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**(1987) 04 AHC CK 0003**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 2559 of 1987**

Krishna Nand Singh

APPELLANT

Vs

The Commissioner and Others

RESPONDENT

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**Date of Decision :** 09-04-1987

**Acts Referred:**

Constitution of India, 1950 — Article 226, 25  
Uttar Pradesh Hindu Public Religious Institutions (Prevention of Dissipation of Properties) (Temporary Powers) Act, 1962 — Section 12, 4(1), 5

**Citation :** (1987) 04 AHC CK 0003

**Hon'ble Judges :** D.N. Jha, J;Brijesh Kumar, J

**Bench :** Division Bench

**Advocate :** M.S.P. Dubey, for the Appellant;

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## Judgement

D.N. Jha, J.—The Petitioner Krishna Nand Singh is the Managing Trustee of Swami Sukhdeo Nand Ashram Trust (hereinafter to be referred as the Trust). He has filed this petition for quashing of the Notification No. 312/XXXVI-2-83-51-T-77 dated 6.12.1983, contained in Annexure 1-A and for quashing of the order of Commissioner, Varanasi Division, Varanasi dated 27.12.86, contained in Annexure-2 and for quashing of the order of Respondent No. 3 dated 14.3.87, contained in Annexure-4. It is also prayed that the proceedings consequent theseupon pending before the Sub-Divisional Officer, Duddhi, District Mirzapur, may also be quashed.

2. The facts giving rise to this petition are that the Trust is situated in the District Mirzapur. District Mirzapur lies within the jurisdiction of Respondent No. 2 Sri D.S. Bagga, Commissioner, Varanasi Division, Varanasi. Sri Bagga was appointed as Commissioner under the U.P. Hindu Public Religious Institutions (Prevention of Dissipation of Properties) Act, 1962; (hereinafter to be referred as the Act). This appointment was made on 6th December, 1983 by the Government in exercise of powers Under Sub-section (1) of Section 4 of the said Act and in supersession of all previous Notifications issued in this behalf. The Commissioners were

appointed for purposes of the said Act for the Area over which they exercise jurisdiction as Divisional Commissioners. The notification is attached as annexure 1/A to the petition. The Commissioner on 27.12.1986, passed an order appointing the Sub-Divisional Officer, Duddhi, District Mirzapur (Respondent No. 3) as Investigation Officer. The Petitioner, in fact, was aggrieved by this order and in order to challenge the validity of this order investigations were made by him and it then transpired that Sri D.S. Bagga, Respondent No. 2, was professing Sikh religion and hence was not qualified for being appointed as Commissioner under the Act and thus the notification appointing him issued on 6.12.1983 has also been challenged.

3. It also transpires from the perusal of the writ petition that the Sub-Divisional Officer, Duddhi, had issued a notice to the Petitioner and the Petitioner on 6.3.87 filed his objection before him raising question of jurisdiction. A copy of this objection dated 6.3.87 is attached as Annexure-3. This objection was rejected by the Sub-Divisional Officer, Duddhi, on 14.3.87. This order is Annexure-4. The Petitioner had approached the Commissioner, Varanasi Division, Varanasi, on 30th of March, 1987 through his pairakar with his objection requesting him to recall his order dated 27.12.86 as the same was without jurisdiction but it was not entertained and he expressed his helplessness to do anything in the matter because the Sub-Divisional Officer, Duddhi, was seized of the matter and could deal with the same. This is how this petition is before us.

4. We have heard the learned Counsel for the Petitioner at length and gone through the averments. The learned Counsel pointed out that the object of the Trust is to promote and offer teaching and sermons for development of character and spiritual values; to construct temples and other places of worship; to help the poor and needy; to remove or mitigate human sufferings both mental and physical; to help and promote educations; to establish and maintain Dharmashalas, Charitable Dispensaries and Public Halls and the like in any part of India; to give monetary aid or other help for relief from natural calamities like floods, cyclone, tempest or otherwise to promote and establish and maintain or help by monetary gifts or otherwise, welfare centre including recreation grounds, swimming baths, public gardens as also sporting institutions which are non-communal and for the benefit of the public; to establish, maintain and support or help by monetary gifts or otherwise public charitable institutions serving one or more of the aforesaid objects; to construct new wells and maintain and repair existing wells, tanks and other sources of water for the benefit of the public or to give monetary help for the same; to advance any other charitable object of general public utility not involving the carrying on of any activity for profit.

5. Learned Counsel maintained that since Respondent No. 2 was professing "Sikh religion" he was not qualified for being appointed as Commissioner under the Act. We do not find ourselves in agreement with the submission of the learned Counsel for the Petitioner. The Act defines "Hindu" and the said definition provided therein is as under:

Punjab Rao Vs. D.P. Meshram and Others, "means persons who are Hindus by religion in any of its forms or developments, including Virashaivas, Lingayata and followers of the Brahma, Prarthana or Ary Samaj and includes the Buddhists. Jains and Sikhs. "This definition appears to be in consonance with the provisions of Article 25 of the Constitution, though in a different context, which reads as under:

25. Freedom of conscience and free profession, practice and propagation of religion. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propogate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political, or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform of the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh Religion.

Explanation II. In Sub-clause (b) of Clause (2), the preference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

6. The learned Counsel for the Petitioner vehemently urged that Sri Bagga may be a " Hindu " but he could not be said to be professing " Hindu " religion as he professes Sikh religion. In order to give strength to his argument he relied on Section 5 of the Act which provides for the appointment of a Commissioner. The relevant section of the Act reads as under:

5. Commissioner, etc., to be Hindus. The Commissioner, Assistant Commissioner and Investigation Officer shall be a person professing the Hindu religion.

7. It may be mentioned that the headnote of Section 5 reads as "Commissioner, etc. to be Hindus". It is true that the headnote or marginal note preceding or prefixed to a section in some of the Statutes does not control the plain meaning of the section itself but it cannot be denied that headnote plays a part in understanding the meaning of the provision or unfolding the intention of the Legislature in enacting the particular provisions. In Bhinka and Others Vs. Charan Singh, Hon"ble Supreme Court has observed that in some modern statutes the headings prefixed to sections or sets of sections are regarded as preambles to those sections. So we have to see the effect of the language used in Section 5 of the Act keeping in view the definition of the word " Hindu " given under the Act as well as under Article 25 of the Constitu tion and the headnote or prefix to

Section 5 of the Act. Clause 2 of Article 25 of the Constitution of India empowers the State for making laws providing for throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. In Explanation 2 it is provided that the word "Hindu" has to be construed as including persons professing Sikh, Jains or Buddhist religions. Thus a distinction between Hindu and other sects or sections of Hindus is sought to be done away with under the Constitutional provisions referred to above. We have already referred to the definition of the word "Hindu" as provided under the Act saying that the persons, who are Hindu by religion, include Buddhist, Jains and Sikh. In this context the headnote to Section 5 of the Act also provides some clue to unfold the real intention of Section 5 itself. The definition of word "Hindu" in our opinion, is expanded for the special purpose by the fathers of the Constitution and the Legislature while enacting the Act- It was in fact intended that the word "Hindu" should have a wide meaning. The word "Hindu" in our opinion, is genus while other sects mentioned would constitute the species. The word "Hindu", in our opinion, cannot be construed in narrow sense to include only orthodox "Hindu" or persons professing merely "Hindu" religion which envisages castes and sub castes and contains injunctions based on caste distinctions. No such definition, in our opinion, is envisaged by the definition of "Hindu" provided under the Act. Thus it is amply borne out that a person professing Sikh religion cannot be termed as one not professing "Hindu" religion inasmuch as a person professing Jain, Budh or Sikh religion will very well be a person Hindu " by religion as provided under the definition. The learned Counsel for the Petitioner has referred to certain cases, namely Arya Samaj Education Trust, Delhi and Others Vs. The Director of Education, Delhi Administration, Delhi and Others, , Commissioner of Wealth Tax, West Bengal III Vs. Smt. Champa Kumari Singhi and Others, , Punjab Rao Vs. D.P. Meshram and Others, , Paunjabrao v. Dr. D.P. Mehsram, but we find that these cases do not advance the submissions made on behalf of the Petitioner.

8. The learned Counsel further urged that even if for the sake of argument it may be assumed that a person professing Sikh religion falls in the category of "Hindu", it cannot be said that he can be categorised as professing Hindu religion. Our observations in the preceding paragraph meet the submission made by learned Counsel, however, we may again observe that there is no force in contention. The word "profess" is defined by Webster's Third New International Dictionary, is as under:

Having professed one's vows; to receive formally into membership in a religious community through the authorised acceptance of the candidate's vows; to declare or admit openly or freely, acknowledge without concealment; to declare or admit in words or appearance only; imply outwardly, ever insincerely; to confess one's faith in or allegiance to, recognize or embrace as a belief; to proclaim oneself versed in, practice the profession of; to teach as a profession; to make a profession or one's profession; to profess friendship; to follow the calling of professor.

9. On careful scrutiny of the meaning of the word " profess " it cannot be said that a person professing Sikh religion cannot profess " Hindu " religion. If a person is well versed with the religious tenets he can profess " Hindu " religion. In our opinion it does not substantiate the argument of the learned Counsel for the Petitioner in any manner. There is no whisper in the writ petition that Sri Bagga was acting or professing any thing to damage the "Hindu" religion. Professing " Hindu " religion warrants that a person should be a " Hindu " and should be duly qualified and is not immature so as to destroy the basic structure of the Hindu religion. It is high time that one has to get out of the shaekles cf narrow views and move in the wider field so as to imbibe as many persons as possible who might be professing different religion. One has to rip off the masked moneterism of hyprocracy. We have not been able to find any thing in the writ petition so as to hold that Sri Bagga was not qualified to be appointed as Commissioner. So far the grievance made against the order of Commissioner appointing Investigation Officer is concerned we may observe that the Petitioner could challenge that order by filing an appeal u/s 12 of the Act but that has not been done.

10. We would like to observe before parting with this case that the learned Counsel was in fact aggrieved by the order passed at Varanasi and the effect of the order was to take place at Mirzapur. In order to avoid jurisdiction of the Allahabad Bench of the High Court he preferred to present this petition before this Bench of the High Court by challenging the notification issued in 1983. This consequential relief, in our opinion, was added to circumvent the jurisdiction which initially vested in the Bench at the Allahabad High Court at Allahabad.

11. In view of the aforesaid discussion we are of the view that the petition is totally devoid of merit and calls for no interference by this Court in exercise of jurisdiction under Article 226 of the Constitution. The petition is dismissed in limine.

12. The learned Counsel has made pra}er that certificate be granted to him that the case is fit for appeal to Hon"ble Supreme Court. We are, however, of the view that the case does not involve substantial question of law as to the interpretation of the Constitution. The certificate prayed for is, accordingly, rejected.