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**(2001) 08 PAT CK 0087**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 5381 of 2001**

Bihia Shahpur Thana Matsyajivi Sahyog Samiti Limited APPELLANT  
Vs  
The State of Bihar and Others RESPONDENT

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**Date of Decision :** 09-08-2001

**Acts Referred:**

**Citation :** (2001) 08 PAT CK 0087

**Final Decision :** Dismissed

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### Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 15-3-2001, (Annexure-4), passed by the Collector of Bhojpur, Ara, in Shairat Case No. 2 of 2001 -2002 (Re: Suhia Bhagar settlement), whereby the petitioner has been deprived of the settlement of fishing rights in the Jalkar in question, namely, Suhia Bhagar, for the period 1-4-2001 to 31-3-2002, and has instead allotted to respondent No. 4 herein on annual licence fee of Rs. 6,25,000.

2. The petitioner is a Co-operative Society registered under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as "the Act"). Suhia Bhagar is a vast expanse of water being an off-shoot of river Ganga in the district of Bhojpur. The petitioner had obtained fishing rights of this Jalkar continuously for a period of three years as follows:

|           |             |             |            |             |             |             |             |
|-----------|-------------|-------------|------------|-------------|-------------|-------------|-------------|
| Year      | Reserve     | Jama        | Settlement | amount      | 1998-99     | 5,18,650.00 | 5,18,650.00 |
| 1999-2000 | 5,18,650.00 | 5,18,650.00 | 2000-2001  | 5,18,650.00 | 5,18,650.00 |             |             |

3. According to the procedure established by the State Government as per its circular, the State Government revises the reserve jama after a block period of three years. Therefore, the reserve jama for the period in question, namely, 2001-2002 was revised and, as is manifest from the order dated 28-10-2000 (Annexure-4), a sum equivalent to 15% of the licence fee for the immediately preceding year, namely, 2000-2001, was added Rs. 5,96,447/- was thus determined to be the minimum bid amount (known in this field as reserve jama) for the period in question. The petitioner was an applicant for settlement. The

same had to be forwarded by the Divisional Joint Registrar to the Collector of the District as per Circular No. 8-KP-108/77-163937, dated 29-11 -1977, where after the application is considered for the bid. As it appears from the counter-affidavit of respondent No. 4, the petitioner was a defaulter during the previous year and is also implicated in a criminal case with regard to the settlement of the same year, his application was not forwarded to the Collector to be included in the bid. The bid took place on 15-3-2001. respondent No. 4 was the highest bidder with an amount of Rs. 6, 25000/-. Therefore, as is manifest from the later portion of the impugned order, respondent No. 4 has deposited the first instalment of the bid amount, namely, Rs. 3,12,500/ entitling him to the Parwana, namely, the licence.

4. While assailing the validity of the impugned action of the respondent authorities, learned Counsel for the petitioner submits that the impugned action is violative of Article 46 of the Constitution of India. He next submits that the law and procedure with regard to settlement of Jalkar is well-settled. The State Government revises the reserve jama after a block period of three years and the settlement is renewed in favour of the previous lessee on the enhanced fee, or the same is put to auction after a block period of three years, but both together is impermissible which has been done in the present case. He relies on a Full Bench judgment of this Court reported in 1986 BLJR 149 (H.C.) (Chet Lal Sah v. Stats of Bihar). He lastly submits that the petitioner has been given the fishing rights of the Jalkar in question continuously since 1955 and, therefore, he is entitled to preferential right this year.

5. On the other hand, learned GP VIII submitted in opposition that the petitioner's application had not been duly recommended/forwarded by the Divisional Joint Registrar for settlement as per the circular dated 29-11-1977. He next submits that the bid took place on 15-3-2001, on which date the petitioner did not participate in the bid, and that of respondent No. 4 was higher than the floor price, i.e. minimum price (reserve jama). He lastly submits that the judgment of this Court in Chet Lai Shah v. The state of Bihar, (supra), has been over ruled by the Supreme Court in its judgment reported in 1986 BLJR 54 (Shatrudhan Sahni v. State of Bihar), and the matter was remitted back to the High Court for reconsideration. The matter on remand was reconsidered by a Special Bench of five Judges of this Court, and the judgment is reported in 1990 (2) BLJR 832 (Shatrudhan Sahni v. State of Bihar).

6. Learned Counsel for respondent No. 4 has supported the stand taken by the State of Bihar and submits that it is manifest from the aforesaid circular that the application with respect to Jalkars above the licence fee of Rs. 10,000/ per annum has to be forwarded by the Divisional Joint Registrar of Co-operative Societies. The petitioner's application had not been forwarded for very valid reasons, namely, arrears against him and pendency of criminal case, both regarding his previous year's settlement. He next submits that the proper procedure according to the appropriate circular is that after a block period of

three years, the minimum floor price (reserve jama) is fixed after taking into account the market price of the product in question and the amount is accordingly added to, or subtracted from, the previous year's reserve jama which becomes the minimum floor price for the bid for the fourth year. Learned Counsel lastly submitted that he has already deposited the sum of Rs. 3,12,500/ by way of payment of the first instalment of the licence fee, the parwana has been issued, he is working on it and has started developing it.

7. Having considered the rival submissions I am of the view that this writ petition is fit to be dismissed. Learned Counsel for the respondents is right, his submission that the petitioner's application had not been forwarded by the Divisional Joint Registrar to the Collector for consideration for valid reasons. It is manifest from paragraph 5 of the counter-affidavit of respondent No. 4 that there were dues against the petitioner society for the period 1999-2000 and, therefore, the Collector directed the local police to stop the petitioner from fishing. However, the petitioner forged a letter and produced before the local police showing that there are no dues against the petitioner. This resulted in a criminal case against the petitioner which has been registered as Shahpur P.S. Case No. 111 of 1999, under Sections 353, 379, 420, 468 and 120B, IPC. I have thus no manner of doubt that the petitioner-society has disqualified itself from settlement of the Jalkar in question for the period 2001 -2002. In one sense, the writ petition is not maintainable because the petitioner did not participate in the bid and for valid reasons. Law is well-settled that a person not having participated in the selection process, or not entitled or qualified to participate, cannot maintain a writ petition challenging the selection process. The Supreme Court has observed in its judgment in *Mani Subrat Jain and Others Vs. State of Haryana and Others*, that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. The judgment of the Supreme Court reported in AIR 1999 SC 944 (para 8) (*Utkal University v. Nrisingha Charan Saraugi*) is to the same effect.

8. The petitioner next contends that he should have been given the preferential right of settlement, namely, he should have been offered settlement for the licence fee of Rs. 6,25,000/- which on his refusal could have gone to the highest bidder. The contention is stated only to be rejected. A disqualified person can never have a preferential right. Secondly, in so far as this Court is concerned, the prerogative writ jurisdiction can never be exercised in favour of the law breakers or disqualified persons. I am unable to appreciate the reliance placed on the Full Bench judgment of this Court in *Chet Lai's case* (*supra*). In any case, the same has been overruled by the Supreme Court. The matter was remitted back to the High Court where after a Special Bench of five Judges was constituted and the judgment is reported in 1990 (2) PLR 832 *Shatrudhan Sahni v. State of Bihar*. The proposition laid down in this judgment has no relevance to the facts and

circumstances of the present case. Learned Counsel for the petitioner ought to have taken care not to rely on an overruled judgment.

9. Learned Counsel for the petitioner has placed reliance on the provisions of Article 46 of the Constitution of India. Apart from making a bald statement, he has placed no material on record to substantiate the contention. Article 46 is included in Part IV Constitution of India, being the "Directive Principles of State Policy". Apart from the legal position that it is not enforceable in Court, the petitioner has not placed any material before the Court as to how and in what manner the provisions of Article 46 are attracted in the present case. In spite of being questioned, learned Counsel has not given any logic to substantiate his contention that the impugned action has resulted in social injustice or exploitation of scheduled castes. The contention is, therefore, rejected.

10. Learned Counsel for respondent No. 4 is right in his submission that the position has rather become irreversible, respondent No. 4 has already deposited a sum of Rs. 3,12,500/- towards the first instalment of the licence fee and the Parwana has already been issued to him. He has already worked for five months and developed it. It is common knowledge that the rainy season is the breeding period for fishes. As the well-known adage goes, fishing should not be done and human beings should not consume fishes during the months the spelling of which do not include "r", that is, May to August.

11. In the result, this writ petition is dismissed. Before I part with the records, I must state that administration of Jalkars in this State is governed by circulars and administrative instructions, giving rise to a large number of avoidable litigations. In view of the absence of alternative remedies, aggrieved persons approach this Court directly which often times does not prove to be an efficacious remedy for the writ petitioner and burdening this Court with unwanted litigations. this Court is quite often unable to go into questions of facts to the detriment and prejudice of the parties. The Tribunal contemplated by Section 39 of the Bihar Self-Supporting Co- operative Societies Act, 1996, has not till date been constituted. Otiose circulars or administrative instructions which have fallen into desuetude, or over-lapping ones, which quite often fall foul of the constitutional provisions, are pressed into service by the rival parties, giving rise to unnecessary and speculative litigations. For example, I dealt with one writ petition where the State Government had issued orders in favour of the writ petitioner accepting his bid for three years, and was cut short to one year giving rise to that writ petition. Justifying the State action, learned Government Counsel, inter alia, submitted on the strength of an old circular that Jalkar settlements should be for one year. It is, therefore, imperative that a suitable legislation with respect to settlement of Jalkars is brought on the statute book which should, inter alia, provide for alternative, statutory remedies, bidding virgilian fare-well to the Circular Raj. Circulars and administrative instructions can at best be supplemental. Let copies of this order be forwarded to the learned Advocate General, Chairman, Bihar State Law Commission, the Secretaries of the

Department of Law and the Department of Animal Husbandry and Fisheries, and  
Mr. A.K. Choudhary, learned Government Pleader No. 8.