

(2005) 04 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 15695 of 2004

Simri Bakhtiarpur Prakhand Matsyajivi Swabalambi Sahkari
Samiti Ltd. and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Registration Act, 1908 — Section 5(5)

Citation : (2005) 2 BLJR 1191 : (2005) 3 PLJR 68

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : N.R. Jha, for the Appellant; A.R. Pandey, for the respondent No. 7
and J.K. Roy, No. 1 JC to GP VI, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard counsel for the petitioner, counsel appearing for respondent No. 7 and for the State.

2. Petitioner, in this application, is a cooperative society, registered under the Bihar Self-Supporting Cooperative Societies Act, 1996, and the respondent No. 7 is the cooperative society registered under the provisions of Bihar Cooperative Societies Act, 1935. The area of operation of both the societies exists to whole of Simri-Bakhtiarpur Block in Saharsa district. Petitioner No. 2 is the Chief Executive of petitioner No. 1 and his prayer is for quashing the order, dated 8.11.2004, of Collector, Saharsa, by which his application for settlement of Gordah Jalkar-cum-Makhana Mahal of Simri-Bakhtiarpur Anchal has been rejected and settled with respondent No. 7. Further prayer of the petitioner is to settle the aforesaid shairat with the societies in proportion to its membership, for the year 2004-2005 or to settle it in favour of petitioner only.

3. Admittedly, in Simri-Bakhtiarpur Anchal there is another society registered under 1935 Act, i.e., respondent No. 7 and two other societies registered under

1996 Act which "includes petitioner and Simri-Bakhtiarpur Prakhand Matsyajivi Swablambi Sahkari Samiti Ltd. Khamauti.

4. Dispute relates to settlement of Gordah Jalkar-cum-Makhana Mahal with regard to which a general notice inviting applications for settlement was issued vide memo No. 74, dated 9.10.2004. An advertisement was also published in the newspaper. The petitioner, prior to this general notice and the advertisement in the newspaper, had applied before the Joint Registrar for making recommendation in favour of the petitioner for settlement of shairat including Gordah Jalkar which had not been settled with any one, till then. The Joint Registrar on 14.10.2004 passed an order that since the respondent No. 7 society has already been allowed settlement of 35 fisheries Jalkars in his favour other Jalkars of Simri-Bakhtiarpur Anchal should be settled with the three societies, i.e., the petitioner, respondent No. 7 and one other society in proportion to their membership for the years 2005 to 2007. It was also mentioned in this order that the petitioner's society which has 320 members have completely been deprived of any settlement of Jalkar in its favour and settlement of 51 Jalkars have already been made in favour of respondent No. 7 and other society, on 8.11.2004 at the time of bidding, four cooperative societies appeared before the Collector claiming settlement. Petitioner's claim was based on the recommendation of the Joint Registrar, Cooperative Society, Kosi Division, vide order, dated 22.5.2004 and order, dated 14.10.2004. The Collector, ignoring the recommendation of the Joint Registrar for settlement settled the Gordah Jalkar with respondent No. 7. Claim of petitioner's society was rejected on the ground that its registration is under challenge in CWJC No. 6771 of 2004. The petitioner has challenged the impugned order on the ground that petitioner's claim was rejected by respondent No. 2 without giving him opportunity to explain and justify his claim for settlement. His claim was rejected on most frivolous and unreasonable ground. Another ground for challenging the impugned order is that the order, dated 8.11.2004, passed by the Collector is against the public interest in view of the fact that the claim of livelihood of 325 poor fishermen who are members of the petitioner's society has been rejected in violation of Articles 14 and 21 of the Constitution of India.

5. Respondent No. 7 has challenged the maintainability of the writ application at the instance of petitioner No. 2. It has been stated that petitioner No. 2 was the member of respondent No. 7. He came in contact with some mafias and at their instance he hatched up a conspiracy to damage respondent No. 7 society. Respondent No. 7 filed an application before the District Cooperative Officer, Saharsa, for expulsion of petitioner No. 2 from respondent No. 7 society. This was not allowed, as such, petitioner No. 2 is still a member of respondent No. 7 society. Being a member of respondent No. 7 society he can not claim to be the Chief Executive of Simri-Bakhtiarpur Prakhand Matsyajivi Swablambi Sahkari Samiti Ltd. (petitioner No. 1), as such, the writ application at his instance is not maintainable and the application should be dismissed on this count. Registration of petitioner No. 1 has also been challenged by respondent No. 7 stating that

taking benefit of the provisions of amendment in cooperative law the petitioner's society has been registered. As per the amended law, in each block, besides a cooperative society registered under 1935 Act there should be two more societies registered under self-supporting Cooperative Societies Act, 1996. After registration of Simri-Bakhtiarpur Parkhand Matsyajivi Swabalambi Sahkari Samiti Ltd., Khamauti, under 1996 Act, there was scope of only one cooperative society for being registered under this Act. The petitioner society and one more society filed their application u/s 5 of the 1996, Act, for their registration. Petitioner No. 2 coming in connivance with the office of Assistant Registrar kept his application for registration pending for more than ninety days, though the application filed by petitioner No. 1 was not in compliance of all provisions for filing an application for registration as provided u/s 5, Sub-section (4) of 1996, Act; but only because the application filed by petitioner No. 1 for registration remained pending for more than ninety days, under Section 5(5) of the 1996 Act, it was deemed to be registered under 1996 Act. Section 5(5) of the Cooperative Society Act, 1996, provides that if the conditions laid down u/s 5(4) of the Bihar Cooperative Society Act are not fulfilled then the Registrar shall communicate the order of refusal within a period of ninety days from the date of submission of application, if refusal is not communicated within ninety days, the cooperative society shall be deemed to be registered. Taking benefit of Section 5(5) of the Registration Act, the writ petitioner's society was registered vide order, dated 8.4.2004. The registration of petitioner's society was challenged by another society which had also filed an application for registration by filing CWJC No. 6771 of 2004. That writ application is still pending and no order has been passed., In sum and substance the case of respondent No. 7 is that being a society registered under 1935 Act, as per the Government circulars and also as decided in CWJC No. 3485 of 2003, respondent No. 7 society is to be treated on priority basis and rightly the settlement has been made by respondent No. 2 in favour of respondent No. 7. So far the petitioner's society is concerned, it is not a society registered properly under the Act and its registration being under challenged in CWJC No. 6771 of 2004. There was no reason for settlement of any Jalkars in its favour and also the claim of petitioner No. 1 that settlement should be made in proportion to the membership of the societies is without any substance particularly as decided in CWJC No. 3485 of 2003.

6. No counter affidavit has been filed by the State though several adjournments were given for the same.

7. Only ground on which settlement in favour of the petitioner society has been rejected by respondent No. 2 is that CWJC No. 6771 of 2004 has been filed against the order of registration of petitioner No. 1. It has been admitted by respondent No. 7 that till the date no order has been passed in CWJC No. 6771 of 2004. It has also been stated that respondent No. 1 is not the petitioner in CWJC No. 6771 of 2004. Considering the fact that till the date no order has been passed quashing the registration in favour of petitioner No. 1, pendency of a writ application can not be a ground for rejecting the claim of petitioner No. 1 for

settlement. Further the impugned order, dated 8.11.2004, was passed without giving an opportunity to the petitioner No. 1, for explaining the circumstance in which its claim was rejected. If any opportunity would have been given to petitioner No. 1 it could have properly been explained. These are the circumstances due to which the order, dated 8.11.2004 can not be held to be a legal order in the eye of law.

8. Petitioner has filed a supplementary affidavit stating that by order, dated 8.11.2004 (Annexure 5), the settlement has been made in favour of respondent No. 7 for the years 2004-2005, 2005-2006 and 2006-2007 which is also illegal. Vide general notice, dated 9.10.2004 (Annexure 2-A) and the advertisement made in the newspaper, dated 13.10.2004 (Annexure 2-B), the applications were invited for settlement of the Jalkars for the period 2004-2005 only without giving any notice to the general people for the extended period up to the year 2007 the order of settlement for extended period is illegal. By order, dated 8.11.2004 settlement has been made in favour of respondent No. 7 for the period 2004 to 2007 for three years. No reply has been filed by respondent No. 7 denying the allegation made by the petitioner, from Annexure 2-A and 2-B to the writ application compared with order, dated 8.11.2004 (Annexure 5), it is clear that general notice as well as advertisement inviting applications for settlement was only for the year 2004-2005 but so far settlement is concerned, it has been made for three years without giving any general notice to the concerned and interested persons, which in itself is a serious illegality and can not be allowed to continue.

9. The petitioner has also challenged the order of settlement on the ground that by resolution, dated 4.9.2004, contained in memo No. 672/9, all fishermen-cum-makhana jalkars, which were earlier being settled by the Revenue Department have been transferred to the Animal Husbandry and Fisheries Department. As per this resolution all makhana-cum-fisheries jalkars, transferred to the Fisheries Department are to be settled by the Fisheries Department only with effect from 4.9.2004, i.e. the date of the resolution itself. The authorities of Revenue Department have no concern with the settlement of such Jalkars and any settlement made by them is invalid and it can not continue. I find much force in this and it has been decided by this Court in some of the decisions that resolution became effective from 4.9.2004 from this date makhana-cum-fishereis Jalkars will be deemed to be transferred to the Fisheries Department. Any order of settlement by Revenue Authorities of such Jalkars, subsequent to 4.9.2004 is illegal. On this count also the settlement, dated 8.11.2004, made by the Collector, respondent No. 2, is illegal.

10. Respondent N o. 7 has placed reliance on a decision of this Court in CWJC, No. 3485 of 2003, whereby the letter No. 29, dated 15.3.2003, issued by the Secretary of Animal Husbandry and Fisheries Department has been quashed and it has been held that earlier circular, contained in letter No. 1180, dated 5.7.2000, and letter No. 1378, dated 25.4.2000, will be effective for any

settlement. Respondent No. 7 has claimed that being society registered under 1935 Act. It can claim priority over the society registered under 1996 Act, as the claim of a society registered under 1935 Act, can not be equated with the claim of a society registered under 1996 Act, Claim of the petitioner society with the settlement should be made in proportion to the membership of the societies concerned has no legs to stand, no such order could have been passed by respondent No. 2 even on the recommendation of the Joint Registrar, Cooperative Society, I find that the order passed in CWJC No. 3485 of 2003 has wrongly been interpreted by respondent No. 7. In this order it has been held that the earlier circular contained in letter No. 1180, dated 5.7.2000, and letter No. 378, dated 25.4.2000, will be the guideline for settlement. Even though the letter No. 29, dated 15.3.2003 has been quashed it does not mean that if in a particular area a large number of Jalkars are going to be settled, all Jalkars should be settled in favour of a society registered under 1935 Act, as it can claim priority over the society registered under 1996 Act. Priority in all cases should be a reasonable priority not unreasonable one when there are large number of Jalkars to be settled in such cases 50% of such Jalkars may be settled with a society registered under 1935 Act, but rest 50% should be settled in between the societies registered under the 1996 Act in proportion to their number of members. Any judicial or quasi judicial order can not be unreasonable or inequitable. Accordingly, the interpretation, which is made by respondent No. 7 to the decision in CWJC No. 3485 of 2003 is not the correct interpretation.

11. Considering all the facts and circumstances, I find that the settlement made in favour of respondent No. 7 by respondent No. 2 for three years, going against the general notice as well as advertisement is bad. The settlement is also without jurisdiction as the Revenue Authority has settled makhana-cum-fishery Jalkar subsequent to the Government resolution, dated 4.9.2004. The settlement has been rejected in favour of the petitioner on the ground of pendency of CWJC No. 6771 of 2004 which could not have been a ground for rejecting the claim of the petitioner.

12. In this view of the matter, the impugned order is quashed.

13. Considering the fact that the Jalkar in question has been transferred to the Department of Animal Husbandry and Fisheries, Fresh settlement should be made by the competent authority in compliance of different Government circulars and decisions.

14. Accordingly, this application is allowed.