
(2012) 07 JH CK 0203

In the Jharkhand High Court

Case No : L.P.A. No's. 343 and 344 of 2010

Kanke Prakhand Matsyajeevi Sahyog Samiti Limited, Ranchi	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Government of India Act, 1935 — Section 26(1)

Citation : (2013) 1 AJR 437 : (2013) 1 JLJR 437

Hon'ble Judges : Prakash Tatia, J;Jaya Roy, J

Bench : Division Bench

**Advocate : Indrajit Sinha, Ajay Kr. Sah and Raunak Sahay, for the Appellant;
Srijit Choudhary, G.A. and Mr. Sumeet Gadodia, for the Respondent**

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. Two writ petitions being W.P.(C) No. 5405 of 2008 and W.P.(C) No. 1738 of 2010 have been decided by common judgment dated 06.08.2010 by the learned Single Judge against which writ petitioner in W.P.(C) No. 1738 of 2010 and some party who was respondent in W.P.(C) No. 5405 of 2008 has preferred these two L.P.As.

2. The writ petition being W.P.(C) No. 5405 of 2008 has been filed by the petitioner Sukurhutu Matsyajeevi Swablambhi Sahyog Samitee Limited. This society has been addressed in the impugned judgment as "1996 Act Society". The petitioner i.e., 1996 Act Society, has challenged the departmental letter dated 25.04.2000 (Annexure-2 to L.P.A. No. 344 of 2010) providing preferential entitlement to the societies registered under the Act of 1935 against the societies which have been registered under the Act of 1996. The learned Single Judge found that the preferential right is not the right to exclude totally other societies. It will be worthwhile to mention here that the petitioner Kanke Prakhand Matsyajeevi Sahyog Samiti Limited had earlier preferred a writ petition being W.P. (C) No. 2375 of 2008 wherein the said 1935 Act Society raised grievance that

out of 17 ponds for which the 1935 Act Society applied, three ponds have been settled with the 1996 Act Society whereas the Registrar, Cooperative Societies has recommended to settle the ponds in favour of the 1935 Act Society. Such Society had relied upon the same letter dated 24.04.2008 issued by the Registrar, Cooperative Societies whereby the Registrar informed the District Fisheries Officer-cum-Chief Executive Officer, Ranchi that the ponds could not be settled with the 1996 Act Society. The writ petition was disposed of giving liberty to the 1935 Act Society to make representation before the Secretary, Department of Animal Husbandry and Fisheries, Government of Jharkhand and the said Secretary was directed to pass appropriate order after considering the representation and giving opportunity of hearing to both the parties. In the light of the above directions, the 1935 Act Society submitted representation which was allowed and three ponds were settled in favour of the 1935 Act Society on the ground of preferential right in view of the Government circular dated 25.04.2000 therefore, petitioner approached this Court by filing writ petition being W.P.(C) No. 4505 of 2008.

3. After hearing the learned counsel for the parties in L.P.A. preferred by the 1935 Act Society i.e. Kanke Prakhand Matsyajeevi Sahyog Samiti Limited (L.P.A. No. 343 of 2010), we are of the considered opinion that circular dated 25.04.2000, if is read otherwise so as to exclude the societies registered under the Act of 1996 from giving any bid for settlement of the ponds, may result into discriminatory treatment to the societies only on the basis of their registration and will be violative of Article 14 of the Constitution of India. If any preferential treatment is given on the basis of some reasonable basis, that can be justified but it appears that the said circular, as interpreted to us, is excluding the societies registered under the Act of 1996 and giving a right to the only societies registered under the Act of 1935. Such interpretation cannot be justified and, therefore, we are of the view that learned Single Judge has not committed any error of law in allowing the writ petition of the petitioner Sukurhutu Matsyajevi Swablambhi Sahyog Samitee Limited (W.P.(C) No. 5405 of 2008). Consequentially, there is no merit in L.P.A. No. 343 of 2010, hence L.P.A. No. 343 of 2010 is dismissed.

4. At this juncture, learned counsel for the 1996 Act Society submitted that subsequently the State Government has also taken a decision on 29.06.2011 whereby it has been provided that when there are more applicants, obviously registered under the Act of 1935 and the Act of 1996, the ponds will be settled after obtaining the bids from the competing parties and that decision was taken in view of the direction of this Court given in W.P.(C) No. 1738 of 2010.

5. In view of this additional reason, the L.P.A. No. 343 of 2010 is liable to be dismissed, hence dismissed.

6. The 1935 Act Society preferred a writ petition being W.P.(C) No. 1738 of 2010 to challenge the direction issued by the Registrar, Cooperative Societies directing the 1935 Act Society (Kanke Prakhand Matsyajeevi Sahyog Samiti Limited) to

amend its by-laws so as to restrict its field of operation to entire Kanke Block excluding Sukurhutu Panchayat. It appears from the order dated 01.07.2009 that the Registrar, Cooperative Societies earmarked the area of working of two societies. The 1935 Act Society i.e., Kanke Prakhand Matsyajeevi Sahyog Samiti Limited, was allocated entire area of Kanke Block excluding Sukurhutu Panchayat and Sukurhutu Matsyajeevi Swablambhi Sahyog Samitee Limited (1996 Act Society) was allocated the area of Sukurhutu Panchayat only. Thereby, in fact the area of operation of the societies have been limited by order dated 01.07.2009. This order dated 01.07.2009 is not adverse to the Sukurhutu Matsyajeevi Swablambhi Sahyog Samitee Limited because its operational area is already limited to the Sukurhutu Panchayat, therefore, only Kanke Prakhand Matsyajeevi Sahyog Samiti Limited could have been aggrieved by the order dated 01.07.2009 as out of its entire working area, a portion of area i.e., Sukurhutu Panchayat, has been excluded.

7. Learned Single Judge was of the view that in view of the disputes between the two societies and in view of the power conferred upon the Registrar, Cooperative Societies by virtue of Section 26(1) of the Act of 1935, the Registrar could have issued any direction which are "desirable in the interest of such society". The learned Single Judge found justification for the order on the basis of the fact that because of the conflicting claim for the settlement of the ponds under the provisions of the Fisheries Act and allotment of the ponds, both societies are continuously litigating and, therefore, this decision was taken.

8. Learned counsel for the appellant submitted that even if the Registrar of the Cooperative Societies has power to issue direction to amend the by-laws of a registered society, then this power cannot be arbitrary power to issue direction. It is submitted that the direction issued by the Registrar, Cooperative Societies reducing the area of operation of the petitioner society is detrimental to the interest of the society. It is also submitted that protecting the right of the society by the society or contesting the frivolous petitions filed by any rival society cannot be a ground for reducing working area of the petitioner society.

9. Learned counsel for the rival society submitted that in fact the petitioner society of W.P.(C) No. 1738 of 2010 was not working properly and it has given membership to even minors and it is being mismanaged, therefore, the decision was taken by the Registrar, Cooperative Societies. It is also submitted that decision was taken after holding an enquiry with respect to the working of the society.

10. We considered submissions of the learned counsel for the parties and perused the order dated 01.07.2009 by which the working area of Kanke Prakhand Matsyajeevi Sahyog Samiti Limited has been reduced. The order clearly shows that the Registrar took note of the fact of disputes between the two societies which, in his opinion, is affecting the working of the societies, therefore, their area have been divided so that there may not be overlapping in the working of the societies.

11. The order on the face of it is absolutely illegal in view of the fact that the direction of the Registrar, Cooperative Societies dated 01.07.2009 to the Kanke Prakhand Matsyajeevi Sahyog Samiti Limited is detrimental to the interest of the society. Furthermore, societies approaching the Court of law for protection of its right and contesting the litigation filed by the rival society cannot be a ground to reduce the working area of the society resulting into serious loss to the society. The order has not been passed on the ground that the society being mismanaged by the office bearers of the society and that also could not have been the reason for passing such type of order as has been passed by the Registrar, Cooperative Societies dated 01.07.2009 of reducing the working area of the society because of any mismanagement by the society or its office bearers. Appropriate action could have been taken against the society and its office bearers and not a direction to the society to curtail its working area and business giving benefit to other society. However, our this observation is only on the basis of the argument of the learned counsel appearing for the Sukurhutu Matsyajeevi Swablambhi Sahyog Samitee Limited without examining the merit in the allegation levelled against the rival society Kanke Prakhand Matsyajeevi Sahyog Samiti Limited. The order dated 01.07.2009 cannot be justified from any angle and, therefore, deserves to be set aside.

12. In view of the above reasons, impugned judgment dated 06.08.2010 dismissing the writ petition No. 1738 of 2010 is set aside. The writ petition No. 1738 of 2010 is allowed. The order dated 01.07.2009 reducing the working area of Kanke Prakhand Matsyajeevi Sahyog Samiti Limited is set aside and the restriction imposed on Sukurhutu Matsyajeevi Swablambhi Sahyog Samitee Limited is also set aside. L.P.A. No. 344 of 2010 is allowed, accordingly.