

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1215 of 2018

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Kahalgaon Prakhand Matsyajivi Sahyog Samiti Limited S/o Late Kartik Mahaldar Resident of Village - Siya P.S. - Kahalgaon, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Animal Husbandry and Fisheries Department, Bihar, Patna
2. The Commissioner, Bhagalpur Division, Bhagalpur.
3. The Director, Fisheries, Bihar, Patna.
4. The District Fisheries Officer-cum-Chief Executive Officer, Bhagalpur.
5. Giridar Mahaldar S/o Late Jhapti Mahaldar Resident of Village P.O. - Ekchari, P.S. - Rasalpur, District - Bhagalpur, Ex-Secretary of Ad-hoc Managing Committee of Kahalgaon Prakhand Matsyajivi Sahyog Samiti Ltd.
6. Dinesh Mahaldar Son of Sudin Mahaldar
7. Surya Kishore Mahaldar S/o Late Narayan Mahaldar Both residents of Village - Paschim Tola, Bholsar, P.S. - Rasalpur, District - Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pashupati Pd. Sinha Mr. Pramod Kumar
For the State	:	Mr. Md. Khurshid Alam- AAG-12
For the private respondent	:	Mr Rakesh Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-06-2019

An order dated 07.12.2017/12.12.2017,
passed by the Commissioner, Bhagalpur Division,
Bhagalpur in Misc. (Fisheries) Appeal No. 07 of 2017-18
is under challenge in the present writ application filed by
Kahalgaon Prakhand Matsyajivi Sahyog Samiti
(hereinafter referred to as the Co-operative Co-operative
Society), through its Secretary Arun Mahaldar, whereby he



has set aside an order dated 13.08.2017 passed by the District Fisheries Officer-cum-Chief Executive Officer, Bhagalpur of issuance of *parwana*, in respect of seventy eight *Jalkars* for the period 2017-18, as illegal, in violation of statutory provisions under the Bihar Fish Jalkar Management Act, 2006 (for short 'the Act of 2006'). After having cancelled the *Parwana* dated 13.08.2017, the Commissioner has directed the Director, Fisheries, Bihar, to depute a Senior Officer of the Department to make an inquiry in respect of illegalities in the matter of changing the *Pattas* issued in favour of fishermen and take further action in accordance with law.

2. At the outset, it must be noted that, according to the petitioner, the aspect that the *Parwana* dated 13.08.2017 was issued in the light of and pursuance to the decision of the Managing Committee of the Co-operative Society dated 30.08.2015, has been completely overlooked by the Commissioner, while passing the impugned order.

3. Before I take note of the chain of events in chronological order, I consider it apt to refer to the resolution of Co-operative Society dated 30.08.2015 in which Arun Mahaldar has been described as the Secretary



and Dasrath Sahni, the Chairman of its Managing Committee. The meeting, as indicated in the resolution, was convened in the light of the settlements said to have been illegally made by Girendra Mahaldar, ex-Secretary of the Adhoc Managing Committee of the Co-operative Society(respondent no.5). In the said resolution, the Managing Committee of the Co-operative Society reached a conclusion that the settlements of 26 *Jalkars* by the *ad-hoc* committee with Girendra Mahaldar as its Secretary, with the issuance of fresh *Pattas*, by changing the earlier settlements, were against the interim order dated 04.12.2012 and final order dated 11.11.2013 passed in CWJC No. 20751 of 2012 and CWJC No. 21873 of 2012. The resolution also termed the decision taken in 2012-13 to be in breach of the provisions of the Act, as amended through Bihar Fish Jalkar Management (Amendment) Act, 2010 (for short 'the Amendment Act of 2010').

4. Mr. Pashupati Prasad Sinha, learned counsel, appearing on behalf of the petitioner, has submitted that the impugned order of the Commissioner, passed on the appeal preferred by respondent no.6, is bad for the reason that there being dispute in respect of the functioning of the



Co-operative Society, only an appeal could be maintained before the Registrar, Co-operative Societies, under the Bihar State Co-operative Societies Act, 1935 (for short 'the Act of 1935'). He has secondly argued that, as a matter of fact, the resolution of the Co-operative Society dated 30.08.2015 was under challenge before the Commissioner in appeal, which being hopelessly barred by time, should have been dismissed on that ground alone.

5. I will take note of other facts and circumstances for determination of the questions which have arisen later. I have considered it apposite to reject the aforementioned two submissions, at the very outset. Against the said resolution dated 30.08.2015, an appeal was preferred by respondent no.5 under Section 48 of the Act of 1935, giving rise to Misc. Case No. 01 of 2016, which was finally decided by order dated 25.11.2016. The Deputy Registrar, Co-operative Societies in his order dated 25.11.2016/23.12.2016 has recorded the objection raised on behalf of the petitioner in the proceeding before him to the effect that the said case was not maintainable before him, in the light of the provisions under Sections 14 and 16 of the Act of 1935.



6. Diametrically opposite stand, which the learned counsel for the petitioner intends to take in the present proceeding, is impermissible. Further, the order passed in Misc. Case No. 01 of 2016, holding the said case filed against the decision of the Managing Committee dated 30.08.2015, as not maintainable, relying on the provisions of Section 16 of the Act of 1935, cannot be said to be unjustified. Keeping that in mind, the appeal cannot be said to be time-barred, which was preferred against the *Parwana* issued on 13.08.2017.

7. Certain statutory provisions and relevant facts, need to be taken note of, at this stage. Section 11B of the Act of 1935 stipulates that all existing Fishermen Co-operative Societies at Block level, with the area of operation confined to the geographical limit of the Block shall stand merged in one Co-operative Society and shall be deemed to be registered as a new Co-operative Society under the Act of 1935. It further contemplates that on such reorganization, all members of the existing Co-operative Societies shall be deemed to have become members of such reorganized Society and shall have all rights and liabilities as members of the said Society. The second



proviso to Section 11B of the Act of 1935 further requires that on such reorganization, for managing the affairs of the new Society and all such affiliating Societies of which the Fishermen Co-operative Society is a member, the Registrar/Government shall constitute an *ad hoc* Managing Committee for a period not exceeding one year, within which the new Managing Committee shall be constituted after elections.

8. There is a statement made in paragraph 5 of the counter affidavit filed on behalf of respondent no.6 that there were four fishermen Co-operative Societies in Kahalgaon Block, namely, (a) Kahalgaon Anchal Matsyajivi Sahyog Samiti Ltd., (b) Kagji Tola Matsyajivi Sahyog Samiti Ltd., (c) Uday-Rampur Kodwar Matsyajivi Sahyog Samiti Ltd. and (d) Bholsar Matsyajivi Sahyog Samiti Ltd. In the light of the statutory provisions under Section 11B of the Act of 1935, a block level Co-operative Society, namely, Kahalgaon Prakhanda Matsyajivi Sahyog Samiti was constituted, but with the merger of only two Societies, mentioned at (a) and (b) above, instead of four and the remaining two i.e. (c) and (d) were left out from reorganization. This specific



avermment has no denial. The registration of the old Society, constituted on 14.03.2011 was challenged before the Registrar Co-operative Societies, giving rise to Misc. Case No. 20 of 2012. In the meanwhile the Managing Committee, so constituted, held an election and the result of the said election led registration of Election Dispute Case No. 79 of 2012. Arun Mahaldar, through whom the present writ application has been filed, claiming to be the Secretary of the Society, was elected as the Secretary of the said Society. The Registrar, Co-operative Societies, while hearing both the cases together, by an order dated 23.07.2012, had stayed the financial transaction of the old Society.

9. It is the case of the petitioner that the *Jalkars* were settled with the issuance of *parwana* in favour of the Society on 29.08.2012, through Arun Mahaldar, who distributed the *Jalkars* in favour of the members of the Society by executing *Pattas*, but the contesting private respondents did not approach the Secretary for taking the settlement of *Jalkars* and therefore, no *Jalkar* was issued in their favour.

10. It is the case of respondent no.6, on the other



hand, as pleaded in the counter affidavit, that despite interim order of stay on final transaction dated 23.07.2012, the District Fisheries Officer, Bhagalpur invited application and settled *Jalkars* in favour of Arun Mahaldar. There is allegation in the counter affidavit of backdating, manipulation and the meeting wrongly shown to have been convened before the interim order of the Registrar, Co-operative Societies. Defying the interim order of the Registrar, Co-operative Societies, *Pattas* and receipts in the names of their favorite members to whom *Jalkars* had been proposed to be distributed, had been shown to have been issued on 21.07.2012 and in violation of the interim order dated 23.07.2012, the revenue was deposited and *Parwana* obtained on 29.08.2012. The Registrar, Co-operative Societies had directed an inquiry into all these affairs and called for a report, whereupon a report was submitted by the Assistant Registrar of the Co-operative Societies, depicting the acts of forgery, backdating and manipulation in the records and breach by Arun Mahaldar of the interim order. The statements to this effect in the counter affidavit filed on behalf of respondent no.6 have not been denied. The Registrar, Co-operative



Societies passed the final order dated 17.09.2012/04.10.2012, holding Arun Mahaldar guilty of backdating and contempt. He also directed for initiation of action against him. The Registrar held the distribution of *Jalkars* among the members pursuant to the meeting dated 20.07.2012 to be null and void. The orders dated 04.10.2012 passed by the Registrar, Co-operative Societies in Misc. Case No.20 of 2012 and Election Dispute Case No. 79 of 2012 were thereafter challenged before this Court by filing writ applications, giving rise to CWJC No. 20751 of 2012 and CWJC No. 21873 of 2012. The two writ applications came to be disposed of by order dated 12.11.2013. This is to be kept in mind that by the said order dated 04.10.2012, the Registrar, Co-operative Societies had set aside the order of the District Co-operative Officer, which had permitted amalgamation of only two Co-operatives out of four. Dealing with the facts and circumstances, this Court in the order dated 12.11.2013 specifically recorded that the order of the District Co-operative Officer, ordering amalgamation could not be sustained and, at the same time, the order of the Registrar, Co-operative Societies could not be



sustained. Assigning reasons, this Court held that the order of the District Co-operative Officer could not be sustained because no steps were taken to see that all the Fishermen Cooperative Societies, operating within the geographical area of the Block were amalgamated. Interfering with the order of the Registrar, Co-operative Societies, the Court held that merely because of the registration of the Co-operative Society was done by the District Co-operative Officer, the registration itself could not be held valid, applying the doctrine of *de facto/de jure*. The Court further held that as the order of the District Co-operative Officer was being set aside on the ground that it was against the legislative intent, as envisaged by amendment to Section 8 of the Act of 1935, the order of the Registrar would also fall and consequently rendered unsustainable. The Court recorded that the amalgamation that had taken place would have to be worked out all over again and all Fishermen's Co-operative Societies would have to be amalgamated, be at Panchayat level or Block level, as contemplated under Section 11B of the Act of 1935. The Court further recorded that an *ad hoc* Committee had to be constituted by the Registrar or the State Government, as



the case may be, as contemplated under second *proviso* to Section 11B of the Act of 1935 and see that upon this amalgamation or reconstitution, the *ad hoc* Committee got the elections held for a permanent Management Committee of the new reconstituted amalgamated Fishermen's Co-operative Society. The Court expected the District Co-operative Officer to take necessary action within one month. The Court after having said so, ordered as follows:-

“Till such time, the new *ad hoc* Committee is formed in accordance with the orders of this Court, status quo as was obtaining upon earlier amalgamation, shall be restored and continued.

It is made clear that any settlement taken by any person in any name would not be a settlement in persona. It would be a settlement for and on behalf of the amalgamated Block Level Fishermen's Cooperative Society.

Let it be noted that the moment the new



amalgamated Cooperative Society comes into existence, all settlements, which were with any of the Cooperatives which have merged, would be transferred to the name of the amalgamated Cooperative and will not stand in the name of any individual or through any individual officer.

With these observations and directions, the two writ petitions are disposed of.”

11. It is evident from the direction given by this Court in the order dated 12.11.2013 that the status quo as was obtaining upon earlier amalgamation was directed to be restored and continued till new *ad hoc* Committee was formed in accordance with the orders of this Court. Two Letters Patent Appeals were thereafter preferred against the said order of this Court dated 12.11.2013, giving rise to LPA Nos. 564 of 2014 and 552 of 2014. The Division Bench of this Court noticed the provisions of Section 8(1) (b) and 11B of the Act of 1935 and dismissed the said appeals by order dated 20.04.2015 in the following terms:-



“It is brought to our notice that despite the direction issued by the learned single Judge for conducting elections to a single society covering the entire Block, they have not been conducted so far. If it is so, the concerned officials shall ensure that the elections are conducted within two months from today.”

12. It is unfortunate that the petitioner did not bring on record the orders of this Court passed in the writ proceeding dated 12.11.2013 and in Letters Patent Appeal proceeding dated 20.04.2015. As a matter of fact, this Court learnt about certain orders having been passed by the Division Bench only through the counter affidavit filed on behalf of respondent no.6.

13. In the aforesaid background the legality of the impugned order of the Commission dated 12.12.2017 is to be tested.

14. It is to be noted that an interlocutory application has been filed on behalf of the petitioner, seeking amendment in the writ application so as to challenge an inquiry report submitted by the Deputy Director, Fisheries (Headquarters), Bihar, wherein he has



recorded that the distribution list submitted by Girindra Mahaldar should be treated as original *patta* and, according to the petitioner, he has failed to consider in his report that two lists of distribution of *Jalkars* for the period 2012-13 and 2013-14 had been also submitted previously, which have been ignored. The said report is in pursuance of the impugned order of the Commissioner. In the light of the order of the Commissioner and the report submitted by the Deputy Director (Fisheries), the District Fisheries Officer has issued *Parvana* on 28.09.2018, whereby *Jalkars* have been settled in favour of original *pattedars* (78) from 01.07.2018 to 31.07.2019.

15. It is the case of the petitioner that it is not evident from the said *Parvana* as to who has deposited the amount on behalf of the Society and, in any event, if any *patta* was required to be issued, the same ought to have been issued by the Secretary of the Society, whereas the *Patta* has been issued by one Amrendra Kumar, a third person who has nothing to do with the Society. The said report, *parwana* and issuance of *patta* have been challenged by seeking amendment in the writ application

16. Considering the nature of grievance and since



the said impugned actions are consequential to the main order under challenge, I. A. No. 9221 of 2018 is allowed. The petitioner is permitted to seek amendment as mentioned in I.A. No. 9221 of 2018, which shall be treated as part of the writ application.

17. A counter affidavit has been filed on behalf of respondent no.6 to the interlocutory application. It has been stated that through Annexure-29, respondent no.6 and others have been allowed fishing till 31.07.2019.

18. Counter affidavit has also been filed on behalf of the Stat-respondent. It has been stated in the counter affidavit filed by the District Fisheries Officer-cum-Chief Executive Officer, Bhagalpur that new *ad hoc* Committee had rightly changed *patta* executed by the previous Managing Committee, the same having been done without the approval of the District Fisheries Officer-cum-Chief Executive Officer, Bhagalpur

19. On a careful analysis of the facts noted above, it is easy to appreciate that the controversy arose because of improper amalgamation of four fishery Co-operative Societies within the geographical area of Kahalgaon Block. Two Co-operative Societies working at Panchayat



level were wrongly excluded and an election was held for Kahalgaon Prakhanda Matsyajivi Sahhog Samiti, excluding two Co-operative Societies, which was held to be illegal by a Co-ordinate Bench of this Court in a writ proceeding as also by the Division Bench. An *ad hoc* Committee was constituted, in accordance with the observations of this Court made in the order dated 12.01.2015. The *ad hoc* Committee had changed the *pattas* executed by the previous Managing Committee and fresh *Pattas* were issued. After the election of the duly constituted Society was held on 10.08.2015, Arun Mahaldar was elected as Secretary and by resolution dated 30.08.2015, the newly constituted Managing Committee changed the *patta* executed by Girendra Mahaldar and thus allowed the previous settlers to continue. The commissioner after having noticed that the cancellation of *patta* had been done without following the procedure under the Act, has directed the Director, Fisheries to examine the correctness of the decision and ensure action in accordance with law.

20. In my opinion, no purpose would be served by entertaining the present writ application as, in any event, the term is coming to an end by 31.07.2019, which



is an admitted fact. I have refrained from interfering with the order of the Commissioner also for the reason that there was no notice issued to the settlees of *jalkars* regarding cancellation of settlement in their favour, which was made earlier by the ad hoc Committee.

21. In the peculiar facts and circumstances, as noted above and in view of the fact that the term of settlement is going to expire in July, 2019, I am of the opinion that the impugned order does not require interference.

22. This writ application is accordingly dismissed.

23. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

HR/-c

AFR/NAFR	AFR
CAV DATE	Nil
Uploading Date	28.06.2019
Transmission Date	

