

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21987 of 2014

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1. Riga Prakhhand Matasyajivi Sahyog Samit Ltd. through its Secretary-cum-Treasurer Asharfi Sahani Son of Late Gayanand Sahani, Riga, Sitamarhi
 2. Asharfi Sahani, son of Late Gayanand Sahani, Resident of Village + Post- Riga, District- Sitamarhi

.... Petitioners

Versus

1. The State of Bihar, through, Principal Secretary, Department of Co-operative, Government of Bihar, Patna
2. The Principal Secretary, Department of Animal and Fisheries, Government of Bihar, Patna
3. The Registrar, Co-operative Societies, Government of Bihar, Patna
4. The Commissioner, Tirhut Division, Muzaffarpur
5. The District Fisheries Officer-cum-Chief Executive Officer, Sitamarhi
6. The District Co-operative Officer, Sitamarhi
7. Sri Sanjeev Sahani son of Raghuni Sahani, resident of village- Baratpur Sakari, Block- Riga, District- Sitamarhi

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Subhas Singh, Advocate
For the State : Mrs. Jehan Ara, AC to GP-14
For the respondent no.7 : Mr. Ranjeet Kumar Mishra, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 15-03-2017

I have heard parties and perused the records of the case.

Through this writ application, the petitioner, who claims to be elected Secretary and Member of the Riga Prakhhand Matasyajivi Sahyog Samiti Limited, originally sought quashing of the order dated 19.08.2014/27.09.2014 passed in Jalkar Settlement Appeal No.523 of 2012 by the Commissioner, Tirhut Division, Muzaffarpur (Annexure-7) by which the Commissioner has set aside the order dated



26.09.2012 passed by the District Fisheries Officer-cum-Chief Executive Officer, Sitamarhi (Annexure-6). However, the petitioners, by filing I.A. No.3287 of 2016, sought amendment by addition of relief for quashing the order contained in Memo No.30 dated 20.01.2015, issued during the pendency of this case, by which 53 *Jalkars* have been settled with the Committee led by respondent no.7 for the period up-to 30.09.2019 and for which reserve money was directed to be deposited vide Annexure-A to the counter affidavit which was eventually deposited vide Annexure-B. The prayer was allowed vide order dated 23.06.2016 and the petitioners were permitted to assail the same.

It is claimed by the petitioners that election of Managing Committee of petitioner no.1 was held on 22.05.2012 by the Bihar State Election Authority in which one Bhola Sahani was elected on the post of Chairman, whereas, petitioner no.2 Asharfi Sahani was elected as Secretary-cum-Treasurer. Eleven Executive Members were also elected. The names of eleven Executive Members are detailed in paragraph 6 of the writ petition.

It is further claimed by the petitioners that after constitution of the Managing Committee, it started discharging the functions and duties. However, in the meetings held on 31.05.2012, 17.06.2012 and 8.07.2012, the eight members including the



respondent no.7 not only refused to take notice but also did not participate therein. However, as the settlement of Jalkars were to be made in terms of the provisions contained in Bihar Fish Jalkar Management Act, 2006 (hereinafter referred to as 'the Jalkar Act'), again a meeting was fixed on 18.07.2012 for which notices were issued on 9.07.2012 granting last opportunity to the aforesaid eight members of the Managing Committee to participate but again eight members including the respondent no.7 did not participate. Then the members of the Managing Committee present in the meeting dated 18.07.2012 decided to invoke the provisions of clause 28 of the Bye-laws of the Society which empowers that, in case any member of the Managing Committee does not remain a member for any reason or absents himself on three consecutive occasions, the Managing Committee will nominate another member till the next meeting of the general body. Accordingly, in the meeting dated 18.07.2012, the members who were present, selected two persons as executive members in place of Kushani Devi and Sanjeev Sahani (respondent no.7). The next meeting was fixed on 26.07.2012 and, thereafter, on 12.08.2012. It is claimed that on both occasions the quorum of Managing Committee was complete and in the meeting dated 12.08.2012, the Managing Committee vide its Resolution No.2 (Annexure-3), approved the Jalkar Distribution List and vide



Resolution No.3, the date of annual general meeting was fixed on 29.08.2012. The annual meeting of general body was held on 29.08.2012 for which notices were published in the newspaper also. In the annual general meeting, all the decisions of the Managing Committee taken in its aforesaid meetings were approved and adopted under the Resolution No.1 and the petitioner no.2 was authorized to take settlement of Jalkars on behalf of petitioner no.1. It is further claimed by the petitioners that the said decision of the annual general meeting held on 29.08.2012 has not been assailed by anybody. After the decision of the Managing Committee and the General Body (Aam Sabha) and after being authorized as such, the petitioner no.2 filed an application on 31.08.2012 along with relevant documents under Section 7 (iii) of the Jalkar Act before the District Fisheries Officer-cum-Chief Executive Officer, Sitamarhi, who, on being satisfied, had settled 53 Jalkars for the period from 2012 to 2019 vide order dated 29.09.2012 (Annexure-6) even though the same was opposed by the respondent no.7 claiming to be the working Secretary along with seven others by filing an application. The aforesaid order passed by the District Fisheries Officer was assailed before the Commissioner, Tirhut Division, Muzaffarpur by filing Jalkar Settlement Appeal No.513 of 2012. The order of the District Fisheries Officer was set aside vide Annexure-7 dated 22.09.2014. The Commissioner, after



setting aside the order, further directed that another meeting should be convened in presence of the District Fisheries Officer and the District Cooperative Officer and, thereafter, upon approval of the list, fresh order of settlement should be passed. This order has been assailed in the present writ petition.

Learned counsel appearing for the petitioners has raised diverse issues for assailing the order. It is contended that once the President or the Secretary is elected in the election conducted by the Bihar State Election Authority, unless he is removed from such post, nobody can be appointed as working President or Secretary and, therefore, the claim of the respondent no. 7 that he is the working Secretary nominated by majority member would fall flat. It is further contended that the nomination of the two members, necessitated due to non-participation by the eight elected executive members including the respondent no.7, was done in view of the provisions in clause 28 of the Bye-laws of the Society as has been discussed above and once the quorum was complete, a decision could have been taken for approaching the District Fisheries Officer under the provisions of the Jalkar Act. However, the same was done after such action was approved by the Aam Sabha in its annual meeting, whereas, the so-called committee, of which the respondent no.7 claims to be working Secretary, was never approved in any general body meeting. Thus, on



representation of such non-est committee, the order of the District Fisheries Officer could not have been set aside by the Commissioner. Lastly, it is contended that the appellate authority, being creature of the statute, was required to take a decision in accordance with law under the framework of statute, v.i.z, Jalkar Act but it has gone beyond it and has exercised the powers of the Register of the Cooperative Society which holding as to which Managing Committee was the real Managing Committee of the Society concerned. It is urged that the same was not in its domain as such dispute is required to be resolved by the Registrar, Cooperative Society under his powers contained in Section 48 of the Bihar Cooperative Societies Act, 1935.

Learned counsel has placed reliance in this connection upon a decision of a co-ordinate Bench of this Court dated 30.04.2014 rendered in C.W.J.C. No.23063 of 2013, as contained in Annexure 8. The petitioners, subsequently, have also challenged the settlement made in favour of the so-called Managing Committee led by the respondent no.7 by filing I.A. No.3287 of 2016.

A counter affidavit and supplementary counter affidavit have been filed on behalf of the respondent no.7. It has been urged on his behalf that even at the time of taking a decision for nominating the members in place of two existing executive members, the quorum of the Managing Committee was not complete and, as such, no



decision could have been taken by it, whereas, eight members out of elected eleven executive members had already formed a separate group and have elected the respondent no.7 as a working secretary. Therefore, they were entitled to represent the Managing Committee. However, no answer has been given to the question raised by the petitioners as to under which provisions of law, if an elected secretary or President is already there, a working secretary could have been appointed by the Executive Committee. There was direct election by which the President and the Secretary were appointed but, without their removal in accordance with law, it is intriguing as to how a working Secretary could have been nominated or appointed by the Executive members. At the same time, the objection raised by the respondent no.7 that the quorum was not complete even for adopting or nominating two members under Clause 28 of the Bye-laws has also some force.

However, the main issue which emerges for taking a decision in this matter would be as to whether the appellate authority had the power to adjudicate as to who was competent to represent the Society? It has to be kept in mind that the settlement is never given to a person rather it is to be given to the Society and even if there is some dispute between members of the Society with respect to its working or representing the Society, that dispute can only be resolved



by taking it to the Registrar, Co-operative Societies under Section 48 of the Act. Reliance has been placed by the petitioners upon a decision of the Single Judge Bench of this Court appended as Annexure 8. The Single Judge Bench while considering the issue has observed that there is a serious misconception that prevails in the mind of the officials including high officials such as Commissioner with regard to the legal status of the Co-operative Society. It has further been observed that the Divisional Commissioner has proceeded as if Cooperative Society is the property or the fiefdom of some individual. In the present case also, under the Jalkar Act, the settlement could have been made in favour of the Co-operative Society only which was duly made. The dispute is as to who is the managing the Co-operative Society. Thus, the dispute essentially was as to the management of the Cooperative which is a subject squarely covered by Section 48 of the Cooperative Societies Act, 1935 and all such disputes would have to be resolved not by the Divisional Commissioner under Section 14 (1) of the Jalkar Act but exclusively by the Registrar under Section 48 of the Cooperative Societies Act.

This Court is also in full agreement with the aforesaid view expressed by the learned Single Judge. After perusal of Annexure-7, it appears that the Commissioner went to great lengths in noticing various facts about the internal management dispute and



tussle between two groups of Cooperative Society and has held that the meeting of Managing Committee held under the petitioner no.2 was not competent to do so in view of the fact that quorum was not complete but it forgot to further discuss as to what would happen if the general body had accepted that and the so-called committee of group of eight members under the leadership of respondent no.7 as working Secretary were never approved by the general body which is the highest body. However, this Court would also not go into such details as such dispute has to be considered, settled, resolved or decided by the Registrar, Cooperative Societies under his powers flowing from Section 48 of the Bihar Cooperative Societies Act. It has been stated that such dispute is still pending before the Registrar, Cooperative Societies. At this juncture, it is being stated on behalf of the respondent no.7 that the dispute raised by him before the Registrar, Cooperative Societies has attained its finality though he does not produce any order thereof but it is informed that the Registrar, Cooperative Societies has directed the District Fisheries Officer to convene a fresh meeting in which all the elected members would participate. Even assuming that to be correct, it can only be understood from the above that the stand of the respondent no.7 that he was the working Secretary and, therefore, settlement was correctly allowed in favour of the group led by him has not been found to be



legal by the Registrar and, therefore, another meeting has been directed to be held.

Be that as it may, this Court would not make a final comment in the matter without looking the matter. However, it is certain that the Commissioner did not have any power to take a decision in the manner which has been done by him. After the aforesaid order passed by the learned Single Judge, the Registrar, Cooperative Society has also issued direction to all the Divisional Commissioners and the District Fisheries Officers that any dispute with respect to the management of the Cooperative Society cannot be decided by the Commissioner in appeal. Under Section 14 (1) of the Jalkar Act, he can merely decide a dispute which arises with respect to the settlement of Jalkars but not the dispute which is prevailing *inter se* between the members of the Managing Committee. This directive was issued on 5.06.2014 vide Annexure-9 but ignoring that Annexure-7 has been passed on 19.08.2014/22.09.2014 by the Commissioner.

In above view of the matter, this writ application succeeds. The decision of the Commissioner, as contained in Annexure-7 and any consequential order of settlement made, are declared as a nullity. However, it would be open for the Registrar, Cooperative Society to bring the relevant pending matter to its logical conclusion if the same has already not been done. So far the issue of



dispute regarding the managing committee is concerned, the decision of the Registrar, Cooperative Societies would be final subject to its challenge before any competent forum.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

