

(1992) 11 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 51196 of 1983

Ananda Mohan Pandey and Others

APPELLANT

Vs

The Bihar State Hindu Religious Trust Board and Others

RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Citation : (1992) 11 PAT CK 0001

Judgement

Shashank Kumar Singh, J.—The present application under Articles 226 and 227 of the Constitution of India has been filed for quashing the order dated 7-11-1983 vide Annexure-1, passed by the Bihar State Hindu Religious Trust Board (hereinafter referred to as the "Board") and it has further been prayed that the communication dated 9 10-1982 (Annexure-2) sent from the Special Officer to the Respondent No. 5, be also quashed.

2. The short facts relating to the present application are that the erstwhile Raja of "Pakur established different deities at different times. The last holder of the said Estate Rani Joytirmoyee Devi had no issue. She executed a deed of trust on 30-6-1947 whereby she has endowed some properties mentioned in the said deed of endowment in favour of the family of the deities in order to provide for their Rag, Bhog and daily worship. She appointed herself as the first Shebait. She also made provision for appointment of Shebait or shebait after her death. The said endowment was subject-matter of consideration before this Court: in Compensation Appeal No. 5/68, decided on 31-1-1970. The competent authority u/s 43 of the Act by order dated 30th January, 1959 in Case No. 20/58, after due consideration of the relevant facts and the Trust Deed held "that the trust was of a private nature to meet the perpetual worship and maintenance of the family deities." Annexure-3 is the copy of the said order.

3. It has further been stated that the said Rani Joytirmoyee Devi died on 3-2-1968. After her death, the trust properties devolved upon the nominees under the endowment deed. In the aforesaid compensation appeal this Court affirmed the finding of the Additional Collector by which the Additional Collector

had upheld the claims of one Uma Pandey and Anand Mohan Pandey both sons of Rama Prasad Prasad Pandey, Ashok Kumar Pandey and Amiya Kumar Pandey sons of Kamla Prasad Pandey to the annuity in respect of the Debettar estate which so long was being paid to Rani Joytirmoyee Devi. The petitioner along with Respondent No. 5 and Ashok Kumar Pandey (since dead) were managing the affairs of the Trust as Shebait. Subsequently, it is stated that Respondent No. 5 with mala fide and oblique motive started laying claim over the entire properties to usurp the shebaitship upon himself and without any knowledge to the petitioner, obtained an order from the special officer of the Board. When the petitioners came to know about the said communication (Annexure-2), they filed an objection before the Additional Collector, Dumka. As directed by the Additional Collector, the Deputy Collector, Land Reforms, Respondent No. 4 made enquiry and submitted his enquiry report (Annexure-4) upholding the claim of the petitioners. The Additional Collector, thereafter forwarded the said report to the Board vide Annexure-4-A.

4. According to the petitioners, the Board thereafter, without issuing any notice or giving opportunity to the petitioners rejected their claim and upheld the earlier communication by Annexure 2 vide order dated 7-9-1983 (Annexure-1).

5. The learned Counsel appearing on behalf of the petitioner has assailed the impugned order on several courts. According to him, after the decision of the competent authority u/s 43 of the Act, the Board had no authority to pass the impugned order. It has further been contended that the Board or its special officers are not competent in law to declare the trust to be a public trust, particularly after the order of the competent authority Section 43 of the Act ; Respondent Nos. 1 and 2 should not have passed the said order after lapse of 23 years when the said matter had been conclusively decided by the competent authority and lastly it has been submitted that the impugned orders, having been passed without any notice or giving opportunity of hearing to the petitioner, are in violative of the principles of natural justice.

6. Learned Counsel appearing on behalf of the petitioner had also relied upon several decisions of this Court reported in New Savan Sugar and Gur Refining Co., Ltd. Vs. Commissioner of Income Tax, Calcutta, and 11 and 1989 BLJR 747 Paras 26 to 28, in support of his submissions as made above.

7. A counter-affidavit has been filed on behalf of Respondent Nos. 1 and 2. According to the said counter-affidavit, the proceeding u/s 43 of the Act was initiated during the life-time of Rani Joytirmoyee and the Trust was wrongly held to be a private trust. It has further been contended that notwithstanding the said order of the authority u/s 43 of the Act the said Authority under aforesaid provisions had no jurisdiction to decide the nature of the trust and the said jurisdiction was only vested with the Board ; as the Board was the only competent authority to decide the same.

8. It has further been stated that Respondent No. 5 filed an application before

the Board on 2-4-1981 admitting the trust to be a public trust and prayed for its registration. A public petition was also received by the Board on 25-6-1952 complaining about the mismanagement and misappropriation of the trust incomes and properties by these petitioners. It is stated that a notice was sent under Registered cover to the petitioners regarding the said complaints and after their refusal to receive the same, the said notice was returned with refusal endorsement on the notices and, as such the service of notice was a valid service, on refusal. Respondent No. 4 was appointed as a temporary trustee u/s 33 of the Act vide Annexure-2. According to the Board, the trust is a public trust and the appointment of Respondent No. 5 as temporary trustee was justified.

9. Although in the counter-affidavit it has been stated that the notice was sent under registered cover the petitioners with regard to the complaints made against the Management of the trust but neither a copy of the said notice has been annexed with the counter-affidavit nor is there any averment to the extent that the said notice was issued to the petitioners calling upon them to show cause as to why they should not be restrained from functioning as Shabait and Respondent No. 5 be appointed as temporary shebait u/s 33 of the Act.

10. To my mind the averments made in Paragraphs 11 and 12 of the counter-affidavit are too vague. Learned Counsel appearing for the Board has informed the court that the registered cover was received back in the office of the Board on 8-10-1982 and on the very next date, i.e., 9-10-1982 the impugned order was passed.

11. Without considering or deciding other points as raised on behalf of the petitioners, this writ application is bound to succeed on the simple ground that the impugned orders were passed without proper notice or giving proper opportunity to the petitioners and as such, the same are violative of the principle of natural justice.

12. Before passing the impugned order, the Board ought to have given a proper show-cause notice to the petitioners against the proposed action which was liable to be taken by the Board. The substance of the complaints should have also been incorporated in the said notice.

13. The notice should have been issued individually to all the petitioners and proper opportunity ought to have been given. On the other hand, the Board acted arbitrarily and in hot haste. The principle of natural justice is of wide application and great importance, For inquest of justice under the rules of law there has been no more spontaneous acceptable idea than the principle combined in the maxim audi alteram partem. It is equally well-settled that the requirement of natural justice is not an empty formality. Lord Donning in Schmidt v. Secretary of State Home Affairs (1969) 2 CH 149 (170) suggested that the ambit of natural justice extended not merely to protect rights but any legitimate explanation of which it would not be fair to deprive without hearing.

14. Accordingly, in my view the Board had duty to act fairly. They ought to have

given an opportunity to the petitioner of satisfying them to the complaints/charges made against them and ought to have called upon them to show-cause as to why the said order be not passed against them. In that case the petitioners, if they so liked, would have denied the charges/complaints made against them.

15. Without examining and considering the other submissions made by the learned Counsel for the parties this application is allowed and the impugned orders, as contained in Annexures-1 and 2 are set aside. However, it will be open to the Board to pass appropriate orders in accordance with law after giving due notice and opportunity of hearing to the petitioners. The petitioners will be at liberty to raise all the points available to them and the Board after due consideration will pass order/orders in accordance with law. The petitioners being aggrieved by such orders of the Board, if so advised, may now approach this Court. I would like to indicate that I have not examined the merit of the case and the observations made in this judgment will not prejudice the case of the either parties.

16. In the result, the writ application succeeds to the extent as indicated above ; but in the facts and circumstances of this case, there shall be no order as to costs.