(2005) 04 PAT CK 0051

In the Patna High Court

Case No : C.W.J.C. No. 15998 of 2004 and 489 of 2005

Chalitar Sahni and Another — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Citation : (2005) 2 BLJR 833 : (2005) 2 PLJR 597

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : P.P. Singh, in C.W.J.C. No. 15998/04 and Yogendra Mishra, in C.W.J.C. No. 489/05, for the Appellant; Yogendra Mishra and P.P. Singh, for the Respondent

Judgement

Mridula Mishra, J.—Heard counsel for the petitioners and counsel appearing for the State as well as private respondents in both the cases.

2. C.W.J.C. No. 15998 of 2004 and C.W.J.C. No. 489 of 2005 are being heard and disposed of together by a common order. Petitioner in one writ application is respondent in other and dispute is common as well as interrelated in both the writ applications.

3. C.W.J.C. No. 489 of 2005 has been filed by the petitioner, Singhwara Anchal Matsyajeevi Seva Swamlambi Shakari Samiti Ltd. (respondent No. 9 in C.W.J.C. No. 15998 of 2004) for quashing the (i) order, dated 30.08.2004, passed by the Commissioner, Darbhanga Division, in Shairat Appeal No. 5 of 2004-2005, whereby direction was issued to adjust the excess amount deposited by the petitioner as reserve jama, towards the remission amount or as amount deposited as instalment for next settlement. (ii) For quashing the order, dated 06.12.2004, contained in memo No. 5 issued by Commissioner, Darbhanga Division, directing the Collector, Darbhanga, and also the Circle Officer, Kewati, Singhwara, Darbhanga, to adjust the excess amount deposited by the society, respondents 7 and 8 for settlement in the years 1996 and 2001 (Annexure-7). (iii) The order issued by the Commissioner, Darbhanga Division, dated 22nd

September, 2004, contained in memo No. 28 directing the Circle Officer to refund the excess amount to respondents 6 and 7, society through bank draft (Annexure-8). (iv) Order issued by the Commissioner, Darbhanga Division, dated 29.09.2004, contained in memo No. 54, whereby the Circle Officer, Singhwara, has been directed to submit compliance report of the direction within three days or to file a show cause (Annexure-9) and (v) Order issued by Circle Officer, Singhwara, dated 30.09.2004, contained in memo No. 501 adjusting the excess amount deposited by respondents 7 and 8 amounting to Rs. 4,46,794/- towards the remission and settlement amount and also refunding Rs. 27,268/- (Annexures-10 series).

4. C.W.J.C. No. 15998 of 2004 has been filed by Singhwara Anchal Matsyajivi Swablambi Sahkari Samiti Ltd., through its Chief Executive, Chalitra Sahni (respondents No. 7 and 8 in C.W.J.C. No. 489 of 2005) for quashing the order, dated 10.11.2004, contained in memo No. 2105, of the Under Secretary, Animal Husbandry and Fisheries Department, Bihar, Patna, respondent No. 3, whereby the petitioners'' society has been declared defaulter of the Government revenue to the tune of Rs. 6,59,341/-. Further prayer of the petitioner is for quashing the order, dated 03.12.2004 of the Commissioner-cum-Secretary,'' Revenue and Land Reforms, Bihar, Patna, whereby the Commissioner, Darbhanga Division, has been directed not to interfere with the settlement of Makhana-cum-Fisheries Jalkars as all such shairats have been transferred from Revenue Department to the Fisheries Department. The orders, contained in Annexures 1 and 2, have been challenged by the petitioner on the ground that question of defaulter of the petitioners society has already been decided by the authority on the direction of High Court in C.W.J.C. No. 4079 of 2002. In this view of the matter, the order passed by, respondent No. 3 is an infringement upon the order of the High Court. On the direction of this High Court in C.W.J.C. No. 4079 of 2002 no dues certificate was granted by the competent authority but at the instance of respondent No. 9, respondent No. 3 has reopened the matter which is mala fide and without jurisdiction.

5. Petitioner No. 1 (in C.W.J.C. No. 15998 of 2004) is registered under the provisions of the Bihar Co-operative Societies Act, 1935. Subsequently, the society was converted into swablambi society under the provisions of the Bihar Self-Supporting Co-operative Societies Act, 1996. Respondent No. 9, society (petitioner in C.W.J.C. No. 489 of 2005) is a society registered under the 1996 Act. The area of operation of both the societies are to the extent of Singhwara Anchal. The petitioners'' society being the converted society under the provisions of 1996 Act had preferential right in the settlement of Jalkars. The settlement in favour of petitioners society was challenged in C.W.J.C. No. 12640 of 2002 by respondent No. 9 on the ground that petitioners'' society is a defaulter. In that writ application the Collector of the district Darbhanga was personally directed .to file affidavit. In the affidavit filed by the Collector it was specifically stated that the petitioners'' society is not a defaulter. Accordingly, the writ application was dismissed as withdrawn on 18.02.2002. Subsequently, in another

writ application, i.e., in C.W.J.C. No. 4194 of 2003 it was decided that no settlement should be made in favour of the defaulter co-operative society until the society pays total dues covered under remission provisionally. This order was confirmed in L.P.A. No. 664 of 2003 and also by the Supreme Court in SLP No. 18245 of 2003. Another writ application, that is, C.W.J.C. No. 11696 of 2002 was filed by Hanuman Nagar Prakhand Swablambi Samiti and Bakarganj Samiti Ltd. challenging the validity of fixation of arbitrary reserve jama by the authorities. By the order, dated 05.07.2003, passed in the writ application the arbitrary fixation of reserve jama was quashed and it was held that in no case reserve jama can be enhanced more than fifteen per cent of previous average jama. On the basis of this order passed in the writ application, several societies including petitioners filed application for refund or adjustment of excess payment of reserve jama. The petitioners'' society also filed an application before Fisheries Commissioner, Bihar, Patna, for refund of the excess payment of reserve jama in the light of the order passed in the writ application. Then Fisheries Commissioner directed to calculate, adjust and refund excess amount which were paid on fixation of reserve jama more than fifteen per cent of the reserve jama. On calculation and adjustment, it was found that the petitioners'' society has paid excess amount of Rs. 2,48,870/- which is liable to be refunded and it was held that the petitioners'' society is not liable for payment of any dues of the Government. Accordingly, no dues certificate was granted in favour of the petitioners. The District Fisheries Officer was not taking any action in this respect then the Fisheries Commissioner, Bihar, Patna, directed the Deputy Director, Fisheries, Darbhanga Division, to examine the claim of dues covered under remission and the claim of the excess deposit of the petitioner. On the basis of the aforesaid direction the Deputy Director, Fisheries, Darbhanga Division, examined the matter and come to the conclusion that after adjustment of excess payment made by the petitioners'' society towards the dues of the Government a sum of Rs. 20,297/- and Rs. 8,296/- is due against the petitioners'' society, even that amount has been paid before 18.12.2003, as such, there is no dues of the Government against the petitioners'' society. In this circumstance, the petitioners'' society was held not to be a defaulter. When this matter was decided in favour of the petitioners, the Under Secretary without examining this matter cancelled the settlement made in favour of the petitioners. The settlement was made in favour of the petitioners'' society for the period 2002 to 2005. On 10.12.2004 but the settlement was cancelled merely on the petition of respondent No. 9 and a direction was issued to make a settlement of jalkars for the period 01.04.2004 to 31.03.2005 in favour of respondent No. 9 society. Submission, made by the petitioner, is that once settlement has been made in favour of the petitioners'' society than the settlement should not have been cancelled before the expiry of the terms on frivolous ground. It has also been stated that a large sum has been invested in the jalkar by the petitioners and he will have to suffer heavy financial loss. The Commissioner, Darbhanga Division, vested with the power under the provisions of law, examined this matter and submitted reports to the Secretary, Fisheries Department, Bihar, on 23.11.2004 and 06.11.2004 vide memos No. 118 and 70.

These letters indicated that the petitioner society is not a defaulter in respect of any dues of the Government. It was also stated that the letter No. 2105, dated 10.11.2004, has been issued against the direction of the Hon''ble Court and that letter may be modified forthwith. The memo No. 118, dated 23.11.2004, and memo No. 70, dated 06.11.2004, were referred to the Secretary, Fisheries, Bihar, Patna, by the Commissioner, Darbhanga Division, but the Secretary, Revenue Department, Bihar Patna, going out of way set aside the letters vide memo No. 922, dated 03.12.2004. It has also been submitted by the petitioners that the Revenue Commissioner has no jurisdiction to interfere in the Settlement of jalkar belonging to the Fisheries Department, which are not under the control of the Revenue Department. The Revenue Commissioner without issuing any notice of without hearing the petitioners'' society has directed to cancel the settlement made in favour of the petitioners on political approach, which is wholly without jurisdiction.

6. Respondent No. 9 has filed a counter affidavit stating that the petitioners society is chronic defaulter. The outstanding dues against this society has been determined by the Commissioner, Darbhanga Division, on the direction of High Court in C.W.J.C. No. 12913 of 2000. After the decision of this Court petitioner No. 1 approached the Secretary of the Co-operative Department who with an oblique motive directed Commissioner, Darbhanga Division, to reopen the matter. On reopening, the earlier orders were reversed. The petitioners were allowed to get rid of about for lacs and odd. The District Fisheries Officer had settled 141 jalkars with the petitioner No. 2 on reserve jama of Rs. 3,90,620/- for the year 2001 -2002. The petitioner deposited the entire amount of the settlement and operated the jalkars for few times. The petitioner, who is a shrewd litigant, mounted pressure on the Secretary, Co-operative Department, and he reviewed the reserve jama fixation for the settlement of the Fisheries. The reserve jama was reduced for the year 2001-2002 at Rs. 3,90,620/- to Rs. 2,78,848/- which benefited the petitioner and it was shown that he has deposited Rs. 1,11,000/- in excess. Simply, details have been given in order to show that in each case of settlement, the petitioners'' society has become defaulter. They defaulted in payment of reserve jama. A notice was issued by respondent No. 8, the District Fisheries Officer-cum-Chief Executive Officer, Darbhanga, to the petitioner to deposit the amount, failing which settlement made would be cancelled. Writ petitioner did not deposit any amount. On the contrary, he approached the Commissioner, Darbhanga Division, and he by his order, dated 23.112004, stayed the order of the Secretary. So far respondent No. 5, the Divisional Commissioner, Darbhanga Division, Darbhanga, is concerned, is involved in the scandal with respect to the settlement of makhana-cum-fisheries jalkars. Noticing the aforesaid bugling, respondent No. 4 issued him letter, dated 23.12.2004, not to interfere with the settlement of fisheries and shairat-cum-fisheries. It has also been stated that there is no violation of rule of natural justice as before canceling of settlement notice was issued to the petitioner for depositing the amount and in case of failure the settlement will be cancelled.

7. Respondents 2 and 3 have also filed counter affidavit stating that in the year 2001-2002 the Reserve Jama Committee under the Chairmanship of the Deputy Director, Fisheries, Darbhanga Division, had fixed the reserve Jama of 95 jalkars of Singhwara Block. Being aggrieved with the revenue fixation by the said Committee, the petitioners'' society filed C.W.J.C. No. 9363 of 2001. The Hon''ble High Court referred this matter to the Secretary, Animal Husbandry and Fisheries Department, for consideration in the light of the Government circular. In pursuance of this order passed, by the High Court in C.W.J.C. No. 9363 of 2001, then Secretary, Animal Husbandry and Fisheries Department, by his order, Reserve Jama Committee, headed by the Deputy Director, Fisheries, Darbhanga, to look into the matter in the light of the Government Circular, the matter was still pending before the Secretary, Animal Husbandry and Fisheries. A judgment was passed in C.W.J.C. No. 11696 of 2002, whereby a direction was issued that reserve jama of ponds and tanks can not be enhanced more than fifteen per cent of the previous reserve jama. On the basis of this judgment, letter No. 113 (S.K.), dated 28.11.2003, was issued. So far the direction that the reserve jama can not be enhanced more than fifteen per cent of the previous reserve jama is not applicable to the reserve jama fixation of the Fisheries Department as the reserve jama of a tank, having an area up to four hectare has been fixed ten per cent of the annual productivity estimated. There are only five per cent of such jalkars which are having area more then four hectares. The revenue fixation is carried out on the basis of assessment of annual productivity. The Department, on realising the mistake bringing out in letter No. 113 (S.K.), dated 28.11.2003, on the basis of the judgment passed in C.W.J.C. No. 11696 of 2002 annulled the said order by letter No. 117, dated 28.10.2003, and letter No. 76, dated 27.08.2003, in respect of earlier instructions issued by the earlier Secretary. It has also been stated that bare perusal of the order, contained in Annexure-8 to the writ petition, makes it clear that order was meant to be complied by the District Fisheries Officer, Darbhanga, and not by the Deputy Director, Fisheries, Darbhanga Division. The attention of the Deputy Director, Fisheries, Darbhanga, was drawn towards all these anomalies of the authorities. It has also been stated that the Government found the order passed by the Commissioner, Darbhanga Division, illegal and beyond jurisdiction, as such, cancelled the same vide memo No. 2105, dated 10.11.2004. The Revenue Secretary is wholly justified in quashing the order of Divisional Commissioner, Darbhanga, on the ground that as and when all the ponds and jalkars have been transferred to the Animal Husbandry and Fisheries Department under the Cabinet decision and the Department has assigned the task of its settlement as well as maintenance to the Fisheries Department, how the Divisional Commissioner can interfere with the orders passed by the Fisheries, Department.

8. The submissions made by the counsel of the parties make it clear that real dispute between petitioners and respondent No. 9 is with respect to the settlement of the jalkars. The settlement which was made in favour of the petitioners'' society has been cancelled on the direction of the Under Secretary,

Animal Husbandry and Fisheries Department, Bihar, Patna, on the consideration that the petitioners'' society is a defaulter society. The petitioners'' claim is that in the light of the order passed by this Court the amount which was shown as dues of the Government against this society has already been adjusted and now the society is not a defaulter society.

9. Both the parties have relied on different orders and decisions of this Court. The State has also supported the case of respondent No. 9 but the question is that whether the petitioners'' society is a defaulter or it has deposited all dues on account of adjustment of excess deposited amount as reserve jama. It has been held by the Divisional Commissioner, Darbhanga Division, on the direction of this Hon''ble Court, that there is no Government''s dues against the petitioner society. Once settlement has been made in favour of the petitioners'' society considering that there is no dues against the petitioners'' society, then it should not having been cancelled on the ground of defaulter unless finding recorded in favour of the petitioners by the Divisional Commissioner is set aside by any authority. The Secretary, Animal Husbandry and Fisheries Department, should not have cancelled the settlement made in favour of the petitioners on this presumption that the petitioners'' society is a defaulter. Once settlement is made and an interest accrues in favour of the settlee in that case it is essential that before cancellation of the settlement, a notice must be given to the settlee proper enquiry should be made and only after considering the case the order of settlement can be cancelled prior to the date of the expiry of the period of settlement.

10. Since, there is nothing to show that before passing the order by the Under Secretary, Animal Husbandry and Fisheries Department, vide letter No. 2105, any notice was issued to the petitioner and any enquiry, in this regard, was done, the impugned letter is illegal and without jurisdiction and it is quashed. The settlement was made in favour of the petitioners for the period 01.04.2002 to 31.03.2005, that period has already expired on 31.03.2005. Now fresh settlement will be made on 1st April, 2005, which is due. Only observation which can be given in the present case in favour of the petitioners is that without there being any fresh finding recorded against the petitioner that the society is a defaulter, the authorities will not debar the petitioners in C.W.J.C. No. 15998 of 2004 from participating in the settlement. So far the impugned order in C.W.J.C. No. 15998 of 2004 is concerned, it is quashed. The period of settlement in favour of respondent No. 9 extended by this impugned letter, contained in Annexure-1, is also quashed. The respondent authorities are directed to start process for settlement considering the period of earlier settlement which is going to expire on 31.03.2005. The petitioners as well as the respondents will have liberty to participate in the settlement which should be made in compliance with the direction issued in different circulars as well as the orders passed by this Court in different writ applications.

11. C.W.J.C. No. 15998 is allowed and C.W.J.C. No. 489 of 2005 is dismissed.

C.W.J.C. No. 15998 is allowed and C.W.J.C. No. 489 of 2005 is dismissed.

