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**(2023) 07 OHC CK 0031**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 11132 Of 2023**

Kalicharan Bindhani

APPELLANT

Vs

Commissioner Of Endowments, BBSR And Others

RESPONDENT

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**Date of Decision : 06-07-2023**

**Acts Referred:**

Odisha Hindu Religious Endowments Act, 1951 — Section 7, 42

**Citation : (2023) 07 OHC CK 0031**

**Hon'ble Judges : Arindam Sinha, J;S.K. Mishra, J**

**Bench : Division Bench**

**Advocate : Suresh Kumar Choudhury, P. Naidu**

**Final Decision : Disposed Of**

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## Judgement

Arindam Sinha, J.

1. Mr. Choudhury, learned advocate appears on behalf of petitioner. He submits, his client is interested administration of the religious institution under the scheme dated 9th September, 1959. He points out from clause-3 in the scheme that the institution of Shri Khirachora Gopinath with endowments are to be administered by the board of trustees, not exceeding five, including the Mahanta. By impugned memo dated 2nd January, 2023 the Commissioner has appointed seven persons, in deviation from the scheme. He submits further, the present Mahanta does not reside in the temple but is presently residing at Gopibalavpur in Paschim Medinipur, West Bengal.

2. Ms. Naidu, learned advocate appears on behalf of the Commissioner and submits, clause-3 in the scheme provided for the absentee previous Mahanta and four others to be trustees. The provision for the absentee previous Mahanta to be made one of the five trustees does not extend to the present Mahanta, who is admittedly residing somewhere in West Bengal. Hence, it became a situation that required exercise of power under section 7 in Odisha Hindu Religious Endowments Act, 1951, for appointment of interim trust board. Government

officials and those retired were appointed. For smooth functioning of the institution the board was expanded to seven members. She submits, the Commissioner had the power to do so, in meeting with the situation arising, inter alia, from the present Mahanta not available and untraceable. Mr. Choudhury submits in reply that the provision for the Mahanta being absent in clause-3 of the scheme should cover the present Mahanta and there cannot be more than five trustees.

3. On query from Court Ms. Naidu submits, to avoid confusion in not being able to notice and secure participation in the proceeding by the present Mahanta, the Commissioner did not exercise power to modify the scheme.

4. Clauses 3 and 5 from the scheme are reproduced below.

"3.The institution of SHRI KHIRACHORA GOPINATH with all its Endowments shall be administered by the Board of Trustees, who not exceeding 5 in (five) in number, of which the previous Mahanta, who has left the Temple shall be one and the other shall be appointed by the Commissioner to hold Office for such period not exceeding three years as fixed by the Commissioner. The Trustees so selected shall elect their President from amongst themselves.

xxx xxx xxx xxx xxx xxx

5. Any vacancy occurring in the Office or the trustees during or at the end of the said or subsequent periods shall be filled up by the commissioner."

We note that clause-3 included previous absentee Mahanta to be one of the trustees. The other four trustees were to be appointed by the Commissioner. It follows that the present Mahanta, who is absent, cannot with certainty be said to create a vacancy occurring in office of trustees. The parties have not raised a question on vacancy and we are not required to answer it. This brings us to the situation on to whether the Commissioner can exercise power under section 7, when under section 42, as it stood on amendment by substitution in Odisha Act no.18 of 1954, the Assistant Commissioner was to frame the scheme. In the circumstance of the statutory authority itself framing the scheme, it should thereafter act within four corners of it and not resort to its interim powers conferred by section 7.

5. We notice that the scheme reserves to the Commissioner power to modify it as well. We appreciate submission made on behalf of the Commissioner regarding attendant confusion on present Mahanta not available in the temple or untraceable by the Commissioner, to proceed to modify the scheme in his absence or ex-parte against him. However, that is a situation that the authority must deal with. It cannot be relied upon to deviate from the scheme, settled by the authorities themselves.

6. Impugned order is set aside and quashed. The Commissioner is directed to forthwith appoint board of trustees in the institution of Shri Khirachora Gopinath in accordance with the scheme dated 9th September, 1959.

7. The writ petition is disposed of.

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