

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9643 of 2013

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Managing Director, Cooperative Milk Federation (Comfed), Near Veterinary
College, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, New Secretariat, Bailey Road, Patna
2. The Principal Secretary, Deptt of Co-Operation, Vikash Bhawan, Jawahar Lal Nehru Marg, Patna
3. Registrar Co-Operative Societies, Bihar
4. Joint Registrar, Co-Operative Societies, Bihar
5. Assistant Registrar, Co-Operative Societies, Bihar
6. Managing Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
7. Ram Sanjivan Prasad Yadav son of Late Basudeo Rai, resident of Village Punarwara, P.S. Runi Saidpur, District Sitamarhi presently the Chairman (Adhyaksh) Of Tirhut Dugdh Utpadak Sahkari Sangh Ltd., Muzaffarpur
8. Vijay Kumar, Managing Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd., (TIMUL), Muzaffarpur
9. Harihar Prasad Sah, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
10. Manju Devi, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
11. Urmila Devi, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
12. Sitaram Rai, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
13. Nathu Sah, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
14. Sunil Kumar Singh, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
15. Nand Kishore Rai, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
16. Janak Choudhary, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur
17. Ramshrestha Prasad, Member, Board of Director, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. (TIMUL), Muzaffarpur

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Rajeev Ranjan Prasad, Advocate
Mr. Rajendra Kumar, Advocate

For the State : Mr. Deepak Sahay Jamuar, AC to AAG-6

For the Respondent No. 7: Mr. Chandra Bhushan Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-08-2015



Heard Mr. Rajeev Ranjan Prasad, learned counsel for the petitioner, learned counsel for the State and Mr. C.B. Das, learned counsel appearing for the respondent no. 7.

Although the other respondents have also been served but only some of them have registered appearance but who also on call are conspicuous by their absence.

The petitioner has challenged the order dated 25.4.2013 passed by the Principal Secretary, Co-operative Department, Government of Bihar in Surcharge Case No. 253 of 2012 whereby the respondent no. 2 has proceeded to determine the financial liability payable by the respondent nos. 7 to 17 payable to the petitioner on different counts fully discussed in the order, a copy of which is placed at Annexure-12 to the writ petition. While admitting to the fact that the order passed by the Principal Secretary is appealable under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as 'the Act') and the rules framed thereunder, Mr. Prasad has chosen to question the order passed by the Principal Secretary on grounds of absence of jurisdiction relying upon the provisions of Section 40(1) of 'the Act'. According to Mr. Prasad the jurisdiction to adjudicate on any surcharge proceeding entirely rests on the Registrar Co-operative Societies and the Principal Secretary has assumed such jurisdiction to adjudicate on the surcharge proceedings. With reference to an order



of this Court passed in the earlier round of proceedings arising from CWJC No. 916 of 2013, it was sought to be contended that a reading of the judgment and order passed by this Court which is present at Annexure-7 to the writ petition would reflect that it is upon consideration of the objection raised by the respondent no. 7 and the other respondents as to the bias in the minds of the Registrar that the Court required the Principal Secretary to consider as to whether at all any surcharge proceeding was maintainable but the order does not confer jurisdiction on the Principal Secretary to adjudicate on the surcharge proceedings. He submits that it is considering this aspect of the matter that the petitioner did appear before the Principal Secretary on the issue of maintainability of the surcharge proceeding and which was held maintainable by the Principal Secretary vide order present at Annexure-9 but according to the petitioner, the matter thereafter ought to have been transferred to the Registrar for adjudication and even when a modification application remained pending before this Court on the issue of jurisdiction in the backdrop of the directions issued in CWJC No. 916 of 2013, that the Principal Secretary hurriedly disposed of the surcharge proceedings vide order impugned at Annexure-12 to the writ petition. Mr. Prasad thus submits that the limited grounds on which the present writ petition rests is the absence of jurisdiction in the Principal Secretary to adjudicate on surcharge

proceedings.

Mr. Das, learned counsel appearing on behalf of the respondent no. 7 has submitted that it is under the order of this Court that the matter has been adjudicated and which suffers from no infirmity.

I have heard learned counsel for the parties and I have perused the records. Since the impugned order has been questioned by the petitioner on the limited issue of exercise of jurisdiction in the backdrop of the statutory provisions of Section 40(1) of 'the Act' and considering that the order impugned has been passed by the Principal Secretary in the light of the order passed by this Court in the earlier round of proceedings in CWJC No. 916 of 2013, it would be appropriate to refer to the directions issued by this Court which would clear whatsoever doubts that prevails in the proceedings. Mr. Prasad has chosen to submit that the petitioner was under impression that it is only on the limited issue of maintainability of the surcharge proceedings that the Principal Secretary was conferred with the jurisdiction and for the purpose he refers to the following paragraph of the order passed in CWJC No. 916 of 2013:

“In the circumstances, to examine the matter threadbare on facts as well as in respect of maintainability and continuance of surcharge proceeding and since the submissions of learned counsels for the



petitioners are also lavelas malafide against the officers of the rank of Registrar and the members of the audit team constituted by the Registrar, this Court proposed to learned counsels for the petitioners to opt for hearing of the matter by any higher authority of the Co-operative Department, after consulting their clients. The counsels for the petitioners propose that the matter may be heard by the Secretary of the Co-operative Department.”

No doubt the paragraph relied upon by Mr. Prasad takes notice of the objection raised by the parties as regarding the hearing to be done by the Registrar and in which connection the issue of maintainability and continuance of surcharge proceedings has been referred to but the operative portion of the order completely puts at rest whatsoever confusion that may be prevail in the mind of the petitioner and which runs as follows:-

“In the circumstances, this Court directs the Registrar, Co-operative Societies to transmit the records of the surcharge proceeding along with all connected records of the matter to the Secretary, Cooperative Department latest by Thursday (14.02.2013). On receipt of the records, the Secretary, Cooperative Department shall proceed with the hearing of the surcharge proceeding, giving reasonable time to the petitioners, not exceeding one week to file their objections, written statements and the grounds of challenge to the proceeding. Thereafter he shall fix up a firm date for



hearing of the matter on which date he shall hear the matter and pass final orders. He shall make all endeavours to conclude the proceeding within one month from the date of receipt of records. The petitioners shall cooperate in the proceeding at all stages and on all dates. However, in case, the proceeding is not concluded within one month for no fault of the petitioners, the Secretary shall consider granting interim protection to the concerned petitioners. For this purpose, petitioners will be at liberty to file an application before the Secretary, in case they intend to file nomination in any election which shall be considered by the Secretary in the light of the facts and circumstances of the case delay in deciding the matter.”

The operative portion of the order passed by this Court in CWJC No. 916 of 2013 leaves no room for confusion that not only the Registrar, Co-operative Societies was directed to transmit the record of the surcharge proceeding to the Secretary rather the Secretary was also directed the mode and manner in which the surcharge proceeding was to be disposed of. The order was passed in open Court and in the presence of counsel for the contesting parties. It is not in dispute that this order was never questioned by the petitioner before a superior forum rather acting in pursuance to the order that the petitioner appeared before the Principal Secretary and the petitioner now cannot turn around to question the order passed by the Principal Secretary on

grounds of jurisdiction. The order passed by the learned Single Judge in CWJC No. 916 of 2013 has attained finality and is an inter party order which binds the petitioner who cannot raise the issue of jurisdiction having participated in the proceedings.

In the circumstances, this Court is not persuaded to interfere with the order impugned and the writ petition is accordingly disposed of. The petitioner, if so advised, may question the order on other grounds before appropriate forum. Insofar as the issue of quantum of loss is concerned, the petitioner would be at liberty to take recourse to such other remedy that may be available to him in law and which shall be considered and disposed of on its own merit and without being prejudiced by the order of this Court.

(Jyoti Saran, J)

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