of settlement. It has further been submitted that the order impugned is illegal as no show cause notice was issued to the petitioners society nor any opportunity was given to file show cause and behind the back of the petitioners without assigning any reason the settlement has been cancelled which is against the principle of natural justice and is fit to be quashed on this ground alone.

5. A counter affidavit has been filed by respondent No. 5 as well as respondent

No. 2 the Collector, Darbhanga and respondent No. 4 Anchal Adhikari, Manigachhi. Respondent Nos. 2 and 4 in their counter affidavit have admitted that subsequent to the settlement made in favour of the petitioners, respondent No. 5 represented before the Collector on 3.11.2003. The Collector, Darbhanga vide letter No. 288 dated 7.2.2004 directed Anchal Adhikari to review the settlement if respondent No. 5 pays the remission amount at a time. In compliance of the direction of respondent No. 2 the respondent No. 4 reviewed the settlement and asked respondent No. 5 to deposit the entire outstanding dues at a time vide his letter No. 251 dated 11.2.2004. The respondent No. 5 deposited the said amount with respect to Revenue Department and Fisheries Department. After receiving the said due amount vide receipt No. 161145 dated 13.2.2004 and receipt No. 142310 no dues certificate was issued in favour of respondent No. 5 and in view of the direction of Collector dated 9.2.2004 and Government circular No. 276 dated 9.5.2001 issued by Revenue and Land Reforms Department wherein it has been stated that the preference should be given to those society which is registered under the Act, 1935. The settlement of 51 jalkars made in favour of the petitioners society has been cancelled and it has been sent to the Collector for its final approval vide letter No. 256 dated 14.2.2004.

6. Respondent No. 5 has filed two counter affidavits. In the first counter affidavit it has been stated that Manigachhi Bikash Prakhand Matsyajivi Sahyog Samiti Ltd. is a society registered under the provisions of the Bihar Co-operative Societies Act, 1935, the settlement of Government sairat as per the circular of the State Government dated 18.1.1992 should be made with the Block Level Fisherman Co-operative Society and in case if the society is not willing or is in default then settlement can be made with any other society. It has also been stated that as per the circular the society should not be treated as defaulter if the claim of remission of that particular society is pending. In this situation the society cannot be precluded from taking settlement of jalkars. The settlement of 51 Makhana-cum-Fishery was settled with the petitioners society in violation of Revenue Department circular No. 1111 dated 7.6.1999 and 276 dated 9.5.2001. No information was given to the respondent society and the petitioners society got the settlement in connivance with the Anchal Adhikari. The respondent No. 5 when got information about the illegal act he made an application on 3.11.2003 to the Collector, Darbhanga and the Collector gave a direction to Anchal Adhikari to realise any amount due against the society and make settlement of the jalkars with respondent No. 5. In the light of the aforesaid direction of the Collector, the Anchal Adhikari issued notice to respondent No. 5 to deposit the amount and accordingly the entire amount including the up-to-date instalment of the aforesaid jalkars were deposited. The petitioners though obtained settlement of 51 jalkars but he failed to deposit the second instalment which became due in the month of January 2004 and, therefore, he had committed breach of the terms of the agreement. In this background the cancellation of settlement in favour of the petitioner has been made and it has been settled with respondent

No. 5. Respondent No. 5 in his second counter affidavit has stated that before the cancellation of settlement the District Fisheries Officer vide Annexure-E E/1 and E/2 had directed the petitioners society to deposit the second instalment of the settlement amount which was not complied with by the petitioners society and finally the order of cancellation was issued as such the petitioners cannot say that he was not noticed or no opportunity was given to him before the cancellation.

7. The petitioner in reply has stated that so far the deposit of second and 3rd instalment is concerned it is the current amount and it can be deposited at any time before the expiry of the period of settlement. Moreover the petitioners had filed their application on 21.5.2004 before the Anchal Adhikari, Manigachhi allowing the petitioner to deposit second and 3rd instalment for the period 2003-2004. The Anchal Adhikari on 27.5.2005 requested to the Collector, Darbhanga to give guideline regarding the acceptance of second and 3rd instalment from the petitioners. The Collector, Darbhanga vide his letter No. 900, dated 3.6.2004 (Annexure-23) directed the respondent No. 4 to comply the order passed in CWJC, No. 4014 of 2004. The petitioner thereafter repeatedly approached the Anchal Adhikari, Manigacchi to accept the second and 3rd instalment, but the respondent No. 4 did not allow the petitioner to deposit the second and 3rd instalment. The Collector, Darbhanga directed the Anchal Adhikari not to accept the amount from any society and if the time of extracting Makhana had come it should be extracted by the department and the same should be sold in auction and the amount should be deposited in Anchal Najalat. It has been submitted by the petitioners that this direction of the Collector Darbhanga was in violation of the order dated 17.5.2004 passed in this writ application by which the illegal cancellation of settlement of jalkars has been stayed as such the respondent Nos. 2 and 4 are liable for suitable action.

8. On perusal of the writ petition, the counter affidavit filed by respondent Nos. 2, 4 and 5 as well as the reply to the counter affidavit filed by the petitioners and also after hearing the parties, it is clear that the respondent Nos. 2 and 4 have committed serious illegality by cancelling the settlement made in favour of the petitioners. In the counter affidavit filed by respondent Nos. 2 and 4 it has been admitted that subsequent to the settlement made in favour of the petitioners society respondent No. 5 approached the Collector on 3.11.2003 and the Collector Darbhanga vide letter No. 288 dated 7.2.2004 directed the Anchal Adhikari to review the settlement if respondent No. 5 pays the remission amount. In compliance of this direction the Anchal Adhikari, Manigachhi reviewed the settlement and asked respondent No. 5 to deposit entire outstanding dues at a time and on his depositing this amount the cancellation made in favour of the petitioners was illegally cancelled. It has been decided by this Court in CWJG No. 5025 of 2003 that the settlement made in favour of any society cannot be cancelled on the ground that subsequently the defaulter society has deposited the remission amount and become qualified for consideration. It has been decided that the settled affair cannot be settled in this manner. This order has

been upheld in LPA 704 of 2003. In the present case also as it transpires from Annexure-1, the order dated 14.2.2004 contained in Memo No. 257 that the settlement made, in favour of the petitioners has been cancelled simply because the respondent No. 5 society has deposited three lacs 68 thousand in the treasury and has became qualified for taking settlement of the sairat. No other grounds have been mentioned in the impugned order. This ground in itself is illegal and arbitrary as such the order contained in Annexure-1 is hereby quashed.

9. It has been submitted by the petitioners that out of 51 jalkars 31 were settled for the period 2003-04 and the period of settlement has already expired. So far 12 jalkars settled for 2003-2006 and 8 jalkars settled for 2003-2005 is concerned they are still in existence. The settlement in favour of the petitioners society with respect to these jalkars will continue. The other 31 jalkars settlement period of which has already expired, same can be settled by the authorities in favour of any such society which is qualified. The settlement must be made as per Government direction and circulars.

10. Accordingly this writ application is allowed.