

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4489 of 2015

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Sasaram Prakhand Matsyajivi Sahyog Samiti Ltd. at Badhaiyabag , P.S. - Sasaram,
District- Rohtas, through its Secretary Birendra Singh S/o Late Raja Ram Singh,
Resident of Village - Badhaiyabag, P.S.- Sasaram , District- - Rohtas.

.... Petitioner

Versus

1. The State of Bihar through the Secretary , Minor Water Resources Department ,
Government of Bihar, Patna.
2. Chief Engineer , Minor Water Resources Department , Patna
3. Superintendent Engineer, (Monitoring Cell) Minor Water Resources Department,
Patna.
4. Superintendent Engineer , Minor Irrigation Anchal, Patna.
5. Executive Engineer , Minor Irrigation Division , Kaimur, Mohaniya.
6. Executive Engineer , Minor Irrigation Division, Bhabhua.

.... Respondents

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Appearance :

For the Petitioner : M/s. Nitiranjana Jha and
Rakesh Kumar Jha, Advocates
For the State : Mr. M.K. Upadhyay, A.C. to G.P.10

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 18-05-2015

Petitioner seeks quashing of the order dated 09.01.2015
passed by the Chief Engineer, Minor Water Resources Department,
Patna by which his bid has been cancelled on the ground of technical
fault.

It is stated that the petitioner is a fishermen Cooperative
Society in the name and style of Sasaram Prakhand Matsyajivi
Sahyog Samiti Ltd. registered under the Bihar Cooperative Societies
Act, 1935 (hereinafter to be referred to as “the Act”). It is further
contended that Minor Irrigation Division, Bhabhua has five water



bodies (Jalkars) in the district of Rohtas and three in the district of Kaimur. The three Jalkars of Rohtas district are Mahadeva, Gijwahi and Bhaisakhoh. It is stated that a notice inviting tender was published for settlement of the five Jalkars including the Mahadeva Jalashay Yojna. The petitioner participated in the same and was declared successful bidder and, thereafter, an agreement was signed with him, a copy of which has been appended as Annexure-3. Subsequently, vide Annexure-4 dated 22.08.2014, the Executive Engineer, Minor Irrigation Division, Bhabhua issued Parwana granting fishing right.

It is submitted that suddenly on 08.01.2015, the bid itself has been cancelled on the ground that Reserve deposit amount was not fixed by the “Reserve Jama Fixation Committee” on the basis of which the earnest money should have been fixed which was not available in the document.

Learned counsel appearing for the petitioner has urged that once agreement was signed with the petitioner, the respondents did not have any authority to unilaterally cancel the bid itself without issuing any show cause notice and granting reasonable opportunity to the petitioner.

A counter affidavit has been filed on behalf of the respondent nos.1 to 5. It is stated in the counter affidavit that Reserve Jama was to be fixed by the Committee constituted for the purpose

and in the absence of that the entire process was erroneous and thus that has been rightfully cancelled in view of the violation of the statutory provision.

In support of his aforesaid submission, learned counsel appearing for the petitioner has placed reliance upon Section 7(iv) of the Bihar Fish Jalkar Management Act, 2006 (hereinafter to be referred to as “the Act”) which is quoted as under for better appreciation :

“ 7(iv) For ensuring the settlement, the District Fisheries Officer shall send a notice Block wise with information of date, place future settlement and proportion of Jalkars in their share to all concerned fishermen Co-operative societies by registered post before 31st march. The copy of this information shall be given to the Collector, Deputy Development Commissioner, Additional Collector, Concerned Sub-divisional Officers, Circle Officers, Block Development Officers, Pramukh of panchayat Samiti with a request to display it on the Notice Board of their offices. For Singhara & Makhana-cum-fish Jalkars this notice shall be sent before 30th June.”

It is next contended that Section 7(ii)(d) of the Act provides that settlement of all the Jalkars of Annual reserve deposit of more than one lac rupees shall be approved by the State Government. It is next contended that when a complaint was received against the settlement of Mahadeva Jalashay for fishing rights as there was resentment in the locality as allegedly the Jalkar meant for the purpose

of irrigation was being settled for other purpose causing obstruction in irrigational facility, then scrutiny was made and it was found that the settlement also suffers from the error as mentioned above.

However, the counter affidavit is silent on the issue why such step for cancellation of settlement was not made as against other four water bodies (Jalkars) which were also advertised along with the jalkar involved in this case.

Learned counsel for the petitioner has pointed out that Tutuain Jalashay Yojna which is at sl.no.4 of Annexure-1 has also a Reserve deposit of Rs.1,32,000/- which is more than Rs.1 lakh but it is not stated that why it was spared and others were spared even though there was no constitution of Reserve Jama Committee in the Minor Irrigation Department whereas the petitioner has been targeted and its settlement has been cancelled.

Now the first question to be answered in this case would be as to whether the statutory provisions as mentioned above on which reliance has been placed by the Department of Minor Irrigation would be applicable in the present case or not. The Act itself appears to have been established to provide the procedure for settlement of Jalkars relating to the department of Animal Husbandry and Fisheries, Bihar, Patna. Learned counsel for the petitioner has vehemently argued that the statutory provisions cannot be made applicable in the

present case as it does not cover the water bodies or Jalkars of the Minor Irrigation Department.

In support of his aforesaid contention, the petitioner has placed reliance a decision of this Court rendered in **Kusheshwar Asthan Prakhanda Matasyajeevi Swablambi Sahkari Samiti Limited, at Barra, through its Chief Executive, Jhunjhun Mukhiya & Anr. Vrs. The State of Bihar & Ors. [2014(1) PLJR 402]**. This Court has held in clear terms that the provisions contained in Bihar Fish Jalkar Management Act, 2006 would not be applicable in cases of such Jalkars which are being settled by the revenue authorities as in such case the same was settled by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Darbhanga. It is contended that the aforesaid decision squarely covers the contention of the petitioner that the same would not be applicable in case of the Department of the Minor Irrigation.

Learned counsel appearing for the State does not have any answer to that at all.

Having regards to the aforementioned facts and circumstances, it is held that the statutory provisions contained in Bihar Fish Jalkars Management Act, 2006 would not be applicable with respect to the water bodies to Jalkars of the Department of Minor Irrigation as learned counsel has not been able to point out any statute



or any decision bringing the aforesaid Jalakars into the ambit of the Act. In fact, the definition, as has been provided under Section 2(iii) of the act, clearly lays down that “Jalkar” means Tank, Pokhar, Ahar, River, water course channel, ‘Chaur’, ‘Dhav’, reservoir Lake, Ox-bow lake etc. under Department of Animal Husbandry and Fisheries, Bihar, in which Makhana, Singhara & fish is reared.

Having held so, this Court is not required to proceed further to decide other issues involved. However, in the aforementioned facts and circumstances, it is also held that similarly the provisions as contained in Annexure-7 would also not be applicable in the present case. That apart, it is surprising that though it must be within the knowledge of the respondents that there has been amendment in the aforesaid Act and the limit of Reserve Jama for which State Government’s approval is required to be taken under Section 7(ii)(d) of the Act has been raised from Rs.1,00,000/- to Rs.20,00,000/- by the amendment brought in the Act vide Bihar Jalkar Management (Amendment) Act, 2007, which is being extracted as under :

“ 7(ii)(d) The State government for the Jalkars of Annual Reserve Deposit of more than Twenty Lac rupees.”

Apart from the above, a ground has been taken that there is resentment within the farmers for settling the Jalkars for fishing



right hampering the irrigational facilities. It is surprising as to how other four of the settled Jalkars as mentioned in Annexure-4 are not creating such problem and how only such problem is being faced though there is a condition of the NIT that during the irrigational period for Kharif and Rabbi, as per demand of the farmers, sufficient water would be discharged from the concerned Jalkars and petitioner has already accepted that.

However, it does not appear, in fact, either from Annexure-5 or from the counter affidavit that the settlement has been cancelled on the ground of resentment of the farmers. It has been stated that on such application having been made vide Annexure-B to the counter affidavit, some scrutiny was made and aforesaid lacuna was found in the settlement process, which, as has been held above, is baseless and without any foundation.

In above view of the matter, this Court is of the opinion that the order contained in Annexure-5 is not at all sustainable in law and there is no justification for cancellation of settlement and the same has also been done in gross violation of the principle of natural justice, as admittedly no show cause notice was ever served upon the petitioner.

As a result, this writ application succeeds and the impugned order as contained in Annexure-5 is quashed and set aside.

In view of the fact that the Court is not satisfied with the explanation given by the respondents that the only one out of the five Jalkars was required to be cancelled which also indicates towards some partisan attitude adopted by the respondents, the petitioner since admittedly have been deprived of fishing right for certain period, if so advised, would be at liberty to take remedial course for grant of compensation or damages in accordance with law.

(Dr. Ravi Ranjan, J)

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