

(2013) 04 PAT CK 0077
In the Patna High Court
Case No : CWJC No. 1708 of 2013

Nagendra Nath Singh and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Bihar Co-operative Societies (Amendment) Act, 2010 — Section 11B
Bihar Co-operative Societies Act, 1935 — Section 8(1b)
Bihar Fish Jalkar Management Act, 2006 — Section 14

Citation : (2013) 3 PLJR 104

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Deepak Kumar, for the Appellant; Vinay Kirti Singh for the State and Ram Suresh Roy and Ram Chandra Sahani for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The present writ petition has been preferred for quashing of an order dated 12.12.2012 passed by respondent No. 2/Commissioner, Purnia Division, Purnia, in Miscellaneous Appeal No. 254 of 2012, whereby, the learned Commissioner has rejected the Appeal preferred by the petitioners. The Appeal was preferred u/s 14 of the Bihar Fish Jalkar Management Act, 2006. The Appeal was primarily against issuance of letter Nos. 751 and 752 dated 13.10.2012 by respondent No. 3/District Fisheries Officer-cum-Chief Executive Officer, Katihar. Vide letter No. 751 dated 13.10.2012 for settlement of 7 Fish-cum-Makhana Jalkars and vide letter No. 752 dated 13.10.2012 for settlement of 34 Fishery Jalkars of Balrampur Block notice for open bid was published. The writ petition is further against fresh notice issued vide letter Nos. 925 and 926 dated 28.12.2012 after cancelling earlier open bid notice during the pendency of the Appeal for settlement of Fish-cum-Makhana Jalkars and Fishery Jalkars of Balrampur Block. The petitioners' case is that by virtue of amendment made in the Bihar Co-operative Societies Act, 1935, in the block of Balrampur all the

Societies were merged and Prakhband Matasyajivi Sahyog Samiti Ltd. Balrampur, was registered. The Registrar, Co-operative Society issued registration certificate on 19.5.2011, and thereafter, an Ad-hoc Committee was constituted to manage the affairs of the Society " for one year. Subsequently, on 22.5.2012 after regular election, the petitioner No. 1 was elected as Secretary of the Balrampur Prakhband Matasyajivi Sahyog Samiti Ltd. Thereafter, a petition was filed for settlement of all Jalkars situated within the area with all relevant documents before the District Fisheries Officer on 9.8.2012. Since the District Fisheries Officer noticed some defects, a letter vide No. 522, dated: 23.8.2012 was issued to the petitioner for removing defects by 3.9.2012. The case of the petitioner is that the said letter was received by the petitioner on 7.9.2012 and by that time period for removing defects as per letter No. 522 dated 23.8.2012 had already expired. However, subsequently, the petitioners in view of letter dated 23.8.2012 submitted the required documents including the proceeding of the annual general meeting dated 6.8.2012 proposing to distribute Jalkars amongst its members, village-wise and panchayat-wise duly approved by the Managing Committee. It was further pointed out that since the Society itself was registered after amendment in the year 2011 it was difficult for submitting Audit Report. However, documents to show deposit of Audit Fee was submitted. It was claimed that though documents required were filed for removing the defects, the respondent No. 3/District Fisheries Officer-cum-Chief Executive Officer, Katihar on 12.10.2012 rejected the petition for settlement of aforesaid Jalkars and issued notice for open bid. Aggrieved with the decision of respondent No. 3 regarding publication of notice for open bid the petitioners filed an Appeal u/s 14 of the Act before the Divisional Commissioner/respondent No. 2 but the Divisional Commissioner without considering the fact that defects were removed as well as the fact that in view of amendment in the Co-operative Societies Act Jalkars within the area of Balrampur Block were to be settled with the petitioner's Society has rejected the petition of the petitioner in a perfunctory manner which is fit to be set aside.

2. In this case a detailed counter affidavit has been filed on behalf of respondent Nos. 2 and 3 i.e. Commissioner, Purnia Division and District Fisheries Officer-cum-Chief Executive Officer, Katihar, respectively. Respondent No. 4/Chairman of petitioner's Society has also filed a counter affidavit and tried to justify the order of the Commissioner as well as steps taken by the respondent No. 3/District Fisheries Officer-cum-Chief Executive Officer, Katihar.

3. Learned counsel for the petitioners while assailing the orders has argued that since all the Societies of Balrampur Block had merged as one Fishermen Co-operative Society as Balrampur Prakhband Matasyajivi Sahyog Samiti Ltd. in view of Section 11B of the Bihar Co-operative Societies (Amendment) Act, 2010, all Fish-cum-Makhana Jalkars and Fishery Jalkars within the area of Balrampur Block were required to be settled with the petitioner's Society and only on technical ground that too not sustainable in the eye of law the said Jalkars may not be settled in an open bid otherwise the whole object of Section 11B of the Bihar Co-

operative Societies (Amendment) Act, 2010 will be defeated. Moreover, it was submitted by learned counsel for the petitioners that though required documents were filed by the petitioner's Society on 9.8.2012 which were sufficient for settlement of the Jalkars, the District Fisheries Officer-cum-Chief Executive Officer, Katihar/respondent No. 3 entertained an objection filed by the Chairman of the petitioner's Society and the Chairman of the petitioner's Society succeeded in persuading the District Fisheries Officer-cum-Chief Executive Officer, Katihar, to publish notice for open bid. To justify action of open bid, in a cryptic manner a letter was purported to be issued in the name of petitioner with a direction to remove defects in the application for settlement of Jalkars. It was submitted that to defeat the right of the petitioner's society the respondent No. 3 though signed a letter No. 522 dated 23.8.2012 on the same date, it was presented in the Post Office for its issuance through registered post on 27.8.2012. Vide letter dated 23.8.2012 the petitioner's Society was directed to remove defects by 3.9.2012, and as such, issuance of letter dated 23.8.2012 for removing the defect was nothing but an eye wash. In any event it was submitted that after merger of Fishermen Societies of Balrampur Block in a one Cooperative Society as Balrampur Prakhand Matasyajivi Sahyog Samiti Ltd. Jalkars of Balrampur Block were required to be settled with the petitioner's society.

4. Learned A.C. to Standing Counsel No. 5 on the basis of averment made in the counter affidavit has argued that since provisions contained in Section 7 of the 2006 Act was not complied by the petitioner's Society, the respondent No. 3 was having no option but to go for open bid for settlement of Jalkars of the Balrampur Block and as such the learned Commissioner has rightly passed the impugned order rejecting the claim of the petitioner.

5. Sri Ram Suresh Roy, learned senior counsel, who was assisted by Sri Ram Chandra Sahni, learned counsel for respondent No. 4, too has opposed the prayer of the petitioners. It was submitted that since in the Managing Committee the petitioner No. 1 was not having majority, the respondent No. 4 had filed an objection before the respondent No. 3/District Fisheries Office r-cum-Chief Executive Officer, Katihar, against settlement in favour of petitioner No. 1 i.e. Secretary of petitioner No. 2. He has also argued that compliance of Section 7 of the 2006 Act was mandatory and since the petitioner had not submitted Audit Report of previous year as well as relevant documents in terms of Section 7 of the 2006 Act, the respondent No. 3 has rightly proceeded u/s 8 of the 2006 Act for limited bid. Moreover, the petitioner was granted opportunity to remove the defects vide Annexure-5 to the writ petition i.e. letter No. 522 dated 23.8.2012 and accordingly the respondent No. 3 had proceeded for settlement of Jalkars by open bid which requires no interference.

6. Besides hearing learned counsel for the parties I have also perused the materials available on record. On perusal of Annexure-3 to the writ petition it is evident that the Block Development Officer, Balrampur, acting as Election Officer had issued certificate on 22.5.2012, whereby, the petitioner No. 1 was declared

Secretary of the Matasyajivi Sahyog Samiti, Balrampur. Moreover, after the amendment of Bihar Co-operative Societies (Amendment) Act, 2010, two new provisions were amended as Section 8(1b) and Section 11B. One of the main object as per preamble of the Bihar Co-operative Societies (Amendment) Act, 2010, was to settle sairats comprised of water bodies with traditional fisherman Co-operative Society and to reorganise the structure of Fishermen Co-operative Societies to enable better management for enhanced production which will ultimately add to GSDP of the State. It would be appropriate to quote both of the amended provisions which are as follows:--

Section 8(1b). Notwithstanding anything contrary contained in Bihar Cooperative Societies Act, 1935 or any other Bihar Act or Rules framed thereunder or bye-laws of a Co-operative Society or class of Co-operative Societies or any order issued by the State Government or Registrar of Co-operative Societies, there shall be only one registered Fishermen Co-operative Society in a Block with its area of operation extending over the whole Geographical limit of the Block.

Section 11B. Notwithstanding anything contrary contained in any provision of Bihar Act VI of 1935 or any other Act, Rules made thereunder and Bye-laws of a registered Co-operative Society or class of Co-operative Societies, any order issued by the State Government or Registrar, Co-operative Societies, all existing Fishermen Cooperative Societies at block level, area of operation being confined to the Geographical limit of the Block shall stand merged in one Co-operative Society and shall be deemed to be registered as a new Co-operative Society under Bihar Act VI of 1935, and the Registrar, Cooperative Societies shall issue registration certificate:

Provided that on such reorganization, all members of the existing Cooperative Society or Societies registered under Bihar Act VI of 1935 or Bihar Self-Supporting Co-operative Societies Act, 1996 shall be deemed to have become members of such reorganized Society and shall have all rights and liabilities as members of the said Society:

Provided further that on such reorganization, for managing the affairs of the new Society and all such affiliating Societies of which the Fishermen Cooperative Society is a member, the Registrar/Government shall constitute an ad hoc Managing Committee for a period not exceeding one year, within which the new Managing Committee shall be constituted after elections.

7. On perusal of the aforesaid amended provisions it is clear that in one block there shall be only one registered Fishermen Co-operative Society and after the amendment all existing Fishermen Cooperative Societies at block level area of operation being confined to the geographical limit of the block shall stand merged in one Co-operative Society. It is not in dispute that in view of aforesaid amendments in Balrampur Block all other Societies merged with one Fishermen Co-operative Society as Balrampur Prakhanda Matasyajivi Sahyog Samiti Ltd. which has been certified as Matasyajivi Sahyog Samiti, Balrampur. Initially, the

said Samiti was run by an Ad hoc Committee but after due election and issuance of certificate i.e. Annexure-3, the petitioner No. 1 was elected as Secretary of the duly elected Managing Committee of the Society in question. After existence of regular Managing Committee the petitioner applied for settlement of all the Jalkars i.e. 7 Fish-cum-Makhana Jalkars and 34 Fishery Jalkars of the said block. Since it was a newly constituted Society there was no occasion for submitting previous year Audit Report and as such documents which were submitted alongwith the application for settlement of Jalkars vide Annexure-4 to the writ petition were sufficient for proceeding with the settlement of the said Jalkars with the petitioner's Society. However, to the reasons best known to the respondent No. 3 he entertained an objection filed by the Chairman of the Society. Once a Society is being run by a duly elected Secretary, the District Fisheries Officer-cum-Chief Executive Officer, Katihar, was not at all authorized to entertain objection of Chairman. If the respondent No. 4 i.e. Chairman of the Society was having any dispute with the Managing Committee such dispute was to be raised before the Registrar of the Co-operative Society as per provisions contained in Section 48 of the Bihar Co-operative Societies Act. In any event, the respondent No. 3 was not required to take notice of any application filed by the Chairman. However, from perusal of Annexure-5 i.e. letter No. 522 dated 23.8.2012 it is evident that the respondent No. 3 had entertained the application of respondent No. 4 i.e. Chairman of the Society, and thereafter, asked the petitioner No. 1 to remove certain defects, though such defects were not having much bearing on settlement of the Jalkars in favour of the petitioner. Moreover, the letter dated 23.8.2012 makes it clear that petitioner was to remove defects by 3.9.2012, whereas, it is admitted case of the respondent No. 3 that said letter was presented in the Post Office for registered post on 27.8.2012, which is evident from paragraph No. 17 of the counter affidavit of respondent Nos. 2 and 3. The stand taken by the petitioner that Annexure 5 was virtually received by him on 7.9.2012 has not been controverted by respondent Nos. 2 and 3, and as such, issuance of Annexure-5 has got no significance since as per Annexure-5 all the defects were directed to be removed by 3.9.2012. Even as per Section 7(vi) of the Bihar Fish Jalkar Management Act, 2006 it is clear that minimum 15 days time for correction of defects was mandatory. It would be appropriate to quote Section 7(vi), which is as follows:--

Applications with all relevant documents shall be examined by the District Fisheries Officer within 15 days from the date of receipt of these applications. If an application is found defective, an information through registered post shall be sent by the District Fisheries Officer giving 15 days time to concerned societies for correction of defects. If no information in respect of defects is given to the society by the end of four weeks from the date of receipt of the application, it will be deemed that the society is competent to get settlement.

8. On perusal of provision contained in Section 7(vi) it is further evident that if from the date of filing of application within four weeks no information is given to the Society for removing the defects, it will be deemed that Society is competent

to get settlement. In the present case application by the petitioner for settlement was submitted on 9.8.2012 and the information which was sought for through Annexure-5 was received by the petitioner on 7.9.2012. Meaning thereby that such information for correction was received by the petitioner after expiry of four weeks from the date of filing of application and as such in the present case it can be held that petitioner was competent to get settlement in compliance with Section 7(vi) of 2006 Act. Moreover, keeping in view the object for constitution of only one Society in a block, in all fairness, it is required to settle Jalkars of a particular block with the said Society which has emerged after merger of different Societies of one block as one Society. In view of aforesaid facts and circumstances, the court is of the opinion that the order impugned i.e. order dated 12.12.2012 passed by Respondent No. 2 and subsequent publication of notice for open bid for settlement of Jalkars of Balrampur Block i.e. last auction notice contained in letter No. 925 dated 28.12.2012 for settlement of 34 Fishery Jalkars and letter No. 926 dated 28.12.2012 for settlement of 7 Fish-cum-Makhana Jalkars within the area of Balrampur Block issued by respondent No. 3/ District Fisheries Officer-cum-Chief Executive Officer, Katihar, are not sustainable in the eye of law and all are quashed with a direction to respondent No. 3 to proceed for settlement of Fish-cum-Makhana Jalkars as well as Fishery Jalkars of Balrampur Block with the petitioner's Society in accordance with law. The writ petition stands allowed.