

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1767 of 2018

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1. Patori Anchal Matsyajivi Sahyog Samiti Limited through its Acting Secretary namely Mina Devi, wife of Rajesh Sahani, resident of village Sahpur Woondi, Police Station Patori, District- Samastipur.
 2. Mina Devi, Wife of Rajesh Sahani, Resident of village Sahpur Woondi, Police Station Patori, District Samastipur.
 3. Nandlal Sahani, son of Nago Sahani, Chairman of Petitioner No. 1, Society, Resident of village Sahpur Woondi, Police Station Patori, District Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Registrar, Co-operative Societies, Bihar, Patna.
3. The Joint Registrar, Darbhanga Division, District Darbhanga.
4. The District Fisheries Officer-cum-Chief Executive Officer, Samastipur.
5. Satrugan Sahani, son of Hira Sahani, resident of village Sivrama, Police Station Patori, District Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mahasweta Chatterjee
For the State	:	Mr. Mukul Prasad, A.C. to G.P-18
For respondent No. 5	:	Mr. Deepak Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 15-10-2019

Heard learned counsel for the parties.

2. This writ application has been filed on behalf of the Patori Anchal Matsyajivi Sahyog Samiti Limited (hereinafter referred to as “Society”) of which petitioner No. 3 is indisputably the Chairman. This is not in dispute that an election of the office bearers of the Society was held on 09.03.2016 in which petitioner No. 3 was elected as the Chairman of the Society and respondent No. 5 as the Secretary of the Society. It is the case of the petitioners that since respondent No. 5 was



found indulging in illegal and anti-society activities, a show cause notice was issued to him on 24.05.2016 and a reminder on 13.06.2016, in this regard. He did not respond, however. A notice was issued on 13.06.2016, convening a meeting of Managing Committee of the Society on 26.06.2016 to consider the removal of respondent No. 5. He did not turn up in the said meeting of the Executive Committee, despite notice. The Executive Committee, in its meeting, decided removal of respondent No. 5 from his primary membership of the Society. A copy of the proceedings of the meeting of the Society held on 26.06.2016 has been brought on record by way of Annexure. Subsequently, the general body of the Society is said to have approved removal of respondent No. 5 from primary membership of the Society. Petitioners are aggrieved by the act of respondent No. 4, the District Fisheries Officer, who is still recognizing respondent No. 5 as the Secretary of the Society and accepting revenue from him in respect of the *Jalkars* settled with the Society. A *Parwana* issued by respondent No. 4 on 1.9.2017 in favour of respondent No. 5 (Annexure-11) whereby treating respondent No. 5 to be the Secretary of the Society, the said respondent had asked him to deposit the installments of *Jalkars* for the settlement years 2012-13 to 2018-19 (7 years), has been challenged in the writ petition, in the aforesaid background.

3. The petitioners are seeking a direction to respondent No. 4 to accept revenue from petitioner No. 2, who, according to the petitioners, is the Acting Secretary of the Society, on behalf of the



Society, for the *Jalkars* settled with the Society and issue *Parwana* in favour of the Society through petitioner No. 2.

4. It is evident from the writ petition itself, that the only dispute, which writ application involve is, whether respondent No. 5 can be said to have been removed from the primary membership of the Society and whether the District Fisheries Officer, respondent No. 4, is justified in accepting revenue from respondent No. 5 in respect of the *Jalkars* settled with the Society.

5. Before I go into the said dispute with reference to the pleadings and submissions made on behalf of the contesting parties, I must mention here that when the writ petition was filed on 29.01.2018, 36 *Jalkars* were settled with the Society by the District Fisheries Officer for a period from 01.07.2012 to 30.06.2019 (7 years). The period of settlement is over. In that background, I.A. No. 03 of 2019 was filed seeking amendment in the relief portion of the writ application, questioning the communication dated 15.05.2019 of the District Fisheries Officer, Samastipur, addressed to respondent No. 5 treating him to be Secretary of the Society. The said application was allowed by an order of this Court dated 21.06.2019 which reads thus:

“I.A. No. 3 of 2019 has been filed seeking amendment in the relief portion of the writ application so as to challenge the communication dated 15.05.2019 addressed to respondent No. 5 treating him to be the Secretary of Patori Anchal Matsyajivi Sahyog Samiti Limited, Distt-Samastipur. The challenge in the writ application



relates to settlement of jalkars of the said society for the period, which is coming to an end on 30.06.2019. However, the core issue, which has been raised to be decided in the original writ application, is as to whether respondent No.5 can be treated to be validly elected Secretary of the Co-operative Society or not. It is in that background, the communication, dated 15.05.2019, is being challenged, whereby respondent No.5 has again been asked by the Office of the District Fisheries Officer-cum-Chief Executive Officer, Samastipur, for submission of all the papers and documents for fresh settlement.

Considering the facts and circumstances, I.A. No. 3 of 2019 is allowed and accordingly the petitioners are allowed to question the legality of the communication dated 15.05.2019.

Learned counsel appearing on behalf of the respondent No.5 has stated that in response to the said communication dated 15.05.2019, respondent No.5 has already filed the required documents, which is being disputed by the learned counsel appearing on behalf of the petitioners.

Be that as it may, the averments made in I.A. No. 3 of 2019 will be treated to be part of the pleadings. The respondent No. 5 shall be at liberty to rebut any averment made in I.A. No.3 of 2019 by filing counter affidavit”.

6. This is also to be noticed that when the matter was taken up on 15.07.2018, the District Fisheries Officer-cum-Chief Executive



Officer, Samastipur, was personally present in the Court in compliance of an earlier order. Following order was passed by this Court on 15.07.2018:-

“I am prima facie of the opinion that the said Satrugan Sahani (respondent no.5), though having been removed from the primary membership of the Co-operative Society, is being recognized as Secretary of the Co-operative Society.

It is directed that, till further orders, the District Fisheries Officer-cum-Chief Executive Officer, Samastipur, will not proceed any further”.

7. I have heard Mrs. Mahasweta Chatterjee, learned counsel for the petitioners and Mr. Deepak Kumar, learned counsel appearing on behalf of the contesting respondent No.5 at length. I have also heard Mr. Mukul Prasad, learned A.C. to G.P. 18, who has represented the State of Bihar including respondent No. 4. The respondents have filed their counter affidavits and supplementary counter affidavits. Rejoinders have also been filed on behalf of the petitioners to the counter affidavits/supplementary counter affidavits.

8. Whereas the Bihar Co-operative Societies Act, 1935, (hereinafter referred to as “Act of 1935”) governs the law relating to the registration, incorporation and business of the Society, the Bihar Fish Jalkar Management Act, 2006 (hereinafter referred to as the Act of 2006), lays down the provisions for long term and short term settlement of *Jalkars*, under the Animal Husbandry and Fisheries Department,



Government of Bihar. Since this matter at hand relates to short term settlement, I am dealing such provisions only, which relate to short term settlement of *Jalkars*. Short term settlement of *Jalkars* is done for seven years as stipulated under Section 5(i) of the Act of 2006 with non-defaulter Fishermen Cooperative Societies operating within the geographical area of the Block or to members of disqualified fishermen Cooperative Societies. The Fishermen Cooperative Society has been defined under Section 2(ix) of the Act of 2006 which means a Fishermen Cooperative Society at Block level registered under the Act of 1935 having fishermen only as its members. Fishermen has been defined under Section 2 (viii) of the Act of 2006 as the persons who are traditionally fishermen engaged in fishing and fish culture. ‘Applicant fishermen’ stands defined under Section 2(ii) of the Act as fishermen who has submitted an application to the Society for settlement of *Jalkars*.

9. On close reading of the various Provisions of the Act of 2006, it can be easily noticed that settlement of *Jalkars* is to be made with registered Cooperative Societies at Block level with fishermen, as members of such Society, for the benefit of traditional fishermen. The Fishermen Cooperative Society is a body corporate within the meaning of Section 13 of the Act of 1935 and the settlement of *Jalkars* within the geographical area is contemplated under the Act to be made with the said body corporate. A Fishermen Cooperative Society is required to maintain a village wise and Panchayat-wise list of *Jalkars* along with



the names of the applicant Fishermen with whom the settlement is proposed under Section 7(iii)(d) of the Act of 2006. The scheme of settlement of *Jalkars* postulates that the *Jalkars*, as defined within the meaning of Section 2 (iii) of the Act are settled by the competent authority under the Act with the Fishermen Cooperative Society and the Society in turn settles the *Jalkars* with the applicant fishermen who are member(s) of the Society. The provisions contemplate *inter alia*, payment of reserve deposit fixed for settlement of *Jalkars* within 21 days of settlement. It is incumbent upon the Society to make available to the District Fisheries Officer, village wise and Panchayat-wise list of the amount received for settlement of *Jalkars* from its fishermen members. Section 7 (12)(Cha) casts a responsibility on the District Fisheries Officer to enter into a registered agreement with the Society within two weeks from the date of issuance of *parwana*.

10. As has been noticed above, whereas it is the case of the petitioners that respondent No. 5 can no more discharge any function as Secretary of the Managing Committee of the Society after having been removed from primary membership of the Society, it is the case of respondent No. 5 that he is still the elected Secretary of the Society inasmuch as his removal is not in accordance with law. A plea has been taken on behalf of the State of Bihar as well as private respondent No. 5 that dispute of such nature which touches the business of the Society can be addressed by the Registrar of the Cooperative Society, Bihar, under Section 48 of the Act of 1935. In the counter affidavit filed on



behalf of the District Fisheries Officer, it has been stated that the executive powers of the Society are vested in the elected Secretary of the Society in terms of the bye-laws No. 31 of the Society and this is why the revenue is being accepted from respondent No. 5. It has not been denied in the counter affidavit that primary membership of respondent No. 5 has been terminated by the Society, but it has been stated that the said decision has not been duly ratified by the Registrar of the Cooperative Societies. He has referred to the letter dated 10.03.2017 which is at Annexure-8 of the writ petition and has stated that the said order cannot be said to be amounting to ratifying the decision of the Society to terminate primary membership of respondent No. 5. He is said to have sought guidelines from the Registrar Cooperative Societies, Bihar, but no guidelines has ever issued by the Registrar. The crux of counter affidavit of the District Fisheries Officer is that despite order of the Joint Registrar, Cooperative Societies dated 10.03.2018 (Annexure-8 to the writ application), respondent No. 5 is yet to be recognized as Secretary of the Society in the absence of any guidelines issued by the Registrar Cooperative Society in this regard. A dispute of this nature could be resolved only by invoking Section 48 of the Act of 1935, respondent No. 4 has pleaded. Reliance has been placed in this regard on an order of this Court dated 30.04.2014 passed in CWJC No. 23063 of 2013 (Suvansh Sahni Vrs. State of Bihar and Anr.).



11. In the counter affidavit filed on behalf of respondent No. 5, a plea has been taken that he is the elected Secretary of the Society and, therefore, he being the proper person to deposit reserve *jama* of *Jalkars*, *parwana* has been issued in favour of the Society through him after having accepted revenue of *Jalkars* from him. According to him, the petitioners have remedy under Section 14 of the Act of 2006 before the Divisional Commissioner, if the settlement of *Jalkars* in question is not in accordance with the provisions of the Act of 2006. It is also his case that there being no provision under the Act of 2006 of Settlement of *Jalkars* in favour of the Acting Secretary, the reliefs which the petitioners are seeking, are not maintainable. He has not disputed resolution of the Managing Committee in the general body meeting held on 10.07.2016 wherein the decision of his removal was taken, but according to him, the said meetings are not in accordance with Section 9 of the bye-laws of the Society and, therefore, his removal is not complete. He has also taken a plea that the petitioners have remedy under Section 48 of the Act of 1935.

12. In the rejoinder filed on behalf of the petitioners, it has been contended on the other hand, that it was the respondent No. 5 who could have approached the Registrar of the Cooperative Societies under Section 48 of the Act, if he had any grievance against his removal from primary membership of the Society.

13. Supplementary affidavits and supplementary counter affidavits have been filed on behalf of the parties which revolve around



the same dispute as to whether the District Fisheries Officer is justified in issuing *parwana* in the name of respondent No. 5, treating him to be an elected Secretary of the Society, despite having been removed by the Managing Committee of the Society and the removal having been approved by the general body of the Society.

14. Ms. Mahasweta Chatterjee, learned counsel appearing on behalf of the petitioners has relied on the order of the Joint Registrar, Cooperative Societies, Darbhanga Division, Darbhanga, dated 10.03.2017 (Annexure-8), wherein it was specifically recorded that functioning of respondent No. 5 as elected Secretary, on behalf of the Cooperative Society with the aid of only one member of the Management Committee was illegal. The said order contains specific direction to the District Fisheries Officer-cum-Chief Executive Officer, Samastipur (Respondent No. 4), to pass order on the basis of decision of the majority of the members of the Managing Committee of the Society. The said order, she contends has remained unquestioned. According to her, action of the District Fisheries Officer in recognizing respondent No. 5 as Secretary of the Cooperative Society is unreasonable, arbitrary and not at all justifiable.

15. Mr. Deepak Kumar, learned counsel appearing on behalf of the contesting respondent No. 5 has submitted, in addition to what has been stated in the counter affidavit, that appointment of petitioner No. 2 as Acting Secretary of the Society, is contrary to the provisions of Article 243(z)(2) of the Constitution of India and Section 14 (9) of the



Act of 1935. He has submitted that term of election of office bearer is five years, and, therefore, respondent No. 5 has a right to continue as Secretary of the Society for five years with effect from the date when he was elected as such, on 09.03.2016. He has reiterated the stand that since the petitioners have challenged the *parwana*, which is part of settlement, they have statutory remedy under Section 14 of the Act of 2016. For the said reason, according to him, this writ application deserves to be dismissed.

16. Mr. Mukul Prasad, learned A.C. to G.P.-18 has made his submission on behalf of respondent No. 4 and has submitted that Section 48 of the Act of 1935 is the appropriate remedy for the petitioners to invoke. He has defended the act of the District Fisheries Officer in recognizing respondent No. 5 as duly elected Secretary of the Society.

17. I have given my anxious consideration to the submissions made on behalf of the parties keeping in mind extent statutory provisions, pleadings of the parties and other materials on record. The Act of 1935 was enacted in order to facilitate the formation, working and consolidation of the Cooperative Societies with the objective of promotion of thrift, self-help and mutual aid among agriculturists and other persons with common needs. It can be easily discerned from the language used in the preamble of the Act of 1935 that 'mutual aid among 'agriculturists' and 'other persons with common needs' is the heart and sole of formation of a Cooperative Society. If a



Cooperative Society comprising of persons with common needs fails in its pursuit of thrift, self-help and mutual aid, the entire purpose of formation of the Cooperative Society would stand frustrated. A Cooperative Society under the Act of 1935 is, therefore, essentially governed by democratic principles. Section 13A of the Act of 1935 casts statutory obligation on the State Government to encourage and promote, *inter alia*, 'democratic control' and professional management of the Cooperative Societies. In order to oversee that the bodies elected under the Act of 1935 and the Cooperative Societies function in a manner conducive for achieving their objectives in accordance with law, regulatory provisions have been made under the said Act. Section 48 of the Act is one such provision which confers upon the Registrar of the Cooperative Societies of the State to entertain any dispute touching the business of registered Society. Explanation 1 of sub-section 1 of Section 48 states in clear terms that a question whether a person is or was a member of registered Society or not, is a dispute within the meaning of said sub-section.

18. True it is that the nature of the dispute as to whether respondent No. 5 is a member of the Society or not, is such dispute, which falls under Section 48 of the Act of 1935. In the present case, even respondent No. 5 has not disputed the factum of the decision taken by the Managing Committee subsequently, approved by the general body of termination of his primary membership of the Society. The developments as noted above, subsequent to the decision of the



Managing Committee to remove respondent No. 5 from the primary membership of the Society, with the District Fisheries Officer, Samastipur, still dealing with respondent No. 5 as the Secretary on behalf of the Cooperative Society, has formed a triangle. The Cooperative Society, the petitioners and the District Fisheries Officer, Samastipur, are operating on each of the three vertices of the triangle. For the District Fisheries Officer, respondent No. 5 is the 'Society', because he was elected at some point of time as the Secretary of the Society, though the Joint Registrar, Cooperative Society in his order dated 10.03.2017 had asked the District Fisheries Officer to act on the basis of majority decision of the Managing Committee of the Society.

19. It is to be kept in mind that there is whole world of difference between the 'Cooperative Society' as a body corporate and elected Secretary of the Society. It cannot be said that a Secretary once elected, can be allowed to indulge in such activities which may be prejudicial to the interest of the Cooperative Society without any control of the Managing Committee over him. The decision of the majority of the Cooperative Society will have to prevail over the decision of any person of the same Society, though, in accordance with law. The picture which is emerging from the materials on record and the submissions which have been advanced is that respondent No. 5 is handling the entire affairs of the Society with the aid of the District Fisheries Officer, on the strength of having been once elected as the



Secretary of the Society, without questioning in any manner, the decision of the Society of termination of his primary membership.

20. The submission made on behalf of the respondent No. 5 that the petitioners have alternative remedy of appeal under Section 14 of the Act of 2006, and, therefore, this writ application should not be entertained and deserves to be rejected, for the simple reason, that short term settlement of *Jalkars* in favour of the Society is not in question. The settlement is with the Cooperative Society, which is a body corporate. The dispute is that respondent No. 5 is being treated as representative of the Society who, according to the petitioners, has lost the confidence of the Society and has been removed from the primary membership of the Society.

21. Reference has been made to sub-Section 9 of Section 14 of the Act of 1935 by learned counsel on behalf of the respondent No. 5, as has been noted above to contend, that term of office of elected members of the Board/Managing Committee shall be five years from the date of election, notwithstanding anything contained in any provisions of the Rules or the Bye-laws of any Cooperative Society, and, therefore, respondent No. 5 has a right to continue till he completes the said terms of five years. It is noteworthy that a person who is a member of the Co-operative Society can only be elected as an office bearer of the Cooperative Society under the provisions of the Act. Neither the Act of 1935 nor the Rules framed there-under comprehend a situation where a non-member can be elected as member of the



Board/Managing Committee. Clause-9 of the Bye-laws of Fishermen Cooperative Society confers jurisdiction on the Managing Committee to suspend or remove a member from the Society. Sub-clause 2 of Clause 9 of the Bye-laws further stipulates that in case any fine is imposed on a member or membership of a member is suspended or terminated by the Managing Committee, such decision of the Managing Committee must be approved by the general body of the Society to be convened within two weeks. It further incorporates that in case of termination of membership, the decision of the Managing Committee must be approved by 3/4th of the members. Clause 10 of the Bye-laws deals with termination of membership. There are six circumstances/conditions for cessation of membership of a Society as stipulated under Clause 10(1) of the Bye-laws. 'Removal' from membership is one of such conditions. It can be easily seen thus, that a member of Cooperative Society ceases to be a member if his membership is terminated by the Managing Committee of the Society, with due approval of at least 2/3rd majority of the members of the Society. As I have already noticed, there is no denial by respondent No. 5 of the decision of the Managing Committee of removing him from the membership of the Society, which according to the petitioners, has been approved by the general body. This aspect has been clearly taken note of even by the Joint Registrar, Cooperative Society, in his order dated 10.03.2017 (Annexure-8). The respondent No. 5 has not chosen to question the decision of the Managing Committee before appropriate forum. It is the stand on his behalf that



his removal from primary membership of the Society will not lead to losing his position as elected Secretary of the Society by virtue of Section 14(9) of the Act of 1935. Much emphasis has been given on the 'non-obstante' clause under Section 14(9) of the Act of 1935 on behalf of respondent No. 5 to contend that the said provisions shall prevail over any contrary provision under the Rules or the Bye-laws of the Society. The said submission is not acceptable for the simple reason that membership of the Cooperative Society is basic qualification/eligibility for being elected as a member of the Managing Committee including the Secretary of the Managing Committee. A person who loses the said eligibility by virtue of any condition under the Bye-laws/Rules/Act, he cannot claim to continue as an elected office bearer of the Society.

22. This is to be noticed that a plea has been taken on behalf of the District Fisheries Officer that in terms of Clause 31 of the Bye-laws, since executive powers are vested in the elected Secretary of the Society, the revenue is being accepted from respondent No. 5.

23. I have carefully examined Clause 31 of the Bye-laws which requires a Secretary of a Cooperative Society to look after the affairs of the Society under the 'general direction of the Managing Committee'. A Secretary can exercise general power of control over the employees of the Society and pursue matters pending in Law Courts and other fora in the interest of the Society. He can convene a meeting of the Managing Committee. It is, however, not permissible for the



Secretary of the Society to act contrary to the directions of the Managing Committee.

24. It is visible thus in the aforesaid background, that the Joint Registrar, Cooperative Society had issued the order dated 10.03.2017 (Annexure-8) wherein the acts of respondent No. 5 were found to be contrary to law. A copy of the said order was communicated to respondent Nos. 4 and 5 both. Respondent No. 5 was asked to participate in a meeting of the Managing Committee to be convened by the Chairman and cooperate in execution of the majority decisions of the Committee. Respondent No. 4 was requested to ensure that the said order is passed in the light of majority decisions of the Managing Committee. Respondent No. 5 did not bother to challenge the said order of the Joint Registrar Cooperative Societies.

25. In view of the above, I am of the considered opinion that the respondent No. 4 has wrongly treated respondent No. 5 as a representative of the Cooperative Society, despite unchallenged decision of the Managing Committee of the Society said to be subsequently approved by the general body of the Society. The preliminary objection on behalf of the respondent No. 5 that the petitioners should have approached the Registrar of the Cooperative Society under Section 48 of the Act is not tenable in view of certain undisputed facts which have been noted above. The respondent No. 5 could have questioned the correctness of the decision of the Managing



Committee or the general body of the Society before appropriate forum invoking Section 48 of the Act.

26. This writ application is, accordingly, allowed. It is directed, therefore, that till the decision of the Managing Committee and governing body of the Society of removal of respondent No. 5 from primary membership of the Society, is not held to be illegal by a competent authority, the respondents are directed not to treat respondent No. 5 as representative of the Society.

27. It goes without saying that respondent No. 5 shall be at liberty to question the correctness of termination of his membership by the Managing Committee of the Society before appropriate forum invoking appropriate provision of law. It is made clear that no observation made in present judgment and order shall be treated to be an expression of opinion of this Court on the legality or otherwise of the decision of the Managing Committee of the Society of removal/termination of membership of respondent No. 5.

28. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	21/10/2019
Transmission Date	N.A.

