
(1995) 02 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2617 of 1994 (R)

Madan Dhibar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Citation : (1995) 1 BLJR 307

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Deb, J.—Both these writ applications are taken up together for disposal at the admission stage itself as the points involved in both the cases are almost same and of similar nature. The petitioners are also father and son

2. Madan Dhibar, the petitioner in C.W.J.C. No. 2618/94 (R) had been settled with the tank in question situated at Bhurkunda appertaining to khata No. 41, plot No. 739/740 measuring an area of 1.93 acres for the year 1993-94 and the Jama from him was taken granting certificate to him on 29.7.1993 and as such according to the petitioner, he was granted settlement from 29.7.1993 till 28.7.1994 for one year but in the meantime, according to the petitioner, respondent No. 4 had been settled with the tank on long term basis for a term of 10 years, which according to the petitioner is against all norms and violative of the codified processes made by the Government of Bihar from time to time and such settlement of tank in favour of the respondent No. 4 was made without offering any opportunity to the petitioner. The petitioner further case is that he belongs to Fishermen community (Kewat) and is also a member of Matsya Jibhi Co-operative Society and as per notification of Government dated 4.6.1982 and subsequently modification on 18.1.1984 and 6.5.1992, the petitioner being of fishermen community ought to have been preferred while the respondent No. 4 is from the Scheduled tribe community only. As the petitioner coming from the fishermen community was available in the vicinity of the tank in that case as per

the latest circular, the respondent No. 4 ought not to have been granted settlement, if the petitioner was not found to be disqualified in any other way.

3. Both, respondent No. 4 and the respondent No.2 i.e. District Fisheries Officer-cum-Executive Officer filed counter-affidavit in the case stating, inter alia, that the petitioner is not entitled to get any relief when he has not come with clean hands. He has suppressed the facts regarding his residence and also the recent circular regarding the Government notification about the settlement of fisheries, According to the respondents, the fisheries in question is a repairable tank and as such it comes within the category where settlement should made on long term basis. But for the revenue year 1993-94, there was no person coming long term basis and as such the petitioner was granted settlement, for ore year, namely, 1993-94, on auction when his bid came to be highest. Afterwards on notice being made after le period is over on 31st March, 1994. the petitioner along with, respondent No/ aid others made applications and the petitioner could not get favour in the Selection Committee as he would be found to be not staying within the village and the Gaon (village) Panchayat which he tank in question is situated and as such as percent circular 6.5.1992, the respondent No .4 as found fit as he is coming from the tribal community for settlement of die tank in his tank" our hen he could satisfy all the qualification needed for the purpose.

4. According to the latest circular, if any fisherman or a co-operative of fisherman be not found within the vicinity of the tank or within the village or Use Gaon Panchayat where the tank is situated then the same can be settled with Scheduled Caste/Scheduled Tribe person, he respondent No. 4 is from the Harijan community and as such he was settled with the tank preference to the petitioner.

5. The petitioner submits that he is from the Gaon Panchayat where the tank is situated at the respondent No.4 by showing papers, such as Voter list. Ration Card and the certificate id report of Gaon Panchayat (hat the petitioner was residing in a different village and his name was included in me Voters" list of that village and he was having his rations from the sir price shop of that village. According to the petitioner, he was originally from another village but by selling his kind and house, he had come to settle within the village where the tank is situated and he has opened new Ration Card in the fair price shop of the village where the tank is situated. But, Mrs. Jaya Roy, the learned Counsel appearing for the Respondent No. 4 has objected to this submission by showing entries in the Ration Card of his original village that the petitioner was having rations from his previous fair price shop till December, 1994.

6. This disputed points cannot be decided in a writ petition, but the facts remains that the petitioner was also an applicant and when he could not satisfy all the necessities regarding settlement of the tank in question, his candidature was rejected.

The other point raised to the effect that the petitioner was settled with the tank

for the period from 29.7.1993 to 28.7.1994 has got no force when the settlement is for a revenue year id the revenue year starts from the 1st April, to the 31st March of the next year. On this point. Tiwari, counsel appearing for the petitioner has not also put much stress.

7. As per discussions above, I do not find any force in the writ petition and hence the same dismissed.

8. In the other Writ petition, the points are the same, only another point was there regarding the minority of the petitioner, Sadhan Dhibar son of Madan Dhibar. But, these disputed factual points are beyond the scope of a Writ petition.

9. In the result, both these Writ petitions are, therefore, dismissed.

No order as to costs.