

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5204 of 2017

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1. Bihar State Milk Co-Operative Federation Limited through its Managing Director, Dairy Development Complex, P.O. - Bihar Veterinary College, Patna - 800014.
 2. The Managing Director, Bihar State Milk Co-operative Federation Limited, Dairy Development Complex, P.O. - Bihar Veterinary College, Patna - 800014.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Co-operative Department, Government of Bihar, Patna.
2. The Principal Secretary, Co-operative Department, Government of Bihar, Patna.
3. Nirmal Kumar Singh Son of Shri Rama Nand Singh Resident of Village - Sikrahata Kala, P.O. - Sikrahara, District - Bhojpur presently Member of Board of Director, Shahabad Dughdha Utpadak Sahkari Sangh Ltd., Katira, Ara (Bhojpur).
4. Shahabad Dughdha Utpadak Sahkari Sangh Ltd. Katira, Ara (Bhojpur) through its Chairman.
5. Niranjan Kumar, son of late Baleshwar Prasad Singh, resident of B/42, Sri Ram Kunj Apartment, B-Block, Mandal Compound, East Boring Canal Road, P.S. Budha Colony, P.O.-G.P.O., District Patna-800001.

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH



ORAL JUDGMENT

Date: 18-08-2017

Heard Mr. P. K. Shahi, learned senior counsel along with Mr. Vikas Kumar and Mr. Nikesh Kumar, learned counsel for the petitioners; Mr. Y . V. Giri, learned senior counsel along with Mr. Ashish Giri, learned counsel for the respondents no. 3 and 4 and Mr. Jitendra Singh, learned senior counsel along with Mr. Ashish Giri, learned counsel for the respondent no. 5.

2. Learned counsel for the petitioners have sought quashing of order contained in Memo No. 38/ML dated 31.03.2017 in Supersession Appeal Case No. 7 of 2016 by which the Appellate Authority, i.e., the Hon'ble Co-operative Minister, Government of Bihar, Patna has quashed Order No. 5697 dated 09.12.2016 issued by the petitioner no. 2 superseding the Managing Committee of respondent no. 4, exercising power under Sections 41 (1) and 41 (3) of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act') and further appointing another person as Administrator.

3. Today, learned counsel for the petitioners, at the very outset, submitted that though he would not be challenging the order interfering with the supersession of the Board of Directors of respondent no. 4, in principle, but he would be assailing the grounds and reasons on which the same has been interfered with, *inter alia*, to the extent that the absorption of the respondent no. 5 has in so many



words been held to be valid and further the power of petitioner no. 2 to repatriate the respondent no. 5 to his parent organization has been held to be bad.

4. Learned counsel for the respondents no. 3 and 4 submitted that in view of petitioners not challenging the ultimate interference in the order of supersession, he is not required to defend the case on merits.

5. Learned counsel for the respondent no. 5 submitted that there are certain issues which are prejudicial to him and his interest, for the reason that his absorption in the service of respondent no. 4 on the post of Managing Director has not been found to be proper and in accordance with law and, thus, for him, all doors for any adjudication on this issue have been shut. It was submitted that the respondent no. 5 has an arguable case, both on facts as well as in law, to show that both, his absorption in the service of respondent no. 4 was valid as well as the order of the petitioner no. 2 repatriating him back to Vaishal Patliputra Milk Union (hereinafter referred to as the 'VPMU') was equally not proper. Learned counsel submitted that even with regard to the present writ petition, the petitioners have only assailed the supersession of the Board of Directors of respondent no. 4 but have not sought any relief with regard to the validity of the absorption of respondent no. 5 in the service of respondent no. 4 or the subsequent order of repatriation of the respondent no. 5 to VPMU.



Learned counsel submitted that the challenge to the supersession having been given up, nothing remains in the writ petition, which should be dismissed simpliciter. Learned counsel submitted that neither there is any definite finding given with regard to the validity of the absorption of service of respondent no. 5 in the respondent no. 4 nor is there any definite finding with regard to the infirmity in the order of the petitioner no. 2 repatriating the respondent no. 5 to his parent organization i.e., VPMU. Learned counsel submitted that once the main relief has not been granted, there cannot be any other relief moulded, either by way of an interim order or final order, as the same is beyond the scope of consideration of the writ petition. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi** reported as **(2010) 1 Supreme Court Cases 234**, the relevant being at paragraphs no. 29 to 35. Learned counsel also relied upon the decision of the Hon'ble Supreme Court in the case of **Cotton Corporation of India v. United Industrial Bank** reported as **(1983) 4 Supreme Court Cases 625**, the relevant being at paragraph no. 10 for the same proposition. He also relied upon the decision of the Hon'ble Supreme Court in the case of **Ashok Kumar Yadav v. State of Haryana** reported as **AIR 1987 SC 454**, the relevant being at paragraph no. 10, for the proposition that something which was not challenged in the writ petition nor there being any relief claimed, the



validity of such could not be questioned collaterally. Further, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **A. R. Antulay v. R. S. Nayak** reported as **(1988) 2 Supreme Court Cases 602**, the relevant being at paragraph no. 8, for the proposition that an act of Court shall prejudice none. He submitted that once there have been certain findings, even though tentative in nature, in the order of the Court dated 07.04.2017, it shall act both as *res judicata* as well as a conceptual proposition before the lower authority/forum where the matter may either be pending or be brought before. In effect, learned counsel summed up his arguments by submitting that his interest to the extent of not being prejudiced by such tentative finding of the Court in its earlier orders be taken care of.

6. Learned counsel for the petitioners, by way of reply, submitted that the order impugned has been assailed in totality and not piecemeal. It was submitted that when the Appellate Authority, while passing the order impugned, has considered the validity and sanctity of the service of respondent no. 5 being absorbed in the respondent no. 4 and has further gone to hold that the order of the petitioner no. 2 repatriating the respondent no. 5 to his parent society, i.e., VPMU was not proper, even without assailing the supersession, it is open to the petitioners to assail the reasoning and finding given in the order impugned on those issues. It was submitted that the Appellate



Authority has gone on the validity of the decision of the petitioner no. 2 as well as the decision of the respondent no. 4 to consider the issue of supersession which is not only objectionable but is also incorrect, both factually as well as in law. Learned counsel further submitted that the Court would not close the door for the petitioners so that if so required in future, an independent decision may be taken with regard to the issue of taking action against any acts of omission or commission by the respondent no. 4, in accordance with law. Learned counsel submitted that he is agreeable to the Court clarifying that neither the findings or reasoning given in the order impugned nor anything which may have been mentioned in the previous orders by this Court in the present proceeding may prejudice either of the parties in any proceeding before any appropriate forum which shall be heard and considered independently without treating such observations as findings.

7. As the petitioners have chosen not to assail the order interfering with the supersession of Board of Director of respondent no 4, the Court has not gone into the said issue. However, the Appellate Authority equally could not have gone into the merit of either the repatriation of respondent no. 5 to VPMU or of his absorption in the service of respondent no. 4., as the said dispute was not the subject matter of the appeal, and in any view of the matter, the respondent no. 5 had not approached the appropriate forum for such



relief and till date situation remains that respondent no. 5 has not moved against such decision of the petitioner no. 2, either against his absorption in the service of respondent no. 4 or with regard to his repatriation to be VPMU. In the present case also, at the instance of the Court, respondent no. 5 had been made a party and has appeared and also heard. This would not amount to the respondent no. 5 claiming right to either his absorption in the service of respondent no. 4 or the issue of his repatriation to VPMU since the present proceeding has not been filed by him. It was open to respondent no. 5 to challenge the same before the appropriate forum but him choosing not to do so, he cannot be permitted to get the said issues adjudicated in the present proceeding.

8. Be that as it may, in any view of the matter, the Appellate Authority, that is, the Hon'ble Minister, Department of Co-operation, Government of Bihar in the *lis* before him could not have gone into and decided such issue and thus to that extent, clearly any observation/finding/decision in the Appellate order impugned dated 31.03.2017 cannot be sustained and accordingly such finding in the decision relating to validity/upholding of the absorption of the service of respondent no. 5 in the respondent no. 4 and repatriation of his service to VPMU are set aside.

9. Furthermore, when the petitioners themselves do not press for adjudication on the issue of supersession of the Board of



Director of respondent no. 4, after conceding on the limited ground that the due and proper procedure prescribed in law has not been strictly followed, the Court has not gone into such aspect in the present writ petition.

10. It would be relevant to indicate here that the Appellate Authority could have inter alia held that the ground taken by the petitioner no 2 for supersession of the Board of Director of respondent no. 4 as far as the absorption of the services of respondent no. 5 in the respondent no. 4 and repatriation of respondent no. 5 to VPMU could not have been a ground for supersession but the said issues could not have been gone into or decided on merits as it was not part of the *lis* before the Appellate Authority, that is, there was no challenge on merits with regard to the decision relating to absorption of the services of the respondent no. 5 in the respondent no. 4 and also to the decision of the petitioner no. 2 to repatriate the respondent no. 5 to VPMU, which was his parent organization. Thus, on this score also, any decision or finding of the Appellate Authority with regard to validity of such decision was beyond this scope of the proceeding before him and could not have been gone into for such proceeding.

11. At the cost of repetition, it was for the party aggrieved that is, the respondent no. 4 or the respondent no. 5 himself to institute a separate and proper proceeding before the appropriate forum, in accordance with law, for setting aside the order of the



petitioner no. 2 relating to absorption of the service of respondent no. 5 in respondent no. 4 and the order of petitioner no. 2 with regard to repatriation of the service of respondent no. 5 to his parent organization VPMU. The Court, would also indicate here that perusal of the memo of appeal of the respondent no. 1 in Supersession Appeal No. 7 of 2016, in which the impugned order has been passed, would indicate that the same was filed primarily assailing the jurisdiction of the petitioner no. 2 to exercise power under section 41 of the Act, which surprisingly, has neither been considered nor dealt with in the impugned order dated 16.03.2017, which is a further indicator that the order to such extent of deciding the merit of both the absorption of service of respondent no. 5 in respondent no. 4 and the repatriation of the service of respondent no.5 to VPMU which is a parent organization, are clearly improper and even though it may have been a ground for supersession, but the merits of the order of absorption and repatriation were distinct and separate issues. Further, when challenge to the supersession has been given up by the petitioners before this Court, accepting that there may have been procedural infirmities, the Court finds that there is no occasion to go into the merits of the supersession and all issues including that of jurisdiction are left open to be decided in an appropriate proceeding by the appropriate forum, in accordance with law, in future, as and when required. Similarly, the decision of the petitioner no. 2 to repatriate



the services of respondent no. 5 to the parent organization, that is, VPMU, unless adjudicated in a separate proceeding before the appropriate forum, in accordance with law, shall continue to operate.

12. Likewise, any tentative finding recorded in the previous orders by this Court on such issue shall also not be a binding precedent and it would be open to the parties to assist the forum/authority before which the *lis* may be pending or brought in future to form an independent view in accordance with law, after giving opportunity of being heard to all parties concerned.

13. It is made clear that the order was dictated in open Court and no other issue or point was raised before the Court. However, in view of the fact that the respondent no. 5 has not preferred to challenge his repatriation or the appointment of another person to the post of Managing Director in respondent no. 4 and this Court not being persuaded to give a finding in favour of the respondent no. 5, the position as continuing today, shall continue till any decision is rendered by the competent forum/authority/court of law.

14. This order has been passed also on the ground that the respondent no. 5 has till date not moved before any authority/forum/court with regard to any grievance he may have with regard to him not being absorbed on the post of Managing Director in respondent no. 4 or his repatriation as well as of posting another



person on the post of Managing Director of respondent no. 4.

(Ahsanuddin Amanullah, J)

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