

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 157 of 2017

- =====
1. Mandar Madhusudan Bahudhandhi Swablambi Sahkari Samiti Limited, Bounsi, District- Banka (Bihar) through its President Shankar Prasad Singh.
 2. Shankar Prasad Singh, Son of Late Jawahar Prasad Singh, Resident of Village- Jhapania, P.S.- Bounsi, District- Banka, President of the Mandar Madhusudan Bahudhandhi Swablambi Sahkari Samiti Limited, Bounsi, Banka (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Commissioner, Bhagalpur Division, Bhagalpur.
3. Collector, Banka.
4. Additional Collector, Banka.
5. Sub Divisional Officer, Banka.
6. Deputy Collector of Land Reforms, Banka.
7. Circle Officer, Bounsi, District- Banka.
8. Manas Kumar Singh, Son of Diwakar Prasad Singh, Resident of Village- Sabalpur (Azadnagar), P.S.- Panjwara, District- Banka.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajender Narain, Sr. Advocate Mr. Rajiv Kumar Singh, Advocate
For the State	:	Mr. Sajid Salim Khan, S.C.25
For the Respondent No. 8	:	Mr. Pankaj Kumar Sinha and Mr. Kamal Kishore Jha, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-01-2017

Heard learned counsel for the petitioners, the State
and the respondent no. 8, who has *suo motu* appeared.

The petitioners have moved the Court challenging the
order dated 19.12.2016 issued by the respondent authorities by which
the settlement of the Bounsi Mela for 2016-17 has been made in
favour of the respondent no. 8.

Learned counsel for the petitioners submitted that the
petitioner no. 1, being a registered Co-operative Society is entitled to



preference in the settlement of the Bounsi Mela in terms of the Government policy. He submitted that the policy envisaged that the settlement would be made with a Co-operative Society, which fulfills other criteria, on reserved deposit. It was submitted that the Society applied for settlement before the Competent Authority in terms of the Advertisement enclosing all the documents required including the 'No Dues Certificate' from the Competent Authority as well as recommendation of the Joint Registrar, Co-operative Societies. Learned counsel submitted that in the auction held, there were three private persons and the petitioner no. 1 was the only Co-operative Society and in that view of the matter, there ought not to have been any auction held. Learned counsel further submitted that one of the grounds taken for not making settlement with the petitioners is that they did not produce the 'No Dues Certificate' from the Competent Authority and also the audit report and cash register of the society which is erroneous since the 'No Dues Certificate' having been granted by the Circle Officer, is a valid document for such transaction and further the recommendation of the Joint Registrar, Co-operative Societies itself implies that the petitioners have a clear audit report and only upon the cash register having been produced, and verified, the Joint Registrar has made such recommendation. Learned counsel further submitted that as per the Government policy even the fixation



of reserved deposit is on the basis of open bid held every three years to determine the amount and in the present case, the same having been done in the year 2014-15, for the present transaction, the amount which was fixed for the previous year would be applicable and the petitioners having already deposited the amount, the authorities were bound to make the settlement in their favour.

Learned counsel for the State and the private respondents submitted that the stand of the petitioners is misconceived for the reason that as per the Government circulars, the 'No Dues Certificate' has to be from the Competent Authority which in the present case is not the Circle Officer and would be the Additional District Magistrate, Revenue of the District since the amount of settlement is more than Rs. 25,000/-. It was further submitted that the settlement authorities are also required to independently verify and go through the audit report with regard to the Society and only recommendation by the Joint Registrar does not fulfill the requirement in law. They have further submitted that in any view of the matter, the amount relating to public revenue, the fact that the settlement claimed by the petitioners is for Rs. 3,32,925/- whereas in the auction bid, the amount has gone to Rs. 19,30,000/-, this Court would not interfere in the matter.

Learned counsel for the respondent no. 8 submitted



that the reserved deposit had not been fixed on the basis of open bid for more than three years, as was required under law, and thus, as of now, the amount of reserved deposit cannot be less than Rs. 19,30,000/-, and thus, in any view of the matter, the settlement with the petitioners cannot be for less than Rs. 19,30,000/-, once in an open bid, such amount has come, moreso, as it relates to public revenue and further, when a private party has bid for such amount, it can be safely presumed that the return is much more and, thus, there cannot be any loss to the petitioner Society.

By way of reply, learned counsel for the petitioners submitted that the Competent Authority for giving the 'No Dues Certificate' has not been defined and further with regard to the recommendation also, the Authority not being defined, they had submitted the required papers as per the past practice and procedure.

Having considered the rival contentions, this Court can only observe that if there is a policy of the State Government, the District Authorities, who are also the Authorities for the purposes of making settlement of Bounsi Mela are bound to strictly adhere to such policy. The said policies cannot be interfered with and have also not been challenged in the present proceeding, but it is obvious that mere financial aspect is not the sole criteria for such policy.

Be that as it may, the writ petition stands disposed



off with a direction to the Collector, Banka to decide the matter afresh after giving due opportunity of hearing, both to the petitioners as well as to the respondent no. 8. The parties shall appear before him on 16th January, 2017 at 11.00 A.M. in his Chamber, along with a copy of this order. The Collector shall pass orders within one week thereafter, after hearing all the parties concerned. In case, the settlement in favour of the respondent no. 8 is upheld, the petition filed by him for permission to hold theater and cinema may also be considered.

It goes without saying that if the settlement in favour of the respondent no. 8 is interfered with, the amount of money deposited by him shall be returned to him after proportional adjustment.

It is made clear that though the order impugned has not been quashed but the same shall ultimately abide by the fresh decision taken by the Collector, Banka. This Court has also not expressed any opinion with regard to the merits of the matter, which shall be decided by the Collector, Banka, in accordance with law, after taking into consideration all aspects of the matter.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	

