

(2006) 12 PAT CK 0122
In the Patna High Court
Case No : CWJC No. 12468 of 2006

Jhanjharpur Anchal Matsyajivi Sahyog Samiti, Jhanjharpur and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 7(1)

Citation : (2007) 1 PLJR 635

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kr. Datta, J.—Heard Mr. Binoda Nand Jha, learned counsel appearing for the petitioner and learned J.C. to AAG-6. The petitioners seek quashing of memo No. 824 dated 28.9.2006 issued by the District Fisheries Officer-cum-Chief Executive Officer, Madhubani (Respondent No. 4) by which notice has been issued for settlement of Sairats of Jhanjharpur Anchal through open bid for five years for the year 2006-07 to 2010-11. The petitioners also seek quashing of the order, as contained in letter No. 858 dated 4.10.2006, by which the said Respondent No. 4 has informed the petitioner that the Sairats of Jhanjharpur Anchal would not be settled with the petitioner-society for the year 2006-07, and further consequential reliefs commanding the respondents to settle the sairats in question with the petitioners-society.

2. The petitioner No. 1 is a registered Cooperative Society of the Fishermen of Jhanjharpur Anchal/Block having been registered in the year 1962. It is stated that as per the provisions of the newly enacted Bihar Fish Jalkar Management Act, 2006, the petitioner being a non-defaulter Fishermen Coopetative Society operating within the geographical area concerned had a preferential right to settlement of the Sairat within that area for five years from 2006-07 till 2010-11. The petitioner-society is stated to have taken all steps for the purpose of

obtaining audit report by making necessary applications before the Assistant Registrar, Cooperative Society and other officials. It also completed the other formalities like payment of fee on 13.7.2006, for which the certificate (Annexure-7) was also issued by the Assistant Registrar, Cooperative Society. Thereafter, it submitted before the District Fisheries Officer all the relevant papers including the certificate of payment of audit fee, list of members, proposed village wise list of Sairats, certificate of last election, audit report of 2003-2004, etc. By letter dated 28.7.2006 (Annexure-17), Respondent No. 4 asked the petitioner-society to submit an audit report of 2005-06 and pay the second and final instalment of Rs. 4,02,900/- pertaining to the year 2005-06 within three days. It is stated by learned counsel for the petitioners that the said letter was sent through U.P.C. and it was received in the office of the Society on 26.8.2006. Thereafter the petitioner-society took immediate steps and the amount of Rs. 4,02,900/- was deposited on 6.9.2006 under receipt of even date, which is Annexure-8/1 to the writ petition.

3. It is submitted by learned counsel for the petitioners that the audit is done by the authorities of the Government for which necessary papers had already been deposited before the Assistant Registrar, Cooperative Society on 3.3.2006 itself and the same is not at all under the control of the petitioner-society but that of the Governmental authority. Thus, for delay in completion of audit, the petitioners-society cannot be held responsible. However, it is submitted on the basis of Annexure-13 which is letter No. 76 dated 5.10.2006 submitted by the Society to the Collector that the audit report was made available to the Fisheries Extension Supervisor on 28.3.2006 itself and the same was submitted through the Assistant Registrar Cooperative Society to the District Fisheries Officer on 4.10.2006.

4. However, despite steps having been taken by the petitioners with regard to the settlement, including the clearance of the dues as demanded by the authorities, the impugned notice dated 28.9.2006, contained in Annexure-9, for settlement of the Jalkars in question on the basis of the limited bid with the non-defaulter members of the society was issued. Learned counsel for the petitioners submits that it was an unlawful attempt to defeat the statutory right of the Society in terms of the provisions of Section 7(1) of 2006 Act. The said notice of limited bid was followed by letter dated 4.10.2006 in which the petitioners' right to get the settlement for five years from 2006-07 was rejected by Respondent No. 4. The petitioner has approached this court against the said notice for limited bid and the letter rejecting the claim of the petitioner for settlement.

5. A counter affidavit has been filed on behalf of the Collector, Madhubani and the District Fisheries Officer, Madhubani Respondent Nos. 3 and 4 respectively. In the said counter affidavit the stand taken is that the petitioner had earlier applied for settlement of April category Sairat in due time but on account of the proposed legislation, the Government of Bihar in the Animal Husbandry and Fisheries Department by letter No. 401 dated 2.3.2006 stayed the settlement of

Sairat. Subsequently after the enactment of the Act, the copy of the same was received in the office of the District Fisheries Officer vide letter No. 2057 dated 16.6.2006. Under the said Act, April to March category Jalkars were changed to July category and provision was made for the supply of certain papers under the Act. Accordingly, the District Fisheries Officer, Madhubani sent a notice by letter dated 17.6.2006 to the petitioner-society for depositing the back dues and all necessary papers in terms of the provisions of the Act, but the same was not done. It is stated that again letter No. 629 dated 28.7.2006 was issued by the District Fisheries Officer, but the petitioners did not deposit the back dues up to 28.9.2006. It is further stated that the District Fisheries Officer after the enactment of the Act by letter No. 517 dated 16.6.2006 directed that the settlement for the period of 2005-06 has been extended from 1.4.2006 to 30.6.2006, for which proportionate amount has to be deposited by the petitioner, but by letter dated 15.7.2006 a prayer was made by the petitioner for exemption of amount and according to the respondents, the petitioner-society did not deposit the amount for the said period of three months from 1.4.2006 to 30.6.2006 and, thus, became a defaulter for an amount of Rs. 24,732/-. It is stated that under those circumstances, the matter was placed before the Collector, Madhubani who directed that when the society is not competent, the settlement of July to June category should be made through limited bid as per the provisions of 2006 Act and accordingly, the notice for limited bid was issued on 28.9.2006. Thereafter, a petition filed by the petitioner before the Collector, Madhubani for taking settlement was also rejected.

6. In paragraph No. 3(v) of the counter affidavit it is stated that the petitioner deposited an amount of Rs. 2,85,908/- for the Sairat settlement of 2005-06 on 19.10.2006, the second instalment dues for the year 2006-07 amounting to Rs. 35,785/- on 19.10.2006 and an amount of Rs. 24,732/- with regard to the dues for extension of 17 Sairats for 2003-2004 on 23.10.2006. It is stated that the aforesaid dues have been paid by the petitioner-society after taking benefit of stay granted by this court by order dated 17.10.2006.

7. The aforesaid averments, particularly one relating to the deposit of the amount of Rs. 2,85,908/- towards Sairat settlement for the year 2005-06 for Jalkars-cum-Makhana is blatantly a false statement, which is evident from Annexure-19 to the supplementary affidavit filed by the petitioner, which clearly shows that the said amount has been deposited as first instalment for 175 Jalkars for the settlement year 2006-07. The said statement in the counter affidavit is, thus, a clear attempt to mislead this court and thereby prejudice it against the petitioners by showing that the petitioner-society is a defaulter society, whereas the said amounts have been paid towards the instalment for the next settlement year and further the said amounts were not at all in the contemplation of the authorities as a defaulted amount when the notice for limited bid was issued on 28.9.2006. In fact, it is clear from the letter dated 28.7.2006 that the only demand issued by Respondent No. 4 was for Rs. 4,02,900/- and the same was deposited by the petitioner-society within 10 days

of receiving the said letter under proper receipt issued by respondent-authorities.

8. So far as the second instalment amount of Rs. 35,785/- is concerned, the same is admittedly the second instalment for the settlement year 2006-07 and the petitioner-society cannot be held to be in default for the same when the notification dated 28.9.2006 was issued.

9. So far as the claim of being defaulter regarding an amount of Rs. 24,732/- is concerned, on account of extension granted from 1.4.2006 to 30.6.2006, is concerned, the same appears to be an attempt at extortion by the respondent-authorities, which is clear from the facts stated by them in the counter affidavit itself. It is evident that while the Act was in the process of being enacted, the Government had issued stay of any further settlement from April 1, 2006 until further orders and the said stay was lifted and it was communicated to the respondent-authorities in the middle of the June; and at the fag end of the three month extension period an arbitrary direction was issued to the petitioner-society stating that an extension had been made and they must deposit the proportionate amounts for the said period. Such demand of the authorities cannot be considered as justified in any case and it is only under duress that the petitioner-society like many other societies who had earlier successfully moved this court, has been forced to deposit the proportionate settlement amount for the said period. The respondents had no right to receive the same and no society much less the petitioner-society, can be held to be defaulter on account of non-payment of such amount for the so-called extended period of three months from 1.4.2006 to 30.6.2006.

10. On a consideration of the aforesaid facts and circumstances, this court is of the view that the notice dated 28.9.2006 for settlement of the limited bid was clearly issued in an arbitrary manner when the arrears demanded by the authorities had already been paid by the petitioner-society at least 22 days before that date on 6.9.2006. The said notice, thus, cannot be permitted to stand and it is, accordingly quashed. Once, it is held that the notification for settlement by limited bid was unjustified since the petitioner-society was not a defaulter society on that date, then it must be held that in terms of the provisions of the Bihar Fish Jalkars Management Act, 2006, the petitioner-society would have a preferential right u/s 7(1) of the said Act for settlement for a period of five years. Accordingly, the order dated 4.10.2006 (Annexure 10) holding the petitioner-society as not entitled to settlement is also quashed and it is held that the petitioner-society would be entitled to preferential settlement in terms of the provisions of 2006 Act.

11. The conduct of Respondent Nos. 3 and 4 in this case appears to be not above-board, particularly the manner in which they have tried to mislead this court by making statements regarding the deposit of defaulted amount of previous settlement year whereas the same pertains to the dues of the year 2006-07 from October onwards. They are warned not to make such an attempt in the future. The writ application is, accordingly, allowed with the aforesaid observations and

directions.