
(2010) 02 PAT CK 0013

In the Patna High Court

Kadwa Prakhand Matsyajivi Swablambi Sahkari Samiti Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 2(viii), 7(viii)

Citation : (2010) 2 PLJR 362

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner Kadwa Block Fishermen Self Supporting Co-operative Society Ltd. (hereinafter referred to as the "petitioner society"), State as also counsel for respondent No. 4 society operating in Kadwa block.

2. Petitioner society is aggrieved by the order dated 23.6.2009 passed by the Director, Fisheries, Bihar, Patna in Appeal No. 47 of 2008, Annexure-6, whereunder the order dated 8.8.2009, Annexure-1 distributing the tanks situate within Kadwa block amongst the petitioner, respondent Nos. 4 and 6, the three societies operating within the said block on the basis of the number of members of the three societies, who are fishermen by caste has been set aside with direction to settle the tanks in favour of the three societies on the basis of the total strength of members of the three societies irrespective of their caste.

3. It is submitted on behalf of the petitioner society that in order to defeat the interest of the fish farmers, who are fishermen by caste respondent No. 4 has enrolled as member of the society even those who are neither fishermen by caste nor traditionally engaged in fishing business and on the strength of non-traditional fishermen member of the society, respondent No. 4 is attempting to corner maximum number of tanks available in the block for settlement thereby depriving the traditional fishermen members of the petitioner society of the tanks. In support of the aforesaid submission reliance is placed on the definition of fishermen given under Sub-section (viii) of Section 2 as also on the provisions

contained in Sub-section (viii) of Section 7 of the Bihar Fish Jalkar Management Act, 2006 (hereinafter referred to as the "Act"), which is quoted below for ready reference:

Section 2(viii) "Fishermen" means the person who is a professional fisherman engaged in fishing and fish culture.

Section 7(viii) "If more than one Fishermen Cooperative Societies are eligible for settlement of jalkars in a Block, then settlement of jalkars shall be made among them in proportion of the number of all classes of jalkars and the number of the members of them.

4. Learned Counsel with reference to receipt dated 4.12.2008, 2.3.2009 as contained in Annexure-3 and Parwana dated 4.2.2009 as contained in Annexure-4 submitted that the distribution made in favour of the petitioner, respondent Nos. 4 and 6, the three societies operating in the same block under order dated 8.8.2008, Annexure-1 be allowed to continue till the period of settlement i.e. until 30.9.2011 as petitioner society has made substantial investment in the tanks in question, which were allotted to it under Annexure-1. In the background of the aforesaid submission it is urged that the appellate order dated 23.6.2009, Annexure-6 be set aside and the distribution made under order dated 8.8.2008, Annexure-1 be continued for the period of settlement until 30.9.2011.

5. Learned Counsel for respondent No. 4 has refuted the submission with reference to Section 5 of the Bihar Self Supporting Co-operative Societies Act, 1996 which inter alia enable any of the ten individuals belonging to different family to join together and form a self supporting cooperative society and a member of the self supporting cooperative society cannot be deprived of the benefits, which is admissible to the society on the ground that the member of the self supporting cooperative society does not belong to a particular caste. In this connection, learned Counsel for respondent No. 4 with reference to the certificate issued by the Circle Officer, Kadwa dated 1.7.2008, Annexure-D to the counter affidavit submitted that all the 1228 members of respondent No. 4 society may be of carpenter and other castes are engaged in fish farming/harvesting enterprise and, as such could not have been deprived of the benefit of settlement of jalkars with the society. Learned Counsel further submitted with reference to the order dated 3.2.2009, Annexure-A to the counter affidavit filed on behalf of respondent Nos. 4 and 5 that functioning of the society having been stayed by the Tribunal during the pendency of the dissolution case, the society is not competent to maintain the writ application, learned Counsel for respondent No. 4 also submitted that reliance placed by the petitioner over receipt dated 4.12.2008 and 2.3.2009, Annexure-3 and Parwana dated 4.2.2009, Annexure-4 to continue the distribution of the tanks made under distribution order dated 8.8.2008, Annexure-1 until the period of settlement i.e. 30.9.2011 is wholly misconceived as receipt, Annexure-3 and Parwana, Annexure-4 was valid for one year during which time the petitioner society harvested the usufructs from the

tanks in question, as would appear from the interim order dated 16.7.2009 passed in C.W.J.C. No. 8098 of 2009 and Parwana for the subsequent two years i.e. 2009-10 and 2010-11 for the tanks in question could not be issued in favour of the petitioner. In this connection, further reliance is placed on Sub-section (iv) of Section 14 of the Act, which inter alia require that during the pendency of the appeal no investment should be made in the disputed jalkars by any of the parties. Reliance in this connection is also placed on the orders of this Court dated 7.3.2007 passed in C.W.J.C. No. 14628 of 2006, Annexure-E to the counter affidavit, whereunder it has been observed that a member of the cooperative society is entitled to all the benefits, which is admissible to the society and he cannot be differentiated for the reason that he does not belong to a particular caste.

6. Having heard counsel for the parties as also having perused the order dated 23.6.2009 passed by the Director, Fisheries, Bihar, Patna, Annexure-6, I am of the view that the tanks situate in Kadwa block are required to be distributed in terms of the provisions contained in Sub-section (viii) of Section 7 of the Act amongst the members of the society/societies operating in the area and while distributing the tanks amongst the societies, the total number of members enrolled with the society irrespective of their caste is to be taken into account for settlement of the tanks situate in the block, which is also the clear mandate of Sub-section (viii) of Section 2 of the Act. Any attempt to give restrictive meaning to the definition of the term fishermen so as to include only the fishermen who are fishermen by caste shall amount to doing violence to the definition clause contained in Sub-section (viii) of Section 2 of the Act, which takes within its sweep, all fishermen who are professionally engaged in fishing and fish culture. In this connection, the provisions contained in Sub-section (viii) of Section 7 of the Act is also relevant, which inter alia require that number of members of the society be taken into account while distributing the tanks amongst different fishermen cooperative societies eligible for settlement of tanks. In my opinion, therefore, distribution of tanks amongst only 398 members of respondent No. 4 society under distribution order dated 8.8.2008, Annexure-1 was not in accordance with law and was rightly set aside by the appellate authority, namely, the Director, Fisheries under order dated 23.6.2009, Annexure-6 with direction to settle the tanks in question taking into account the total strength of members of the three societies operating in the block, namely, petitioner, respondent Nos. 4 and 6. I do not see any infirmity in the appellate order dated 23.6.2009, Annexure-6 and the writ application assailing the same is dismissed with direction to the District Fisheries Officer, Muzaffarpur to make settlement of the tanks in question for the remainder term until 30.11.2011 with the three societies, namely, the petitioner, respondent Nos. 4 and 6 as per the strength of the members enrolled by the three societies in accordance with law as early as possible, in any case within one week from the date of receipt/production of a copy of this order before the District Fishery Officer. The societies are directed to appear before the District Fishery Officer, Muzaffarpur on 16.2.2010.