

(1987) 03 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 129 of 1985 (R)

Birendra Kumar Jain

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 12, 8(3), 8(3)(b)

Citation : (1987) PLJR 1066

Hon'ble Judges : S. Roy, J

Bench : Single Bench

Advocate : Debi Prasad and Miss. Indrani Choudhuri, for the Appellant; S. B. Sinha, G. A. Narayan Roy, G.P. No. II and Delip Jerath, J.C. to G.A. Respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—The relief prayed is not happily worded. What can be culled out from the statements made in the writ petition and the submissions made by the Learned Counsel appearing on behalf of the parties the prayer is for issuing a writ of quo-warranto to oust respondents No. 3 to 12 as members of 6th Board constituted for the Bihar State Digambar Jain Religious Trust published u/s 12 of the Bihar Hindu Religious Trusts Act, 1950 (the Act). Section 8(3) of the Act provides that of the members of the second and every subsequent Bihar State Board of Digambar Jain Religious Trusts.—

(a) two shall be persons appointed by the State Government.

(b) four shall be persons elected in the prescribed manner by the trustees of the Digambar Jain Religious Trusts registered under this Act; and

(c) Five shall be persons elected in the prescribed manner by the members of Digambar Jain community residing in the State of Bihar who are enrolled as electorate in the electoral roll of any constituency of the Legislative Assembly of the State of Bihar for the time being in force.

One such member shall be appointed by the State Government to be the President of the Board.

2. The State Government after election of four persons, namely, respondents No. 4 to 7 and five persons, namely, respondents No. 8 to 12 as required u/s 8 (3) (b) and (c) respectively appointed respondents No. 3 and 13 as President and Member of the 6th Board u/s 8 (3) (a) of the Act by issue of notification as contained in Annexure-1. It may be mentioned that as there was some mistake in that notification, a subsequent notification correcting the same was issued which is Annexure-5 to the writ petition. Since Annexure-1 was corrected by Annexure-5, in this case we are concerned with Annexure-5.

3. According to the petitioner, the respondent No. 3 could not have been appointed by the State Government to be the President of the Board as he was trustee of as many as seven trusts at the time of his appointment. The respondents No. 4 to 12 could not have sought election to the Board as they were also trustees of Religious Trusts of Digambar Jain registered under the Act and in terms of Section 9 (h) of the Act, Done, of the respondents No. 3 to 12 were eligible for appointment or election as members of the Board.

4. Two counter-affidavits have been filed; one on behalf of respondents No. 1 and 2 and the other by respondent No. 3. In both the counter-affidavits it has been stated that at the time of appointment of respondent No. 3 to the Board by the State Government, he was not a member of any religious trusts. In the counter affidavit filed on behalf of respondents No. 1 and 2, it has been contended that respondents No. 4, to 12 were also not the members of any religious trusts at the time of their election. I may mention that the appointment of respondent No. 13 by the State Government u/s 8 (3) (a) of the Act has not been challenged by the petitioner.

5. A preliminary objection was raised by Mr. S.B. Sinha, Learned Counsel appearing on behalf of the respondents No. 1 and 2 with regard to the maintainability of the writ petition so far respondents No. 4 to 12 are concerned. He contended that as internal remedy has been provided under the provisions of the Act, the writ petition must be dismissed. According to him, an alternative remedy shall be a bar for maintainability of the writ of quo-warranto. So far the preliminary objection raised by Mr. Sinha with regard to respondents No. 4 to 12 must succeed. u/s 82 of the Act, Bihar Digambar Jain Religious Trusts Rules, 1955(1955 Rules) were framed. Rule 4 provides for preparation of electoral roll. Rule 5 lays down the procedure to be followed in respect of election of members. It provides that after filing of nomination, opportunity shall be given to file objection. The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination. He shall refuse any nomination paper which involves infringement of law. Rule 5 further provides for filing of election petition by any candidate or elector against any candidate declared elected. It will thus appear that elaborate procedure has been laid down for challenging the nomination papers of candidates and also for challenging the

election of any candidate. There is no averment in the writ petition that the petitioner, an elector, filed an objection with regard to the nomination papers of respondents No. 4 to 12. Admittedly the petitioner did not file any election petition challenging the election of respondents No. 4 to 12. It is settled law that where there are statutory provisions dealing with the conduct of election, the writ of quo-warranto is displaced. That being the position, the petitioner must fail so far those respondents are concerned.

6. So far respondent No. 3 is concerned, in paragraph-10 of the writ petition it has been asserted by the petitioner that respondent No. 3 was a trustee of seven trusts at the time of his appointment by the State Government to the Board. In support of this, reliance was placed by the petitioner on a printed copy of the voters list. Paragraph 10 of the writ petition has been traversed by respondents No. 1 and 2 in paragraph 6 of their counter affidavit. It has been stated that the Government had ascertained the facts and was satisfied that respondent No. 3 was not trustee of any Trust. In Paragraph-5 of the counter-affidavit respondent No. 3 asserted that although he was trustee of eight trusts in early 1984, but he had resigned from all the trusts in November, 1984. He was not a trustee of any Religious Trusts on the date of his appointment. The petitioner filed reply to the counter affidavits. In reply to the counter-affidavit filed by respondent No. 3, the petitioner annexed copies of three letters marked as Annexure-3, 4 and 4/A to show that respondent No. 3, never resigned from any of the Religious Trusts and he continued to be trustee of at least three trusts.

7. With reference to Annexures-3, 4 and 4/A, Mr. Debi Prasad, Learned Counsel appearing on behalf of the petitioner contended that in view of these annexures, the statement of respondents No. 1, 2 and 3 that respondent No. 3 had ceased to be the trustee of any Religious Trust on the date he was appointed to the 6th Board cannot be accepted. Mr. Sinha submitted that since the Government was satisfied that respondent No. 3 was not a member of any religious trust at the relevant time, the statements made in the counter affidavit on behalf of respondents No. 1 and 2 must be accepted to be correct. He also contended that in view of proviso to section 9 (h) of the Act, there was no bar for appointing respondent No. 3 as member of the 6th Board.

8. So far the last submission of Mr. Sinha is concerned, proviso to section 9(h) of the Act provides that clause (h) shall not apply to a person appointed as a member of the 1st Board under sub-section (1) of Section 7. Section 7 provides that all members of the 1st Board shall be appointed by the State Government. For the purpose of appointment to the 1st Board, a person even if he was a trustee of any religious trust registered under the Act, there was no bar for the State Government to appoint such person the member of the 1st Board. The proviso to section 9 (h) of the Act must be confined to person appointed to the 1st Board by the State Government in exercise of its power u/s 7 of the Act and this cannot be stretched to second and subsequent Boards to be constituted under the Act. It is, therefore, clear that if respondent No. 3 was a trustee of any

religious trusts registered under the Act on the date of his appointment to the 6th Board, the writ of quo-warranto may be issued.

9. I have noticed in detail the statements made by the parties in this writ petition. In support of his statements that respondent No. 3 was trustee of a number of Religious Trusts registered under the Act, the petitioner has annexed three letters Annexures-3, 4 and 4A. Annexure-3 is dated 29.3.1985. In reply to the query made by the petitioner he was informed that respondent No. 3 who was shown in the voter list as trustee of a number of trusts had not resigned from those trustees. Annexure-4 is dated 23.2.1985 written by the Secretary of Righabhchand Kesarimal Trust, Nawada, in which he informed the petitioner that respondent No. 3 was the Joint Secretary of that Trust. Annexure-4/A is dated 25.5.1985 and the contents of Annexure-4 was reiterated. It was clearly stated in Annexure-4/A that respondent No. 3 had not submitted any resignation from that Trust. As against these annexures, there are mere statements by respondents No. 1, 2 and 3 in their counter-affidavits. No document was annexed by respondent No. 3 to show that he sent his resignation letters to the trusts of which he was a member before his appointment. Respondents No. 1 and 2 also did not produce any record to show the materials on the basis of which the Government was satisfied that respondent No. 3 was not the trustee of any Trust on the date he was appointed to the 6th Board. In a quo-warranto proceeding, it may be determined whether the appointment of respondent No. 3 was in accordance with the express statute governing such appointment. The question involved in a proceeding for writ of quo-warranto is the right of respondent No. 3 to hold the office. In the *University of Mysore v. Govinda Rao*: AIR 1965 Supreme Court, 491: the Supreme Court observed that: -

....the procedure of quo-warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to the public offices against the relevant statutory provisions....

...in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if jurisdiction of the courts to issue writ of quo-warranto is properly invoked, the usurper can be ousted....

10. In this case, it has not been disputed that respondent No. 3 is holding a public office. We have noticed that he was appointed by the State Government in exercise of its statutory power as a Member-cum-President of the 6th Board of Digambar Jain Religious Trusts. We have also noticed that a person shall not be eligible for such appointment if he is a trustee of any Religious Trust. I am satisfied on the averments made in the writ petition and the reply to the counter-affidavits that respondent no. 3 was disqualified to be appointed as a member of the 6th Board of Digambar Jain Religious Trusts and he has no legal authority to hold that post. The respondent No. 3 is, therefore, clearly an usurper to the office he is holding. In the result, the application is allowed in part. Let a writ of quo-warranto be issued ousting respondent No. 3 from the office of the 6th

Board Digambar Jain Religious Trusts. There shall be no order as to costs.