

(1996) 04 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4492 of 1995

Anam Charan Mallick and Others

APPELLANT

Vs

Commissioner of Endowments and Another

RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 28, 29, 7

Citation : (1996) 82 CLT 467 : (1996) 1 OLR 529

Hon'ble Judges : P. Ray, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : Bidhayak Patnaik, M.K. Badu and P.K. Panda, for the Appellant; A.S. Naidu, R.K. Rath and P.R. Ray, for the Respondent

Judgement

P. Ray, J.—There is a famous deity, namely; Sri Radhakanta Jew situated at village Danduo, P. O. Baijanga, District, Jagatsinghpur having its temple and considerable properties. The nature of the said temple has not yet been determined and a proceeding u/s 41 of the Orissa Hindu Religious Endowments Act (hereinafter referred to as "the O. H. R. E. Act") is pending for determination of the nature of the said institution. It appears that the said institution belongs to Madhab Gaudeswar Sampradaya and was all along being managed by Nihangi Baishnabas. The last person in management of the institution was one Mahanta Harmohan Das. Mahanta Harmohan Das died on November 2, 1990 without nominating any chella and without indicating any line of succession. After death of said Mahanta the Commissioner of Endowment (in short "Commissioner") in exercise of powers conferred upon him u/s 7 of the O. H. R. E. Act appointed the Inspector of Endowment, Jagatsinghpur as an interim trustee for proper administration of the institution and its property. By order dated May 6, 1993 the Commissioner constituted an interim Trust Board consisting of nine persons for management of the institution for a period of one year. By order dated June 2, 1995 a new interim Trust Board consisting of 7 persons was constituted by the Commissioner in exercise of the power u/s 7 of the O. H. R. E. Act (Annexure-2). The petitioners being residents of some of the adjoining villages have filed this

writ application challenging the said order dated June 2, 1995 on the ground that almost all the members of the interim Trust Board are persons disqualified u/s 29 (1) of the O.H.R.E. Act inasmuch they have direct or indirect interest and that the Commissioner acted unreasonably and unfairly in not including persons from all the adjoining villages in the Trust Board. It appears from the writ petition that on June 16, 1995 the petitioners submitted a representation before the Commissioner alleging that the members of the Board of Trust were persons disqualified to become member of the Board. Admittedly, no action has been taken by the Commissioner on the said representation.

2. It has been submitted by Mr. Naidu, learned counsel appearing on behalf of the Commissioner that after appointment of a member of the Trust Board in exercise of the power u/s 7 of the O. H. R. E. Act, the Commissioner has no power or authority to replace or change any person from the Trust Board and the only remedy available for any aggrieved person is to initiate a proceeding in accordance with Section 28 of the O.H.R.E. Act.

3. The said submission by Mr. Naidu is not acceptable. The Commissioner while exercising powers u/s 7 of the O. H. R. E. Act is under a statutory obligation to ensure that no person disqualified to be a member u/s 29 of the Act is appointed as a trustee. Appointment of any disqualified person as a trustee is void ab initio and a nullity. Thus, if any allegation is made drawing his attention that any of the members appointed by him was disqualified at the time of appointment it is an incumbent duty of the Commissioner to make an appropriate enquiry after giving opportunity of hearing to the complainant and to the person or persons against whom complaint has been made to find out whether the allegation was correct or not. Being the appointing authority, the Commissioner has not only got the authority or jurisdiction, but also the duty to ensure that no disqualified person is appointed as a member or is allowed to continue as such. A power to appoint normally includes the power to recall a person who is disqualified to get such appointment at the time of such appointment. If Mr. Naidu's submission is accepted, then the whole purpose of Section 29 of the O. H. R. E. Act will be rendered ineffective and nugatory.

4. It is clear from the language of Section 28 of the O. H. R. E. Act that the said section envisages a post-appointment situation. There is no question of invoking the power u/s 28 for the purpose of determination of pre-appointment disqualification within the meaning of Section 29 of the Act. A comparison between the two Sections 28 and 29 will make it clear that while Section 29 refers to pre-appointment disqualification Section 28 deals with post-appointment contingencies.

5. Considering the facts and circumstances of the present case and the relevant provisions of the O. H. R. E. Act, we have no hesitation to hold that the Commissioner has failed to exercise a power vested in him and to discharge his statutory duty or obligation by sitting silent over the complaint without making any effective enquiry. The complaint was made immediately after the

appointment. Nothing has been disclosed in the counter filed the Commissioner to show that any attempt was made to make any inquiry or determination upon the written complaint submitted by the petitioners.

6. For the foregoing reasons we direct the Commissioner of Endowment to immediately hold an enquiry and make a determination after giving opportunity of hearing to the petitioners and to the persons against whom allegations have been made whether any disqualified person has been appointed as a trustee. Such determination is to be made expeditiously before May 31, 1996.

7. The writ petition is thus disposed of with the aforesaid directions. Let this order be communicated to the Commissioner immediately. Requisites for communication of the order are to be filed within two days from to-day.

D.M. Patnaik, J.

I agree.