
(1994) 02 PAT CK 0038

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1147 of 1993

Mitan Mukhiya and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-1994

Acts Referred:

Citation : (1994) 1 PLJR 686

Hon'ble Judges : S.B. Sinha, J;R.N. Prasad, J

Bench : Division Bench

Advocate : Birendra Prasad Verma, Bhola Prasad, Akhilesh Kumar Sinha and Pankaj Kumar, for the Appellant; Ram Suresh Roy, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—The Petitioners who are nine in numbers in the writ application have inter-alia prayed for quashing the order dated 21.11.1992 as contained in Annexure-8 to the writ application whereby and whereunder the agreement entered into by and between the Petitioners and the State for settlement of the various Jalkars were cancelled.

2. The Petitioners have however, filed an application for amendment of the writ petition whereby and whereunder it had also prayed for quashing of order of settlement dated 18.3.1993 in favour of Fisherman's Co-operative Society Khajauli and parwana wherefor was issued by the District Fisheries Officer-cum-Chief Executive Officer in favour of Khajauli Anchal Fisherman's Co-operative Society, Khajauli (hereinafter referred to as the society) which is contained in Annexure-10 thereto.

3. The fact of the matter is not much in dispute.

The Jalkars in question were transferred to the Fish Farming Development Agency, Madhubani (FFDA in short), and allegedly for the purpose of settlement of the said Jalkars on a long term basis, a Selection Committee was constituted which held a meeting on 16.7.1992 and by reason of a decision taken therein

which is contained in Annexure-2 to the writ application, recommendation for long term settlement in favour of the Petitioners were made, the details whereof are as follows:

Number and name of Petitioner Name of Jalkar/Sairat Plot No. Area of water in Sairat

1 2 3 4

1. MitanMukhiya ChabhachaPokhar 548 1 acre.
2. BechanMukhiya Chhathiyahi 703 1 acre.
3. RamdeoMukhiya BrahmasthanPokhar 3330 90 acre.
4. BilasMukhiya PuraiPokhar 3409
5. Bhogendra
Mukhiya 3412 2 acres.
6. Judge Mukhiya PakaPokhar 589 1 acre.
7. PremMukhiya MachahariPokhar 1068 0.90 acre.
8. JogiMukhiya BhanidiPokhar 936 0.90 acre.
9. BabulalMukhiya DumathaPokhar 332 0.90 acre.

4. On or about 1.8.1992 the Respondent No. 5 passed an order wherein it was stated that no-body had filed any objection regarding settlement of the Jalkars in question in favour of the Petitioners and recommendation was, therefore, made that the settlements be made for a period of 10 years i.e. from 1.4.1992 to 31.3.2002 on the prescribed reserve Jama. A photo copy of the order-sheet is contained in Annexure-3 series.

5. On 12th August, 1992 the District Collector-cum-Chairman, Fish Farming Development Agency approved the proposal for settlement which is contained in Annexure-4 series.

6. On 13.8.1992 the Petitioners deposited the reserve Jama (Annexure-5 series) and on 17.9.1992 an agreement was executed.

It is stated that the Petitioners had already filed the requisite non-judicial stamps for execution of a registered deed of settlement.

7. However, by reason of the order dated 21.11.1992 as contained in Annexure-8 to the writ application the said settlement has been cancelled.

8. This writ application came up under the heading for admission before us on 9.7.1993 and same was allowed inter alia on the ground the prior to passing of the said order that the minimal requirement of the principles of natural justice had not been complied with.

9. However one Khajauli Anchal Fishermen's Cooperative Society Ltd. filed a review petition which was registered as. Civil Review No. 125 of 1993.

In the said review application our attention was drawn to certain events which occurred subsequent to the writ application, which were not taken into consideration by us as the State did bring those facts to the notice of this Court.

10. By reason of our order dated 13.12.1993, we allowed the said review application staling:

Heard learned Counsel for the Petitioner, learned Counsel for the State and Mr. Verma, learned Counsel appearing on behalf of the private Opposite parties.

Having heard learned Counsel for the parties at a great details, we arc of the view that interest of justice demands that our order dated 9.7.1993 passed in C.W.J.C. No. 1147 of 1993 be recalled as the Petitioners were not heard therein. We make it clear that the parties have agreed that the affidavits filed in the review application may be treated to be the affidavits filed in the writ application. The parties, however, may file additional affidavits, if any, which should be filed in the writ application by 22.12.1993

Reply on rejoinder to the said counter affidavit may be filed by 6.1.1994.

Let the C.W.J.C. No. 1147 of 1993 be listed on 10.1.94 under the heading for admission."

The records of Civil Review No. 125 of 1993 shall be kept with the records of the aforementioned C.W.J.C. No. 1147 of 1993.

C.W.J.C. No. 1147 of 1993 may be listed at the top of the list and if this Bench will not be available in court, the same may be listed in Chambers.

11. The matter was again placed before us and we have heard the learned Counsel for the parties at great length.

12. Mr. B.P. Verma, learned Counsel appearing on behalf of the Petitioner submitted that from a perusal of the impugned order as contained in Annexure-8 to the writ application il would appear that the grounds stated therein was non-existent and in any event as the principle of natural justice which was required to be complied with in terms of the policy decisions of State as is evident from Annexures 7 and 7/A to the writ application, the same having not been done, the impugned order is liable to be cancelled.

13. Mr. Verma submitted that the purported settlement made and Parwana issued in favour of the society in terms of Annexures 9 and 10 to the writ application was also bad inasmuch as the name of the Society was not recommended by the concerned authority and thus its prayer for settlement of the tanks in question could not have been considered by the FFDA in law.

14. It was stated that as the society was a defaulter no settlement could have been made in its favour.

It was further submitted that the settlement had been made mala fide during pendency of this writ application on 18.3.1993 in order to defeat the just claim of the Petitioners.

15. Mr. Yogendra Mishra, learned Counsel appearing on behalf of the society, however, submitted that the earlier policy decision of the State had been superseded by the Government by issuing Anr. circular letter which is contained in Annexure-A to the counter affidavit.

It is stated that again in June, 1992 the Government issued Anr. circular but no action was taken by the authorities in terms thereof.

16. Our attention was further drawn to the fact that the Petitioner Nos. 4 and 6, Petitioner Nos. 7 and 9 and Petitioner Nos. 3 and 8 are sons and father respectively and in order to obviate such a situation, the policy decision of the State as reflected in its circular letter dated 18.1.1992 was adopted.

It has been stated that despite the said policy decision the Chief Executive Officer did not place the same before the Committee of the FFDA, nor did he fix the reserve Jama in relation to the Jalkars in question.

In this situation, an application was filed before the Collector of the District by the Society which is contained in Annexure-D to the counter affidavit and by an order dated 28.8.1992 as contained in Annexure-E thereto the Collector had already stayed the operation of the order and the said matter is still pending before the said authority.

17. It has been stated that despite the said stay order action has been taken thereafter and the settlement of the tanks in question was directed to be made and agreements were executed in favour of the Petitioners in contravention of the said order of stay.

18. It has been submitted that it is wrong to contend that the society is a defaulter and in this connection our attention has been drawn to a certificate dated 6.3.1993 as contained in Annexure-F to the counter affidavit, wherein it has been slated that except some amount of rebate the society is not a defaulter.

19. Mr. Mishra, contended that under what circumstances the certificate purported to have been granted to the Petitioners to the effect that the society is a defaulter is not known to it.

20. It was further contended that from a perusal of the impugned order as contained in Annexure-8 to the writ application, it would appear that the reasons assigned in support thereof to the effect that the loan has not been made available by the Bank is valid and cogent and thus this Court should not exercise its writ jurisdiction in favour of the Petitioners. It is contended that it is well known that the State has no fund.

21. Mr. Mishra submitted that from a perusal of the policy decision of the State as contained in Annexure-A to the counter affidavit it would be absolutely clear

that long term settlements were to be granted only on availability of the funds from the Bank and thus as the banks have refused to release the amount of loan, the settlements made in favour of the Petitioners were liable to be cancelled.

In this connection our attention has been drawn to paragraph 6 of the said policy decision wherein procedure for grant of such loan had been laid down.

22. Mr. Mishra, further submitted that even in terms of the policy decision as contained in Annexure-1 to the writ petition no consultation has taken place with the Managing Committee of F.F.D.A. nor the procedures laid down therein have been followed.

Our attention has further been drawn to a decision of this Court in C.W.J.C. No. 13309 of 1992 disposed of on 30th April, 1993 which is contained in Annexure-9 to the Review petition wherein allegedly this Court refused to interfere in a similar order.

In that decision it was held as follows:

It is an admitted position that long term settlement of tanks through FFDA can be made, in terms of the circular of the State Government on the subject, only after necessary fund is made available. Counsel for the Petitioners pointed out that the fund was later on made available. However he is not in a position to refer to any document. In that regard, there is no specific averment either to that effect.

In our opinion, even if submission of the learned Counsel be accepted to be correct, that would only justify taking fresh steps for their settlement. We, accordingly dispose of this application with an observation that the matter should be examined afresh by the Collector of the District and appropriate decision taken in the light of the circular of the State Government on the subject. If it decides to make long term settlement, the same should be done within one month from today, in the light of the circular aforesaid and giving opportunity of participation to all eligible and desirous parties.

23. It has further been submitted that from a perusal of the said circular letter dated 18.1.1992 as contained in Annexure-A to the counter affidavit itself, it would appear that a mode has been prescribed for disposal of the disputes which may arise in the matter of grant of settlement.

It was further submitted that the Petitioners in fact was even not recommended by the competent authority.

24. In this case no-body has appeared on behalf of the State.

25. Mr. Verma in reply submitted that from paragraphs 6 and 7 of Annexure-A relied upon the Respondents, it would appear that even in terms thereof the principles of natural justice are required to be complied with.

26. It has not been disputed before us that the policy decision of the State as

contained in Annexures 7 and 7/A to the writ petition was superseded by the circular as contained in Annexure-A to the counter affidavit, from a perusal whereof it appears that a comprehensive policy has been laid down therein with regard to the grant of long term settlement.

It is really surprising as to how the responsible officers of the State of Bihar did not follow the aforementioned latest policy decision of the State of Bihar in the matter of grant of settlement and proceeded to grant such long term settlement on the basis of the circulars which had been superseded.

27. Further in this case it is not in dispute that the Respondents-Society had filed an application before the Collector and the Collector by an order dated 28th August, 1992 has stayed the operation of the order purporting to grant settlement in favour of the Petitioners.

28. It is now well known that any action taken after communication of such an order of stay would be illegal.

It is further well known that even in a given situation the parties may be brought back to the same position which was prevailing prior to passing of the order of stay.

It is also not in dispute that a similar matter has been disposed of by a Division Bench of this Court being C.W.J.C. No. 13309 of 1992 as contained in Annexure-9 to the review application.

29. However, evidently either in terms of Annexures 7 and 7/A to the writ application or in terms of Annexure-A to the counter affidavit, the Petitioners were entitled for an opportunity of being heard in the matter, as the impugned order is contained in Annexure-8 to the writ application have been passed in violation of the principles of natural justice, the same cannot be sustained. Consequently the order of settlement passed in favour of the Respondent No. 7 which appears to have been issued during pendency of this writ application cannot also be sustained inasmuch as if after hearing of the parties, the Collector and/or Committee constituted for this purpose comes to the conclusion that a settlement could be made in favour of the Petitioners and settlement can be made in favour of the Respondent society, the status-quo ante as on the date of the settlement made in favour of the Petitioner has to be maintained.

30. In this view of the matter, this application is allowed in part and to the extent mentioned hereinbefore and the matter is remitted to the Collector for a fresh decision in accordance with law.

31. The Petitioner shall appear before the Collector and may file a written statement. Similarly the Respondent-Society may also file a written statement before the Collector in the aforementioned case.

32. The Collector shall consider the matter not only upon granting of an opportunity of hearing to the contesting parties but also upon taking into

consideration all relevant records and upon hearing the representative of the FFDA.

33. In our opinion, the Collector may constitute a Committee in terms of the Circular letter of the State of Bihar as contained in Annexure-A to the counter affidavit.

34. This order is being passed in order to avoid Anr. round of litigation wherein the question of absence of jurisdiction of the Collector may be raised.

35. The Collector or the Committee as the case may be keeping in view the observations made by Anr. Division Bench of this Court in C.W.J.C. No. 13309 of 1992 make all endeavours to dispose of the matter within one month from the date of the receipt of a copy of this order.

36. This application is disposed of with the aforesaid directions.

Ram Nandan Prasad, J.

37. I agree.