

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1632 of 2017

In

Civil Writ Jurisdiction Case No.5204 of 2017

Niranjan Kumar, son of Late Baleshwar Prasad Singh, resident of B- 42, Sri Ramkunj Apartment, East Boring Canal Road, P.O.- Boring Road, P.S.- Buddha Colony, District- Patna- 800001.

... .. Appellant

Versus

1. Bihar State Milk Cooperative Federation Ltd. Through Its Managing Director, Dairy Development Complex, P.O.- Bihar Veterinary College, Patna- 800014.
2. The Managing Director, Bihar State Milk Cooperative Federation Ltd., Dairy Development Complex, P.O.- Bihar Veterinary College, Patna- 800014.
3. The State of Bihar, through Principal Secretary, Co-operative Department, Government of Bihar, Patna.
4. The Principal Secretary, Co-operative Department, Government of Bihar, Patna.
5. Nirmal Kumar Singh, son of Sri Rama Nand Singh, resident of Village- Sikrahata Kala, P.O.- Sikrahata, District- Bhojpur, presently Member of Board of Director, Sahabad, Dughdha Utpadak Sahkari Sangh Ltd., Katira, Ara, District- Bhojpur.
6. Sahabad Dughdha Utpadak Sahkari Sangh Ltd., Ara (Bhojpur) Katira, Ara, District- Bhojpur through its Chairman.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Kamal Nayan Choubey, Senior Advocate Mr. Ashish Giri, Advocate
For the Respondent State:		Mr. Raj Ballabh Pd.Yadav, AAG-11
For the Respondents :		Mr. P.K.Shahi, Senior Advocate Mr. Vikas Kumar, Advocate Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 23-04-2018

Heard counsel for the parties.

2. The origin of the present appeal lies in an earlier writ application preferred by the Bihar State Milk Co-operative Federation Ltd. as well as by the Managing Director of Bihar State



Milk Co-operative Federation Ltd., Patna (hereinafter referred to as 'the Federation'). Their hands were forced because of an order dated 31.03.2017 passed by the Hon'ble Minister, Government of Bihar, Patna in Supersession Appeal No. 7 of 2016.

3. The Managing Director of the Milk Co-operative Federation in exercise of power under Section 41(1) and Section 41(3) of Bihar Co-operative Societies Act, 1935, dissolved the Managing Committee of Shahabad Dugdh Utpadak Sangh Ltd. (hereinafter referred to as 'the Sangh') and appointed Shri Ramesh Kumar Mishra, General Manager, COMFED as Administrator. It was also directed that all decisions taken in respect of one, Niranjana Kumar, the then so called Managing Director of the Sangh to be declared illegal.

4. The order of supersession was assailed by one, Nirmal Kumar Singh, who was said to be a Member of Shahabad Dugdh Utpadak Sangh. The core issue before the Minister, while exercising power of appeal, was whether the supersession order passed against the Shahabad Society was legal or valid.

5. In a detailed order dated 31.03.2017, passed by the Minister, which was Annexure-1 to the writ application, while deciding the issue of supersession, which he held to be bad, he went overboard and decided the appointment/absorption as well as



continuance of Niranjana Kumar as Managing Director of Shahabad Society to be valid. The reason for doing so given by the Minister is that manner of functioning of Niranjana Kumar was also one of the reasons provided in the order of supersession.

6. The Milk Co-operative Federation and the Managing Director being aggrieved by the findings and declarations given by the Minister in the impugned order, moved the Patna High Court in a writ application which was registered as CWJC No. 5204 of 2017. The petitioners, i.e. the Federation, who are Respondent 1 and 2 to the present Letters Patent Appeal, urged and argued before the learned single Judge that they are not seriously contesting the decision given by the Minister with regard to supersession, but the findings, which has been given by the Minister with regard to the status of Mr. Niranjana Kumar, was totally uncalled for. It is their case that Niranjana Kumar was an employee of Vaishal Patliputra Dugdh Utpadak Sahakari Sangh. He was sent on deputation to the Shahabad Dugdh Utpadak Sangh and his lien with the original employer was not terminated. No doubt, some effort was made by Mr. Niranjana Kumar as well as the Shahabad Society to absorb and retain the service of Mr. Niranjana Kumar permanently, for which certain deliberations and exercise had been done but with the kind of controversies and his conduct,



the Federation decided to withdraw the services of Niranjana Kumar and give him another responsibility or post and position. However, the Minister by exceeding his power under Section 41(6) of the Bihar Co-operative Societies Act, 1935 entered into an area of adjudication by exercising powers not vested in him. The decision of the Minister, which if read in entirety, gives an impression to this Court that it was not the issue of supersession, which was of paramount importance, but the continuance of Mr. Niranjana Kumar and his absorption on the post of Managing Director, which was the core issue which needed to be adjudicated upon.

7. With the above declaration made by the Minister with regard to the status of Niranjana Kumar and his continuance being given a seal of approval despite the decision of the parent department to recall him and give him posting, rightly gave a cause for the Federation to assail the order before the writ Court.

8. When the matter was earlier heard in detail by the learned single Judge, an order dated 07.04.2017 was passed. The learned single Judge in the hotly contested matter did take note of the fact that the issue before the Hon'ble Minister was the position of supersession and it was totally uncalled for and unwarranted for the Minister to decide the issue of absorption and continuance of



Niranjan Kumar on the post of Managing Director in the Shahabad Milk Co-operative Society. Therefore, he passed an order of restraint so far as that part of the order of the Minister was concerned. The learned single Judge taking note of the fact that the order of restraint will have a fall out on the interest of Niranjan Kumar, who was not a party to the writ application initially, was impleaded as respondent No. 5.

9. The learned single Judge after hearing the parties decided to finally dispose off the writ application by a detailed order dated 18.08.2017, wherein he held the order of the Hon'ble Minister declaring the status of Mr. Niranjan Kumar to be unwarranted and uncalled for. He set aside the order of the Minister dated 31.03.2017. Since the question of illegality of the supersession was given up by the writ petitioner, therefore, that aspect was not adjudicated and the order of the Minister to that extent remained operative.

10. An appeal, namely, L.P.A. No. 1632 of 2017 came to be preferred by Mr. Niranjan Kumar. Much arguments came to be made on behalf of the learned senior counsel representing Mr. Niranjan Kumar as to how the order of the learned single Judge is required to be interfered with and how serious prejudice has been caused to him by the observations made by the learned single



Judge. He harped on the fact that when the earlier order dated 07.04.2017 was passed by the learned single Judge he was not made a party and despite the same, an ex-parte order of stay was granted against the finding in his favour by the Minister, therefore, any subsequent decision and adjudication made vide order dated 18.08.2017 will not cure the illegality committed initially.

11. This Court finds it strange as to why so much is sought to be made out about the order of the learned single Judge where he very fairly refrained from commenting upon the issue relating to the status of Mr. Niranjana Kumar either with regard to his absorption as a Managing Director in the Shahabad Milk Co-operative Society or the order of recall of his service passed by the Managing Director and his new posting and assignment provided to him. This was done with a purpose and object because the learned single Judge was conscious of the fact that the issue before the Hon'ble Minister was issue of supersession of the society and it was not a service appeal of Mr. Niranjana Kumar, who was not even a party in the Supersession Appeal No. 7 of 2016. Obviously, the Minister, therefore, had transgressed his boundaries by going into merits of adjudication, which was neither necessary nor fell within his jurisdiction, of exercise of power.

12. The decision, which had been taken by the Managing Director of the Federation with regard to the status of



Niranjan Kumar, was an independent cause of action and Mr. Niranjan Kumar had all the freedom and right to knock at the doors of the forum available to him. But the whole effort on the part of Niranjan Kumar is to somehow hang on to the decision and observation of the Hon'ble Minister and by a via-media by preferring the present appeal, i.e. L.P.A. No. 1632 of 2017, to focus on the issue of his absorption, continuance as well as repatriation, which was not the issue for adjudication either before the Minister or before the learned single Judge.

13. The learned single Judge, therefore, has rightly allowed Mr. Niranjan Kumar to assail all the decisions which may have been taken by the Federation contrary to his interest and by refusing to comment upon the legality or otherwise. He has rightly held back his horses for the reason that he did not want to create any prejudice either in favour of Mr. Niranjan Kumar or against the interest of the decision taken by the Managing Director of the Federation.

14. Effort on part of the learned senior advocate representing Mr. Niranjan Kumar is to convert the forum of appeal into one where his issue should be decided when it was not his case even before the learned single Judge that he was willing to



contest the issue relating to his absorption, continuance or repatriation, which was an independent cause.

15. In the totality, therefore, we do come to a conclusion that the Hon'ble Minister had exceeded his jurisdiction by passing a decisive order in favour of continuance of Mr. Niranjana Kumar as a Managing Director of the Shahabad Milk Co-operative Society as well as holding his repatriation to be bad and such a decision, which exceeded the jurisdiction and power of the Minister, was rightly interfered with by the learned single Judge. We also opine that the learned single Judge vide order dated 18.08.2017 has allowed Mr. Niranjana Kumar all the freedom to assail the decisions taken by the Managing Director of the Co-operative Federation before the forum he chooses and he has also rightly observed that none of the observations made by any of the authorities, be it the Minister or be it the writ Court, will in any manner cause prejudice either in favour or against Mr. Niranjana Kumar.

16. We are of the opinion that the decision in relation to the status that Mr. Niranjana Kumar is an independent cause of action and the adjudication made in the writ application of the Bihar State Milk Co-operative Federation as well as the Managing Director of the said Federation can not be used to decide the status



or otherwise of Mr. Niranjan Kumar on the basis of observation of the Hon'ble Minister.

17. The appeal, therefore, is required to be dismissed as we do not find any infirmity in order dated 18.08.2017 passed in CWJC No. 5204 of 2017 by the learned single Judge. The dismissal of the appeal, however, will not come in the way of Mr. Niranjan Kumar assailing the decision of the Managing Director of the Federation before the forum he chooses to do so. To belie any kind of misgivings, which the learned senior advocate has expressed, let it be recorded that the adjudications and observations made either by the Minister or by the learned single Judge in the writ application especially in relation to the order dated 07.04.2017 will not create any kind of prejudice. His case will be decided on the materials and arguments which may be made before the forum concerned.

18. Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan-Ragini/-

AFR/NAFR	A.F.R.
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