
(2005) 03 OHC CK 0032
In the Orissa High Court
Case No : Writ Petition (C) No. 2530 of 2004

Ch. Krishna Murty and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 27(1)

Citation : (2005) 1 OLR 465

Hon'ble Judges : Pradip Mohanty, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : S.P. Misra, S.K. Mishra, M.R. Dash and P. Sahu, for the Appellant;
A.K. Nanda, S.K. Bhanjdeo, R.R. Muduli for intervenors and Akshaya Kumar Rath,
for opp. parties 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Pradip Mohanty, J.—The petitioners are the members of the public belonging to Hindu community and representing the inhabitants of Rayagada. They also claim to be the devotees of "Maa Majhi Ghariani Thakurani Bijee Rayagada". In this writ petition they have assailed the illegal and arbitrary action of the opposite parties appointing non-hereditary trustees of the said deity by order dated 13.02.2004 (Annexure-3) and have prayed to accept the recommendation of the Assistant Commissioner of Endowments-opposite party No. 3.

2. The facts of the case are that the deity "Maa Majhi Ghariani Thakurani Bijee Rayagada" is an ancient religious institution which was established by the then ruler of Rayagada in 18th century. Subsequently, the deity was managed by the inhabitants of the locality. Since 1968, the deity has been maintained by a non-hereditary trust board constituted by the Orissa Hindu Religious Endowments Department. In due course of time, opposite party No. 3 published a notice on 20.10.2003 vide Annexure-2 inviting objections from the general public both by beat of drums as well as affixture of notice in the notice board for reconsidering the names of some persons to be appointed as non-hereditary trustees, and after

the period for filing objections was over, he recommended the said names to the Government for approval u/s 27(1) of the Orissa Hindu Religious Endowments Act, 1951 (for short "the Act"). But, opposite party No. 1 in exercise of its powers u/s 27(1-a) of the Act, without assigning any reason, rejected the names recommended by opposite party No. 3 and substituted some other names for appointment as non-hereditary trustees by order dated 13.02.2004 (Annexure-3).

3. An intervention petition filed by the newly appointed trustees with a prayer to implead them as opposite parties 4 to 10 has been allowed by order dated 05.08.2004. The case of the intervenors is that they have been appointed as trustees of the aforesaid temple after taking into consideration the allegations made against the members of the previous trust board and considering the opinion of the general public. They have further stated that after the said order under Annexure-3, opposite party No. 4 has been appointed as the Managing Trustee as per the resolution dated 20.02.2004 which has been approved by opposite party No. 3 vide his order dated 03.03.2004 (Annexure-A/4). Copy of the said order has been sent to the ex-Managing Trustee with direction to hand over all the charges to the newly elected Managing Trustee.

4. Mr. Misra, learned counsel for the petitioners, contends that the proviso to Sub-section (1) of Section 27 of the Act, as inserted by way of amendment by Orissa Act 13 of 2003, prescribes that the Assistant Commissioner shall, before sending any proposal to the State Government for approval, publish a notice in the Notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from the date of such publication, and forward to the State Government the suggestions and objections, if any, received, along with such proposal. Basing upon this proviso, objections were invited by the Assistant Commissioner, opposite party No. 3. After due publication of notice and receipt of objections, names were recommended by the Assistant Commissioner to the State Government for approval, but the State Government modified the proposal of the Assistant Commissioner and inserted new names in place of the names recommended by the Assistant Commissioner. Mr. Misra submits that the State Government, opposite party No. 1, has no power to modify the names without intimating the general public. Therefore, he contends that the order under the Annexure-3 is illegal and liable to be quashed.

5. Mr. A.K. Rath appearing for opposite parties 2 and 3, on the other hand, contends that the State Government is the final authority in the matter of appointment of non-hereditary trustees. After receipt of the proposal made under Sub-section (1) of Section 27 of the Act for appointment of non-hereditary trustees, it may approve, reject or modify the proposal of the Assistant Commissioner. Therefore, no fault can be found with opposite party No. 1 in modifying the recommendation made by the Assistant Commissioner, opposite party No. 3.

6. Mr. Nanda, learned counsel appearing for the intervenors-opposite parties 4 to 10, who are the newly appointed members of the non-hereditary trust board, submits that no illegality has been committed by the State Government in modifying the recommendation made by the Assistant Commissioner. He submits that there were some allegations against the members of the previous trust board. After considering such objections, the recommendation has been modified by the Government consequent upon which the order under Annexure-3 has been issued whereafter opposite party No. 4 has been appointed as the Managing Trustee vide resolution dated 20.02.2004, which has been approved by the Assistant Commissioner. But, due to the interim order dated 03.03.2004 passed by this Court, the newly constituted trust board is not able to take over the charge of management of the institution. According to Mr. Nanda, since the order under Annexure-3 has already been acted upon, the writ petition is liable to be dismissed.

7. Orissa Act 13 of 2003 has amended Section 27 of the Act by adding a proviso to Sub-section (1) and inserting a new sub-section, i.e., Sub-section (1-a). For better appreciation, the relevant portion of Section 27, as it stands after the aforesaid amendment, is quoted below :-

"27. Non-hereditary trustees, their number and appointment - (1) The Assistant Commissioner shall, in cases where there is no hereditary trustee, with the prior approval of the State Government, appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained.

Provided that the Assistant Commissioner shall, before sending any proposal to the State Government for such prior approval, publish a notice in the Notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from the date of such publication, and forward to the State Government the suggestions and objections, if any, received, along with such proposal.

(1-a) On receipt of a proposal made under Sub-section (1) for the appointment of a Non-hereditary Trustee, the State Government may either accord the required approval or reject or modify the proposal of the Assistant Commissioner as it may deem fit in the interest of the persons belonging to the religious denomination for whose benefit, the concerned religious institution is chiefly maintained."

From the aforesaid provision, it is crystal clear that the amended provision recognises the right of the public in the matter of appointment of non-hereditary trustees of a religious institution inasmuch as it has a right to object to the appointment of any individual as a non-hereditary trustee. In other words, before

recommending the names for appointment as non-hereditary trustees, the Assistant Commissioner shall invite suggestions and objections from the public by publishing a notice in the notice board of the concerned institution and also by intimating the general public of the locality by beat of drums. Such suggestions/objections have to be made within a period of thirty days from the date of publication. The Assistant Commissioner shall forward to the State Government the suggestions/objections, if any, received along with the proposal. After receipt of the proposal with suggestions/objections for appointment of non-hereditary trustees, the State Government may either accord approval or reject or modify the proposal of the Assistant Commissioner. The intention of the legislature behind the aforesaid amendment, is that it is the duty of the State Government to verify all the suggestions/objections forwarded along with the proposal before according approval to the proposal sent by the Assistant Commissioner for appointment of non-hereditary trustees. The object in inviting such suggestions/objections is only to ascertain the conduct of an individual for appointment as a non-hereditary trustee to manage a religious institution, in a cases where the State Government intends to modify the proposal of the Assistant Commissioner by substituting new names for appointment as non-hereditary trustees, such modification can only be done after obtaining suggestions/objections from the public. In other words, before modifying the proposal by substituting names of the trustees, the State Government has to invite objections from the local public through the Assistant Commissioner. In the instant case, however, the State Government has substituted new names without inviting objections from the public of that locality. Therefore, the order under Annexure-3 is illegal and liable to be quashed.

8. In the result, this writ petition is allowed and the impugned order under Annexure-3 is quashed. We remand the matter by directing the concerned authorities to invite objections on the names proposed to be substituted by the State Government as non-hereditary trustees. Thereafter, the Assistant Commissioner of Endowments would process the matter relating to appointment of non-hereditary trustees in accordance with law by avoiding unreasonable delay.

P.K. TRIPATHY, J. I agree.