
(1984) 03 OHC CK 0019

In the Orissa High Court

Case No : O.J.C. No. 1455 of 1978 and M.A. No. 169 of 1978

Adhikari Narahari Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-03-1984

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 42, 42(1)

Citation : AIR 1984 Ori 185 : (1984) 57 CLT 515 : (1984) 1 OLR 366

Hon'ble Judges : P.K. Mohanti, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : D.P. Sahoo, S.S. Basu, S.K. Mund and S.K. Patnaik, for the Appellant; A.S. Naidu and M.M. Sahu and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—The writ application and the miscellaneous appeal are directed against an order u/s 42 (1) (b) of the Orissa Hindu Religious Endowments Act, 1951 (for short "the Act"). Both the cases have been heard together and will be governed by this common judgment.

2. Petitioner is the hereditary trustee of Raghunath Jew Temple at Dakhyabrahmapur in the district of Cuttack. On the basis of a report dated 2-1-1975 submitted by the Additional Assistant Commissioner of Endowments, a proceeding u/s 42 (1) (b) of the Act was started by the Commissioner of Endowments and after due enquiry an order was passed on 18-8-1977 recording satisfaction that in the interests of proper administration of the institution a scheme of administration should be settled. Notices were issued to the hereditary trustee and the persons interested to furnish proposals as to how best the scheme should be framed. The proceeding was adjourned to 6-10-1977 for consideration of proposals. On 6-10-1977, counsel for both parties were heard and the proceeding was adjourned to 6-12-1977 for consideration of proposals. On 6-12-1977, the Commissioner passed orders directing the office to frame the

scheme "as per draft." On 19-1-1978, a petition was filed by one Baishnab Panda (O. P. No. 4 in O. J. C. here) for appointment of a fit person u/s 42 (5). The proceeding was adjourned to several dates for consideration of the question of making an interim arrangement. In the meantime the Orissa Hindu Religious Endowments (Amendment) Ordinance No. 2 of 1978 promulgated by the Governor of Orissa came into force on 7-6-1978. Under the Ordinance several provisions of the Act were amended. By amendment of Section 42 of the Act the words "the Deputy Commissioner" were substituted for the words "the Commissioner". Consequently the power to frame the scheme was vested on the Deputy Commissioner of Endowments. On 18-9-1978, the Deputy Commissioner of Endowments signed the scheme (vide Annexure 2) and directed its publication in the official gazette.

3. Although several grounds had been taken in writ application and the miscellaneous appeal challenging the validity of the scheme, the Ordinance and the provisions of Section 42 of the Act, Mr. S. S. Basu, the learned counsel appearing for the petitioner confined his argument to the question of invalidity of the scheme only and did not press the other grounds. His argument was that the Commissioner, of Endowments having held the enquiry u/s 42 (1) (b) of the Act the Deputy Commissioner of Endowments had no jurisdiction to settle the scheme as per Annexure 2.

4. Mr. Naidu, the learned counsel appearing for the Commissioner of Endowments (O. P. No. 2 in O. J. C.) contended that the order for settlement of the scheme was duly passed by the Commissioner of Endowments, that he had approved the draft scheme before the coming into force of the Ordinance and that the Deputy Commissioner of Endowments has only signed the fair copy of the scheme. He argued that the mere signing of the scheme by the Deputy Commissioner does not affect the validity of the scheme.

5. Section 42 (1) (b) of the Act as it stood before the amendment reads as follows :

"(b) in the case of a religious institution presided over or managed by a hereditary trustee, the Assistant Commissioner shall make such enquiry as he thinks fit and submit his report to the "Commissioner who shall hold an enquiry in the manner prescribed and so far as may be, in accordance with the provisions of the Civil P. C., 1908 relating to the trial of suits and if he is satisfied that in the interests of the proper, administration of such institution a scheme of administration should be settled, he shall consult in the prescribed manner the trustee and the persons having interest and by order settle a scheme of administration for the institution."

The above provisions require the Commissioner to take three steps one after the other. The first step that is to be taken by the Commissioner is to hold an enquiry in the prescribed manner, and to give a finding about his satisfaction that in the interests of the proper administration of the institution a scheme of

administration should be settled. If a finding about such satisfaction is arrived at then the next step to be taken by the Commissioner is to consult in the prescribed manner the trustee and the persons having interest. It is only after, such consultation is made that the Commissioner shall proceed to make an order settling a scheme of administration. Once the Commissioner settles the scheme of administration, it is the duty of the office to prepare the scheme and place it before the Commissioner for his signature. The passing of an order settling a scheme and signing the scheme are two separate and independent acts.

6. In the present case, the Commissioner of Endowments has taken all the three steps. He held the enquiry in the prescribed manner and recorded a finding about his satisfaction that in the interests of the proper administration of the institution a scheme of administration should be settled. Then he issued notices to the trustee and the persons interested to furnish proposals as to how best the scheme should be settled. In pursuance of the notice the petitioner who was opposite party No. 1 in the proceeding u/s 42 of the Act appeared through an advocate and filed an application on 6-10-1977 for time to furnish his proposal. Time was allowed till 6-12-1977. On that day, the Advocate for the petitioner reported no instruction. The Commissioner passed the final order directing the office to frame scheme as per the draft. The fact that the Commissioner ordered for framing of the scheme "as per the draft" would necessarily imply that he had settled the scheme. The draft approved by the Commissioner by his Order dated 6-12-1977 forms the foundation and basis of the scheme which was signed by the Deputy Commissioner of Endowments on 18-9-1978. There is nothing to show that the Deputy Commissioner of Endowments made any modification in the draft which had been approved by the Commissioner on 6-12-1977. Thus, it is clear that the Commissioner had made the order settling the scheme before the Ordinance came into force and the Deputy Commissioner merely signed the scheme in a formal way after the Ordinance came into force. There is, therefore, no force in the contention that the Deputy Commissioner settled the scheme without holding the enquiry u/s 42 (1) (b) of the Act. In our opinion, the mere signing of the scheme by the Deputy Commissioner does not affect the validity of the scheme which has already been carried into effect.

7. In view of our above findings, we dismiss the writ application and the miscellaneous appeal, but in the circumstances without any order as to costs.

D.P. Mohapatra, J.

I agree.