

(2002) 11 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 4890 of 2002

Ram Kumar Mukhiya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

Citation : (2003) 51 BLJR 26 : (2003) 1 PLJR 606

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : A. Amanullah, M.K. Pathak, Jawed Gaffar Khan, for the Appellant; Sheema Ali Khan, Deepak Kumar, S. Azeem and R.P.S. Singh, JC to AAG 1, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The single petitioner Ram Kumar Mukhiya and respondent No. 6 Paltan Mukhiya seem to be engaged in a bitter fight over the settlement and control of the many Government jalkars in two blocks in the District of Darbhanga. The fight for the control of the Jalkars is manifested before the departmental authorities and the Courts in a controversy over an order passed by the Assistant Registrar Cooperative Societies (A.R.C.S.) by which he recalled his earlier order approving the division of a self sufficient co-operative society and cancelled the certificate of registration of the two societies, resulting from the division of the erstwhile society.

2. The relevant facts may be stated as follows ; A co-operative society under the name of Kusheshwarasthan Fishermens" Co-operative Society was registered in the year 1963 under the provisions of the Bihar Co-operative Societies Act, 1935. The area of operation of the Society was the whole of the undivided Kusheshwarasthan block. In 1994 Kusheshwarasthan block was divided by a Government notification into two blocks, namely, Kusheshwarasthan Prakhand and Kusheshwarasthan Purvi Prakhand. On 17-1-1997 the Bihar Self-Supporting Co-operative Societies Act, 1996 came into force and on 26-3-1998 the Society

got itself converted into a self-supporting Society under the name of Kusheshwarasthan Matsyajivi Swavlambi Sahkhari Samiti Limited in terms of Section 5 (1)(v) of the Act. The self-supporting society, like the previous society, had its area of operation over both the blocks which had resulted from the division of the erstwhile Kusheshwarasthan Prakhand. These facts are admitted by all concerned but from this stage one enters into the zone of dispute. According to the contesting respondent, the general body of the self-supporting society in its meeting held on 25-12-1998 passed resolution No. 14 taking the decision for the division of the society into two societies, one with the area of operation over Kusheshwarasthan Prakhand and the other having its area of operation over Kusheshwarasthan Purvi Prakhand. The A.R.C.S. Benipur Anchal, Benipur was moved for issuance of registration certificates to the two new societies. The A.R.C.S. gave approval to the division of the self-supporting society u/s 11(1) of the 1996 Act and on 19-8-1999 issued registration certificates to the two societies resulting from the division of the erstwhile society namely (i) Kusheshwarasthan Purvi Prakhand Matsyajivi Swavlambi Sahkari Samiti Limited, Kewatgama and (ii) Kusheshwarasthan Prakhand Matsyajivi Swavlambi Sahkari Samiti Limited, Satighat.

3. The petitioner who was a member of the undivided society and who came on the role of members of one of the two societies resulting from its division made a complaint before the A.R.C.S. with regard to the division of the erstwhile society. On the complaint the A.R.C.S. issued a show-cause notice, dated 26-10-1999 to one Baidyanath Mukhiya (Respondent No. 8) who was elected as the Chairman of the undivided society in the general body meeting on 25-12-1998 and who had moved the A.R.C.S. for giving approval to the division of the society and for the registration of the two resultant societies. According to the contesting respondent, no notice was issued to the office-bearers of the two societies that had come into existence as a result of the division of the erstwhile society and which were functioning when the controversy arose. Further, according to the respondent, the notice, dated 26-10-1999 was despatched on 29-10-1999 and was received by Baidyanath Mukhiya on 2-11-1999 and even though he went to the A.R.C.S. with his show-cause, the A.R.C.S. declined to entertain or accept the show-cause on the ground that it was being filed beyond the time allowed in the notice and passed the order, dated 4-11-1999 rejecting the division of the erstwhile society and cancelling the registration of the two societies that came into being as a result of the division. In that order the A. R.C.S. held that the division of the erstwhile society was made by deceit and fraud and hence, the approval given to the division was liable to be cancelled. As we shall see presently this order passed by A.R.C.S. on 4-11-1999 has generated much heat and controversy.

4. The respondents immediately took the matter to the District Co-operative Officer who on 6-11-1999 (within two days) stayed the operation of the order dated 4-11-1999 passed by the A.R.C.S. Against the order passed by the D.C.O. the petitioner came in revision before the Registrar, Co-operative Societies

(R.C.S.) who while admitting Revision Case No. 258 of 1999 stayed the operation of the order of the D.C.O. At the stage of the final hearing of the case, however, the, R.C.S. found and held that as the Co-operative Society that went into division was a self-supporting society and the two societies resulting from the division were registered under the 1996 Act, any dispute regarding the division of the erstwhile society and/or registration of the two resultant societies could only be adjudicated on by the tribunal constituted u/s 39 of the 1996 Act (which is yet to be constituted in the State) and the matter did not come within the purview of any of the departmental authorities, including the R.C.S. himself. He, accordingly, disposed of Revision Case No. 258 of 1999 by order, dated 20-1-2000. The order of the R.C.S. did not conclude the dispute. Following the order passed by the R.C.S. a number of orders were issued both by the D.C.O. and the A.R.C.S. that made the matter quite murky. The two local officers issued directions that were not only in opposition to those issued by the other but also contradiction or recalled the previous order issued by the same officer. At the end of all this the A.R.C.S. dourly held that his order dated 4-11-1999 had remained undisturbed. At this stage respondents Nos. 6 (Paltan Mukhiya) and 7 (Surya Devi) filed C.W.J.C. Nos. 2939 and 5613 of 2000 respectively challenging the order of the A.R.C.S., dated 4-11-1999. Paltan Mukhiya and Surya Devi were the chair-persons of the two societies that had come into being as a result of the division of the erstwhile society and the registration of which was cancelled by the A.R.C.S. by his order dated 4-11-1999. Earlier they had jointly filed C.W.J.C. No. 1587 of 2000 on the issue of settlement of Jalkars in favour of the two societies.

5. While those writ petitioners were pending before this Court, Paltan Mukhiya filed a petition before the Secretary, Co-operative Department, Government of Bihar on which the Secretary issued an order under his memo No. 2213, dated 30-7-2001 holding that the order passed by the A.R.C.S. on 4-11-1999 was void ab-initio. He further directed the D.C.O. to make settlement of the Jalkars in favour of the two societies.

6. It was then the petitioner's turn to come to this Court in C.W.J.C. No. 13411 of 2001 challenging the order of the Secretary dated 30-7-2001. All the four writ petitions (One filed by the petitioner and the other three filed by respondents 6 and 7) were heard together and were disposed of by a common judgment and order dated 13-2-2002. In the judgment this Court severely admonished Paltan Mukhiya for maintaining two parallel proceedings seeking the same relief and even while the writ petitions were pending before this Court, approaching the Secretary without disclosing to him that writ petitions seeking the same relief were also pending before this Court. The judgment also deprecated the action of the Secretary in passing the order even without giving any notice or opportunity of hearing to Ram Kumar Mukhiya, the present petitioner whose rights were adversely effected by that order. The Court set aside the order passed by the Secretary primarily on the ground that it was passed in breach of the principles of natural justice and remitted the matter to the Secretary with a direction to

pass a fresh order after giving an opportunity of hearing to all concerned.

7. The Secretary then issued notices to all the contesting parties, only two of whom, namely, the petitioner and respondent No. 6 appeared before him. After hearing the Counsel representing them at length the Secretary passed a detailed and exhaustive order holding that the order dated 4-11-1999 passed by the A.R.C.S. was void ab-initio. The operative portion of the order of the Secretary is as follows :

"The order dated 4-11-1999 passed by the A.R.C.S. Benipur and communicated vide his memo No. 132 is, therefore, declared ab-initio void and all concerned are directed to ignore this order. It is also clarified that as per provisions of the Bihar Self-Supporting Co-operative Societies Act, 1996, both the Co-operative Societies, KPPMSSSL, Kewatgama and KPMSSSL, Satighat continue to exist as self-supporting co-operative societies."

8. The petitioner Ram Kumar Mukhiya has filed this writ petition challenging the order of the Secretary, Department of Co-operative dated 21-3-2002.

9. In the long order the Secretary, apart from adjudicating on the legal issues arising in the case has also, as the head of the Government department, taken serious note of the actions of the local officials of the department which he found to be highly irregular and unauthorised. The order indicates that there are powerful forces operating for not letting go their strangle-hold over the Government jalkars and to that end they tried to subvert the law and the departmental rules, procedures and norms by taking into their collusion some local departmental officers. The order makes it clear that the orders and directions issued by the A.R.C.S. and the D.C.O. apart from being unauthorised and illegal were influenced by extraneous considerations and the local officers in order to help certain vested interests went so far as to brazenly disregard and disobey the directions issued by the superior departmental authorities. On this aspect of the matter, however, I would refrain from making any comment or observation because that would form the subject matter of the departmental proceedings that may be initiated against the concerned officers.

10. Coming now to the petitioner's challenge to the order passed by the Secretary, Department of Co-operative, it is noted above that on a petition filed by Baidyanath Mukhiya (Respondent No. 8) who was elected as the Chairman of the undivided society in the general body meeting held on 25-12-1998, the A.R.C.S. gave his approval to the division of the society and on 19-8-1999 issued certificates of registration to the two societies resulting from the division. The petitioner was aggrieved by this and according to him, the division of the society was made in violation of the law and in breach of the provisions of the bye-laws and was tantamount to a fraud upon the members of the Society. What was the remedy before the petitioner and how could he get the division of the society undone which according to him was made illegally. He could go to the tribunal seeking his relief but the tribunal was not constituted. In that situation the

proper course for him would have been to come to this Court in a writ petition, challenging the approval to the division of the Society accorded by the A.R.C.S. He did not do so and instead he moved the A.R.C.S. himself.

11. Mr. Ahsan Amunallah, learned Counsel appearing for the petitioner was unable to show any provision in the 1996 Act which might have enabled the A.R.C.S. to cancel the registration of a self-supporting society even though the registrations, were made irregularly and not in accordance with law. Mr. Amanullah, however, submitted that the A.R.C.S. had passed the order dated 14-11-1999 in order to undo a fraud committed upon the authority. Learned Counsel submitted that even though there may not be any express statutory provision in that regard, every authority, administrative or judicial/quasi judicial had the inherent right, power and obligation to undo a situation brought about by committing fraud upon it and the A.R.C.S. was, therefore, fully competent to pass the order dated 4-11-1999.

12. Here, there is no need to express any opinion on the correctness of the principle propounded by Mr. Amanullah. Suffice it to note that the principle, even if valid, has no application in the facts and circumstances of this case. Though making laboured submissions Mr. Amanullah was unable to satisfy the Court that the A.R.C.S. was subjected to any fraud or deception in granting approval to the division of the society and in issuing the certificates of registration to the two resultant societies.

13. Mr Amanullah made a reference to the notice for the general body meeting of 25-12-1998 and the agenda item No. 14 for the meeting. He also referred to the provisions of the Society's bye-laws and the Act. But on the basis of the materials relied upon by him, all that can be said is that the decision for the division of the society was arrived at irregularly or without giving full information to the members of the society. There is no question of any fraud being committed on the A.R.C.S. because all these materials were presented before him as they were without any interpolation or misrepresentation of facts. The grievance that no proper notice was given or the agenda was not worded properly to indicate the division of the society could be made by the members of the society who could seek their relief against the order dated 19-8-1999 passed by the A.R.C.S. but the A.R.C.S. himself could not say that any fact was misrepresented to him or that any forged or fabricated documents were used before him. I am, therefore, satisfied that the order, dated 4-11-1999 passed by the A.R.C.S. cannot be justified even on the ground that he intended to undo the fraud committed upon the authority.

14. Mr. Amanullah next sought to justify the order by submitting that the approval for the division of the society was wrongly given on 19-8-1999 and in support of the submission he substantially relied upon the same materials. I find it difficult to accept this line of submission because the order passed by the A.R.C.S. on 19-8-1999 when he issued the certificates of registration to the two societies has not been challenged in this writ petition even incidentally or

indirectly. I have carefully gone through paragraph 1 and the prayer portion of the writ petition but neither in the prayer portion nor in paragraph 1 nor in any other part of the writ petition there is any challenge to the order of the A.R.C.S. giving approval to the division of the society and granting certificates of registration to the two resulting societies.

15. In the light of the discussions made above, I find no merit or substance in this writ petition. It is accordingly dismissed but with no order as to costs.