
(2010) 08 JH CK 0088
In the Jharkhand High Court

Kanke Prakhand Matsyajeevi Sahyog Samiti Limited though
its Secretary Bhoopesh Kumar Nayak and Sukurhutu
Matsyajevi Swablambhi Sahyog Samitee Limited

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Jharkhand Co-operative Societies Act, 1935 — Section 26, 26(2)

Citation : (2010) 4 JLJR 602

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—These two connected writ petitions were heard together at length.

2. Petitioner in W.P.(C) No. 1738 of 2010 and respondent in W.P.(C) No. 5405 of 2008, Kanke Prakhand Matsyajeevi Sahyog Samiti Limited, Ranchi is a Society registered under the Jharkhand Co-operative Societies Act, 1935 (the 1935 Act for short) hereinafter referred to as the 1935 Act Society". Respondent No. 4 in W.P.(C) No. 1738 of 2010 and petitioner in W.P.(C) No. 5405 of 2008, Sukurhutu Matsyajevi Swablambhi Sahyog Samitee Limited, Sukurhutu, Ranchi is a Society registered under the Jharkhand Self Supporting Co-operative Societies Act, 1996 (the 1996 Act for short) hereinafter referred to 1996 Act Society".

3. The "1935 Act Society" has filed W.P.(C) No. 1738 of 2010 against the letter dated 1.7.2009 issued by the Registrar Cooperative Societies, dividing the area of operation between the two societies.

According to the 1935 Act Society, the area of its operation is sought to be curtailed by the said letter, which is against the interest of the Society and thus against the provisions of Section 26 of the 1935 Act. It is further contended on behalf of 1935 Act Society" that no notice/ opportunity of hearing was given to it

before issuing said letter and moreover, the said letter is against the decision of the Cooperative department contained in letter dated 25.4.2000.

4. On the other hand, according to the 1996 Act Society" there is nothing either in 1935 Act or in 1996 Act prohibiting the division of area of operation between a society- registered under 1935 Act and the other registered in 1996 Act. It is further argued that to settle the disputes between the two societies, the letter dated 1.7.2009 was rightly issued, keeping in view the interest of both the Societies. Moreover, the procedure of Section 26 of 1935 Act has been followed.

5. The questions thus arise are Whether the departmental letter dated 25.4.2000, is of any help to the petitioner- 1935 Act Society"; and whether the procedures provided in Section 26 of 1935 Act has been followed by the respondent-State?

6. The answer to the first-question would be in the negative and the answer to the second question would be in the affirmative. These are the reasons.

7. Regarding the first question, it may be noted that the 1996 Act Society" was registered prior to the issuance of the departmental letter dated 25.4.2000. It appears that in view of the disputes between the Societies registered under 1935 Act and 1996 Act, the said letter was issued by the Co-operative Department. Paragraph-5, inter alia, provides that the society registered under 1935 Act may be given preference in settlement of Ponds at the local level, but settlement between the societies registered under 1935 Act and 1996 Act, can be done in proportion to their members. There is nothing in the letter dated 25.4.2000 providing for giving preference to a society registered under 1935 Act over a society registered under 1996 Act. Further, there is nothing either in 1935 Act or in 1996 Act under which such preference is contemplated. In the circumstances, it has to be held that the departmental letter dated 25.4.2000, is of no help to the petitioner-"1935 Act Society".

8. Regarding the second question- it appears that from April, 2002 onwards, "1996 Act Society" has been regularly getting settlement of the three Ponds of Sukurhutu village. Other thirty-four Ponds are being settled with 1935 Act Society". 1996 Act Society" requested by letter dated 26.8.2008 for division of the area of operation between the two societies to avoid serious disputes and litigations between them which was adversely affecting their working and was also causing financial burden on them. Keeping in view the interest of both the societies, the Registrar, Co-operative Societies, thought it proper to divide the area of operation between them in exercise of powers conferred u/s 26 of 1935 Act. Accordingly, notices dated 3.7.2009 and 4.8.2009 were issued to 1935 Act Society" for sending the resolution of the General Body with regard to amendment in the bye-laws in respect of divided area of operation. 1935 Act Society" sent a resolution of General Body under letter dated 6.8.2009 objecting to such amendment. After considering the matter, the letter dated 1.7.2009, (impugned by "1935 Act Society") was issued and a proceeding u/s 26(2) of

1935 Act was started. An enquiry report dated 30.4.2010 was sent by the District Co-operative Officer to the Registrar, Cooperative Societies, recommending division of area between the two societies for preventing disputes between them, as such disputes were adversely affecting the working of the societies. It was also found that a large number of members of "1935 Act Society" were dead persons or were ineligible persons.

9. As per Section 26(1) of 1935 Act, if the Registrar is satisfied that an amendment of the bye-laws of a registered societies is necessary or desirable in the interest of such society, he may, by order in writing to be issued to the society, require it to make amendment within specified time. The Registrar is to be satisfied whether amendment in bye-laws is necessary or desirable in the interest of the society. The interest of the society cannot be seen from the own perspective of the society. It has come on the record that serious disputes and litigations between the two societies have been continuing with regard to settlement of Ponds between them which were adversely affecting their working and finance. Thus, the Registrar was fully justified in taking recourse to Section 26 of the 1935 Act. It is also clear that the procedures provided u/s 26 of the 1935 Act have been followed in this case.

10. In the circumstances, the writ petition filed by the "1935 Act Society" i.e. W.P. (C) No. 1738 of 2010 is dismissed. The letter/order dated 1.7.2009 is upheld. The writ petition filed by the 1996 Act Society- W.P.(C) No. 5405 of 2008 is allowed. The order dated 13.8.2008 passed by the Secretary, Department of Animal Husbandry and Fisheries is set aside. However, no costs.