
(2008) 06 PAT CK 0030
In the Patna High Court
Case No : CWJC No. 8657 of 2008

Motipur Prakhand Matsyajivi Swablambi Sahkari Samiti Ltd. APPELLANT
and Another

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 14

Citation : (2008) 3 PLJR 498

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Nitranjan Jha, for the Appellant; Deepak Kumar for Respondent No. 4 and Mr. Rajiv Kumar Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The petitioners are aggrieved by administrative order as contained in Annexure-8 passed by the Director, Fisheries by which he has set up an enquiry and stayed the working of fishery jalkars as settled to the petitioners. This has been done on a private application of respondent No. 4 without even notice to the petitioners and without even formal appeal being filed by respondent No. 4. This is what is challenged and is contained in Annexure-8. Respondent No 4 has appeared and filed a counter affidavit. Perused the same. Heard the parties and with their consent, this writ petition is being disposed of at this stage itself. It appears that there were certain disputes in regard to settlement of fishery jalkars in the Muzaffarpur district. Two appeals were preferred both by respondent No. 4 before the Director, Fisheries. Both those proceedings were disposed of by the Director, Fisheries by a common order dated 21.4.2008 as contained in Annexure-6. In the said order, he gave directions to the District Fisheries Officer in regard to apportionment of settlement of fisheries amongst the petitioners and respondent No. 4. Pursuant to the aforesaid order, by order as contained in Annexure-7, the District Fisheries Officer made

settlements in favour of the petitioners and respondent No. 4. Now it appears, respondent No. 4 was aggrieved by the said order. He, in terms of Section 14 of the Bihar Fish Jalkar Management Act, 2006, had a remedy of preferring a statutory appeal instead he made an administrative approach to the Director, Fisheries complaining about the order aforesaid. The Director, Fisheries, even without notice to the petitioners nor making petitioners parties to those proceedings, has passed the impugned administrative order virtually staying the settlements in favour of the petitioners.

2. In my view, such an authority does not vest at all in the Director of Fisheries. The matter with regard to settlements of fishery jalkar are now governed by statutory provisions and not by circulars or ipse dixit of officers. If respondent No. 4 was aggrieved by orders passed by the District Fisheries Officer, he had to file a statutory appeal making petitioners parties. The appeal had to be entertained and then orders passed. Act does not contemplate of private actions or administrative actions de hors the Act. It must be kept in mind that once the Director, Fisheries disposed of the appeal filed by respondent no. 4. he had become functus officio. The matter then lays exclusively within the jurisdiction of District Fisheries Officer and if he did not implement the order correctly, thus, passing a wrong order on remand, the remedy of respondent No. 4 was to file an appeal afresh and not a private application and obtain an ex parte stay. Such a procedure is wholly de hors the Act.

3. I am constrained to hold that the Director, Fisheries appears to have forgotten that he is exercising statutory function as a statutory authority and his powers are limited to those given by the Statute and have to be exercised in the manner as contemplated by the Statute. He has no inherent power in the matter. Thus, Annexure-8, the order of the Director, Fisheries staying the operation of fishery jalkar settlement as made in favour of the petitioners is set aside and the writ application is allowed.