
(1968) 08 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 436, 437 and 483 of 1967

Labh Chandra Reipurana and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-08-1968

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 8(1), 8(2), 82, 82(1), 82(2)
Constitution of India, 1950 — Article 14, 26

Citation : AIR 1969 Patna 209 : (1969) 17 BLJR 320

Hon'ble Judges : S. Wasiuddin, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : K.D. Chatterji, Prabha Shankar Mishra, Vinod Kumar Kanth and Jagdish Chandra Sinha, for the Appellant; Lal Narayan Sinha, Rai Paras Nath, Ashok Kumar and Rewati Raman Singh, for the Respondent

Final Decision : Allowed

Judgement

Untwalia, J.—Since identical questions were involved for determination in these three writ applications, they have been heard together and are being disposed of by this judgment

2. C. W. J. C. Nos. 436 and 483 of 1967 relate to a group of Svetamber Jain temples situated at Pawapuri in the State of Bihar which are known as Shree Jain Svetamber Bhandar Pawapuri Tirth. Some of the petitioners in CW.J.C. No.436 of 1967 claim to be members of Shree Jain Svetamber Bhandar Pawapuri Tirth Vyavasthapak Samiti which is petitioner No. 1. C. W. J. C. 483 of 1967 in which petitioner No. 2 is the Secretary of that Samiti, and the other petitioners in C. W. J. C. 436 of 1967 are persons residing in the various parts of India and professing Svetamber Jain faith. Similarly, some of the petitioners in C. W. J. C. 437 of 1967 are members of a committee known as Shri Jain Svetamber Bhandar Tirth, Rajgir Vyavasthapak Samiti and some claim to profess Svetamber Jain faith.

3. The facts of the two writ applications which relate to the Pawapuri group of

temples are identical. For the sake of convenience, I shall refer to the relevant facts from a large number of affidavits filed in C.W.J.C. No. 436 of 1967. There is a public religious trust established at Pawapuri in the State of Bihar in respect of a group of Svetamber Jain temples which were established several centuries back. According to the petitioners' case, the management of the trust aforesaid has, according to the long standing practice and usage of the trust, vested in a committee known as Shree Jain Svetamber Bhandar Pawapuri Tirth Vyavasthapak Samiti. The Svetamber Jains constitute a separate religious denomination the general body of which is known as Shree Sangh. The Sangh elects members of the Samiti at its annual congregation generally held on Diwali day at Pawapuri from time immemorial. Properties of the Trust and the right to administer the same vest in the Shree Sangh and the Samiti elected by it. The petitioners' case further is that according to the said settled practice and usage, the last election of the members of the Samiti took place on the 16th of November, 1963 at the annual meeting of the Shree Sangh at Pawapuri and members of the Samiti were elected therein. A copy of the resolution passed in the said meeting of the Sangh is annexed to the writ application and marked annexure "A".

4. In exercise of the powers conferred by Section 5(2) of the Bihar Hindu Religious Trusts Act, 1950 (Bihar Act 1 of 1951) (hereinafter referred to as the Act), a Board called Bihar State Board of Svetamber Jain Religious Trust was constituted and incorporated. u/s 7 of the Act, all the members of the first Board had to be appointed by the State Government. The second and subsequent Boards were to be constituted in accordance with the provisions of law contained in Section 8(2) of the Act. In exercise of the powers conferred by Section 82 of the Act, the State Government made the Bihar Svetamber Jain Religious Trusts Rules, 1955, There was no interference at any time in the past by the State Government or the Svetamber Jain Religious Board in the management and administration of the properties of the Trust carried on by the Samiti appointed and elected by Shree Sangh on the 16th of November 1963. In spite of the objections raised by the members of the Samiti, Shree Sangh and Svetamber Jains in general, the Bihar State Board of Svetamber Jain Religious Trust adopted a scheme at its meeting held on the 25th of June, 1967 for the management of the Pawapuri group of temples and New Samosaranji temple. A copy of the impugned scheme has been annexed with the writ application and marked annexure "D". The scheme has been attacked on various grounds mentioned in paragraph 15 of the writ application in the fourteenth paragraph of which it has been said that it is violative of Articles 14, 19(2), 26 and 29 of the Constitution. For the reasons stated in my judgment hereinafter, It is not necessary to enumerate the grounds of attack on the scheme.

5. In the writ application the State of Bihar is respondent No. 1, the second respondent is the Bihar State Board of Svetamber Jain Religious Trusts and the third respondent is its President. The rule issued on the writ application against the respondents to show cause why an appropriate writ or direction should not

be issued to quash the re-constitution of the Trust in accordance with the scheme as contained in annexure "D" and for directing them not to enforce the scheme or otherwise to interfere with the right of the petitioners to manage the affairs of the Trust in accordance with its usage and the samiti constituted by the Shree Sangh in accordance with the custom and usage, has been resisted by respondents 2 and 3 whose case was argued by the learned Advocate General.

The petition was filed on the 25th July, 1967 in paragraph 7 of which it was stated that the Government of Bihar in exercise of its power under the Act constituted the Bihar State Board of Svetamber Jain Religious Trust and framed rules per notification dated the 15th January, 1955 for constituting the same. Apart from challenging the other facts in the counter affidavit filed on the 14th November, 1967 on behalf of respondents 2 and 3. in the thirteenth paragraph of the counter affidavit it was stated with reference to paragraph 7 of the petition "that the Board is legally constituted and is functioning with all the powers and obligations conferred and cast upon it under the Act and the Rules made thereunder." It would be convenient to mention here that on the facts Stated by the parties in the various affidavits and which are not in dispute, a second Board was constituted in the year 1958 in accordance with Section 8(2) of the Act. But this Board was superseded on the 24th of October, 1962 u/s 80 of the Act. A special officer was appointed to take charge of the functions of -the Board. Thereafter, on the 2nd April, 1964 a third Board was constituted, purporting to be so constituted in accordance with the provisions of Section 8(2) of the Act. It is this third Board which proceeded to frame the impugned scheme and appointed a Committee of management thereunder, u/s 32 of the Act. In the seventh paragraph of the petition, obviously reference has been made to the establishment of the first Board but in the thirteenth paragraph of the counter affidavit it was asserted by respondents 2 and 3 that the Board being legally constituted at the relevant time i. e. at the time of framing the scheme was validly functioning. In other words, the contesting respondents asserted the legal constitution of the third Board. The petitioners filed an affidavit in reply on the 12th July, 1968 in the sixteenth paragraph of which they have said with reference to the assertions of the respondents in the thirteenth paragraph of the counter affidavit that the present Board, meaning thereby the third Board, was illegally constituted for the reasons mentioned in that paragraph.

6. When the writ applications came up for hearing before us on the 7th of August, 1968, two points were urged in support of the rule issued thereon; namely, (i) that the Bihar State Board of Svetamber Jain Religious Trust has been illegally constituted and, hence, the scheme framed by it was void and (ii) that the impugned scheme is such that It leads to total deprivation of the right of administration of the Trust by the Shree Sangh which is the supreme body of the Svetamber sect of Jains. The first point was pressed before us in the first instance. When we called upon the learned Advocate General to reply to this point first before we proceeded to hear the second point urged on behalf of the petitioners, if necessary, he submitted that this point was not taken in any of the

three main applications. It was taken for the first time in the affidavits in reply. He was, therefore, on behalf of respondents 2 and 3, not prepared to meet this point on the 7th of August, 1968 as it was not a part of the main application.

Thinking that the point was a very important one which went to the root of the constitution of the third Board, we allowed it to be raised in all the three writ applications and directed that it will be treated as a point taken in the main application. Learned Advocate General thereupon wanted ten days' time to file a further counter affidavit by way of reply to the point taken in the affidavits in reply. Thinking this prayer to be reasonable, we adjourned the case by order dated the 7th August, 1968 for further hearing to the 28th August, 1968, and in the meantime, directed the parties to file their further counter affidavit or reply affidavits, if any. After they were filed, the case was placed before us for hearing yesterday. We concluded the hearing on the first point and since we found that the submission made in support of this point were well founded and had to prevail, we did not think it necessary to hear and decide the second point urged on behalf of the petitioners. The only point, therefore, which is being discussed and decided on the basis of which all the three applications are going to be allowed relates to the validity of the constitution of the third Board.

7. In the sixteenth paragraph of the affidavit in reply dated the 12th July, 1968, it is stated by the petitioners that five out of eleven members of the Board to be elected in accordance with clause (c) of Sub-section (2) of Section 8 of the Act were to be elected in the prescribed manner by the Shree Sangh, an assembly of Svetamber Jains. There was no power in the State Government or the Board to frame rules u/s 82 of the Act in contravention with the right of the Shree Sangh to elect the five members and the Board in contravention of the Act and the Rules, issued a notice for preparation of electoral roll to include the names of Svetamber Jains of the State of Bihar but limiting the inclusion of the names of Svetamber Jains residing outside the State of Bihar to those only who had donated Rs. 500/- either to the Board or to the Svetamber Jain Religious Trust of Bihar during the last ten years. Such a direction in the preparation of the electoral roll was discriminatory, unconstitutional and without jurisdiction.

The election of five members of the present Board on the basis of such an electoral roll was illegal and void. A copy of the notice dated the 16th August, 1963 giving the direction for preparation of the electoral roll has been annexed and marked annexure "5" to the affidavit in reply. This was an instruction by the special officer on the 16th of August, 1963 as the second Board had been superseded by then. The relevant portion, of the direction contained in annexure "5" reads thus :--

^^r`rh; fcgkj jkT; "osrkEcj tSu /kkfeZd U;kl ifj"kn ds fy, ikap lnL;ksa dk pquko fgUnw /kkfeZd U;kl dkuwu 1950 dh /kkjk 8?2?lh- ds vUrxZr "kh?kz gksus tk jgk gS A bl dk;Z dks lEiUu djus ds fy, ,oa ernku lwph esa uke fy[kokus ds fy;s ?1? fcgkj jkT; esa jgus okys leLr "csrkEcj tSu ?h ,oa iq:"kkas ls ftudh mez 21 lky ls de u gks ?2? leLr "osrkEcj tSu ?h ,oa iq:"kksa ls tks fogkj jkT; esa ugh jgrs gksa

vkSj ftudh mez 21 lky ls de u gks vkSj ftUgksasus fogkj ds fdLh rhFkZ vFkok /
kkfeZd laLFkk ;k fcgkj jkT; "osrkEcj tSu /kkfeZd U;kl ifj"kn dks de ls de
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dk uke ,oa iwjk irk fy[kdj mijks? dk;kZy; esa bl lwpuK ds izdk"ku gh rkjh[k ls 30
fnu ds vUnj Hkstusa dh ?ik djs-**

8. On the 23rd of July, rejoinder to the affidavit in reply filed on behalf of the petitioners was filed on behalf of respondents 2 and 3. In this reply, no statement was made with reference to the contents of the sixteenth paragraph of the affidavit in reply. On this very date i. e. the 23rd July, 1968, a supplementary affidavit in reply was filed by the petitioners in which it was stated that the Board, respondent No. 2, arbitrarily, illegally and purposely restricted by the directions issued on the 16th August, 1963, the Swetamber Jains residing outside the State of Bihar, from becoming voters by providing that only those who had contributed Rs. 500/- or more within ten years of the preparation of the electoral roll in the year 1963 could be included in the voters' list. The result was that the voters' list so prepared contained about 2518 voters out of which about 2178 voters were residents of Bihar and only 240 voters could be enrolled as electors from outside Bihar, although according to the figures mentioned in paragraph 3 of this affidavit, the population of Swetamber Jains throughout India was about ten lacs out of which only about nine thousand were residents of Bihar.

On these figures, it is to be noticed that even assuming that quite a substantial proportion of the population may be below 21 years of age, yet a vast majority of the people professing Swetamber Jain faith are residents of places outside Bihar. A reply to this supplementary affidavit was filed on behalf of the contesting respondents on the 24th July, 1968 but nothing special was pleaded with reference to the allegations made by the petitioners in their supplementary affidavit in reply filed on the 23rd July, 1968. The affidavit which has been filed on behalf of the contesting respondents with reference to the point at issue in pursuance of our order dated the 7th August, 1968, is the one which was filed on their behalf on the 14th August, 1968.

The gist of the statements contained in this affidavit is that whatever terms and conditions were laid down by the special officer who was exercising the powers of the Board after the second Board was superseded, had been laid down by the State Government in their several letters issued in the year 1957 copies of which were annexed to this affidavit and marked as annexures "A", "A(1)" and "A(2)". It was further asserted that the State Government had refused to reconsider the matter about the qualification of the voters as intimated by their letter of the 23rd July, 1957, a copy of which is annexure "B". Some more affidavits were put in by the parties on the 23rd and the 26th of August, 1968 but I do not consider it necessary to refer to them.

9. Section 8(2) of the Act provides: "Of the members of the second and every subsequent Bihar State Board of Swetamber 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 Swetamber Jain Religious Trusts registered under this Act; and
- (c) five shall be persons elected in the prescribed manner by the Shree Sangh (an assembly of Swetamber Jains)."

As usual "prescribed" means under clause (h) of Section 2 of the Act "prescribed by rules made by the State Government under this Act." It is first to be pointed out here that u/s 6 of the Act, the Bihar State Board of Swetamber Jain Religious Trust is to consist of eleven members out of whom five are to be elected in the prescribed manner by the Shree Sangh. The word "manner" is too narrow to admit of any restriction on a member of the Shree Sangh in regard to his right to elect the five members of the Board. The point is further fortified by the language of the section conferring the rule-making power on the State Government i. e. Section 82.

In view of the use of the word "manner" in clause (c) of Sub-section (2) of Section 8 of the Act, the power conferred on the State Government in general terms under Sub-section (1) of Section 82 for carrying out the purposes of the Act could not confer a power even on the State Government to make rules so as to limit the right of members of the Shree Sangh to elect five members of the Board under clause (c) of Sub-section (2) of Section 8 of the Act because such a rule would have been inconsistent with the Act. Clause (b) of Sub-section (2) of Section 82 which illustrates the matters in respect of which the State Government may make rules says that the State Government may make rules with respect to "the manner in which members shall be elected under clauses (b) and (c) of Subsection (1) of Section 8 and u/s 10;". It is, therefore, clear that even the State Government had no power to make a rule that in the electoral roll all residents of Bihar professing Swetamber Jain faith and above 21 years of age will be entitled to be included as electors while on the other hand, only those out of a large body of Swetamber Jain residing outside Bihar will be eligible to be entered as electors who had contributed Rs. 500/- either to the trust or to the Board within the last ten years. Apart from the fact that such a rule would have contravened the provisions of the Act, it is significant to note that it would be in violation of the fundamental rights guaranteed under Articles 14 and 26 of the Constitution.

10. It is difficult to find out anything in the provisions of the Act to justify such a discrimination between persons professing Swetamber Jain faith residing in the State of Bihar and outside. There is no rational basis for it. The classification cannot be held to be reasonable. It is difficult to appreciate how merely because the Trust properties are situated in the State of Bihar and a Bihar State Board of Swetamber Jain Religious Trust is to be constituted under the Act, Swetamber Jains living in the State of Bihar have got a larger right as members of the Shree Sangh or a larger body of such persons can exercise their right of electing five

members of the Board as members of the Shree Sangh and Swetamber Jains living outside the State of Bihar must get a limited right and not only limited, limited to an irrationally unreasonable extent. To illustrate my point, it is undisputed on the statements made in the various affidavits filed on behalf of the parties that the temples in question were established and constructed long time ago, in some cases centuries ago.

A donor from outside Bihar, who even would have contributed suppose a lac of rupees in construction of such a temple and who having not contributed five hundred rupees within the last ten years of the issuance of the instruction or preparation of the electoral roll will be debarred from his right as a member of the Shree Sangh to exercise his vote in the matter of election of the five members of the Board under clause (c) of Sub-section (2) of Section 8 of the Act.

11. The instructions issued by the special officer exercising the powers of the Board, it is manifest, are all the more ultra vires and completely void. The Board had no power to make any rule u/s 82 of the Act. Even granting, as is the case of respondents 2 and 3 in their further supplementary counter affidavit filed on the 14th August, 1968 that the special officer followed the directions which had been issued by the State Government in the year 1957, it is to be pointed out, as was conceded by the learned Advocate General and in my opinion rightly conceded, the instructions even issued by the State Government, had not the statutory force. They were mere departmental instructions. They were not incorporated in and made part of the Bihar Swetamber Jain Religious Trusts Rules, 1955, by following the procedure of making the rules. It follows, therefore, that the electoral roll prepared on the basis of such illegal, ultra vires and unjust instructions issued on the 16th of August, 1963, were invalid and void ab initio. That being so, the election of the five members in accordance with Clause (c) of Sub-section (2) of Section 8 of the Act was also void ab initio. On the facts and in the circumstances of this case, it was not a case of "any irregularity in the constitution of the Board" within the meaning of the phrase occurring in Subsection (3) of Section 76 of the Act as was argued by the learned Advocate General on the authority of a Bench decision of this Court in Mahanth Mahanarain Das v. The State of Bihar 1959 BLJR 338. In my opinion, the constitution of the Board in this case was illegal as contemplated u/s 81-A of the Act.

12. The relevant facts of the case of Mahanth Mahanarain Das 1959 BLJR 338 are these. By a notification dated the 12th February, 1957, a second Bihar State Board of Religious Trust was constituted in accordance with Section 8(1) of the Act. Seven persons were appointed u/s 8(1)(a) and seven persons were elected under clauses (b) and (c) of Section 8(1). By another notification dated the 6th March, 1957, three more persons were declared elected as members of the second Board.

On the 4th May, 1967, the Assistant Superintendent of Bihar State Board of Religious Trust issued a notice to Mahanth Mahanarain Das asking him to submit the budget of his math failing which he was to be prosecuted u/s 67 of the Act.

The Mahanth attacked the issuance of the notice by the Board by filing a writ application in the High Court and therein he challenged the constitution of the Board on some grounds the first of which was that five of the persons who were appointed by the State Government u/s 8(1) (a) were not eligible to be members of the Board as they were trustees of various religious trusts registered under the Act and hence were disqualified from being so appointed in view of the provision engrafted in Clause (h) of Section 9 of the Act. While granting in favour of the petitioner that the five persons were so disqualified, Choudhary, J. with whom Ramaswami, C. J. agreed held:

"..... the Board is a body corporate, and, once it is established, it continues to exist, unless dissolved, if it could be so dissolved. Of course, the appointments and elections of members may vary from time to time, as occasion may arise, and there may be illegal ties or irregularities in their appointments or elections which can be properly challenged in accordance with law, but the establishment or constitution of the Board, which, as already observed, is a corporate body, does not cease to be lawful on that account.

It is, however, to be pointed out that after considering certain other provisions of the Act, especially those contained in its fourteenth section giving power to the State Government to remove from office any member, if he is subject to any disqualification specified in Section 9 of the Act, it was held that "the appointment or election of the above disqualified members was a mere irregularity which could easily be cured by the State Government, and it does not affect the legality of the Constitution of the Board. "In this context, the use of the word "illegalities" in the passage which I have extracted earlier, if I may say so with respect, must be held to be an obiter dictum. The word used in Sub-section (3) of Section 76 is "irregularity" and not "illegality" and reading that word in the context of Sub-section (3) and Sub-sections (1) and (2) of Section 76, it is clear that any irregularity in the constitution of the Board cannot entail its constitution being declared illegal. Section 81A introduced in the parent Act by Section 2 of Bihar Act 9 of 1957 postulates the constitution of the Board being declared illegal by a competent Court.

13. The second ground on which the argument was repelled was with reference to the rules framed in the year 1952 u/s 82 of the Act in relation to the religious trusts other than the Jain Religious Trusts providing for challenging the election under the rules. Similar rules are there in the Bihar Swe-tamber Jain Religious Trusts Rules, 1955. But here it is not a question of challenging the election of the five members of the Board purporting to have been elected under clause (c) of Section 8(2) of the Act on any of the grounds mentioned in Clause (k) of Rule 5 but it is beyond it. In my opinion, the election could not be challenged or, in any view, it was not necessary to be challenged in accordance with the procedure prescribed under Rule 5 of the 1955 Rules. Such a fundamental mistake was committed initially by the Government in issuing the departmental instructions and finally by the special officer on the 16th of August, 1963 that any election

held on the basis of the electoral roll prepared in pursuance of such directions, has got to be treated as a nullity and completely void. It is also to be remembered that what Mahanth Mahanarain Das was challenging in his writ application was a direction to him to submit the budget of his math which he was obliged to do under the Act, by challenging the legality of the constitution of the Board. But what is being challenged here by the petitioners is an interference with their right to the trust properties as managed by a validly constituted samiti the members of which were elected by the Shree Sangh. The Illegally constituted Board, as the third Board was, could not frame a scheme as to interfere with such a right of management.

14. The next ground of attack on the constitution of the Board in the Mahanth's case was the subsequent election of the three members of the Board by the notification dated the 6th of March, 1957. On similar grounds, this ground was also repelled and so was repelled the third attack that the State Government had to appoint two sadhus out of seven members appointed by it under clause (a) of Sub-section (1) of Section 8 of the Act. On a question of fact, it was held that two of the members appointed were sadhus. One of the grounds for rejecting the contention on behalf of the petitioner, given by Chaudhary, J. in the Mahanth's case, was with reference to the requisite quorum of the Board, an argument which was faintly repeated before us also. In my opinion, however, the ratio of that case is that there was no illegality in the constitution of the Board going to its root so as to enable the Court to declare the constitution as illegal but all attacks on the constitution remained within the limit of irregularity.

15. Coming to the question of quorum, however, I would like to point out that u/s 17 of the Act, four members shall form the quorum for a meeting of the Bihar State Board of Swetamber Jain Religious Trust and Section 19 provides that every matter coming before the Board shall be decided by a majority of votes of the members present and voting in the meeting. In the last affidavit filed on behalf of the contesting respondents on the 26th of August, 1968, a convenient chart has been annexed as an-nexure "D" showing that in all the meetings which led to the framing of the scheme, more than four members out of the six, either appointed or elected under Clause (a) or (b) of Sub-section (2) of Section 8 of the Act were present in those meetings. But it is not stated how many out of the five purporting to have been elected under clause (c) were present in those meetings, nor is it stated as to who constituted the majority passing the scheme.

In my opinion, the mere fact that the quorum was complete by the members of the Board appointed or elected under clause (a) or (b) of Sub-section (2) of Section 8 of the Act cannot validate the scheme which purports to have been passed by the Board constituted not only of those six members but also of the five, said to have been elected under Clause (c) on the basis of the unconstitutional, illegal and void electoral roll prepared in pursuance of the directions issued by the special officer on the 16th of August, 1963. The violation of the law and the fundamental rights of the petitioners was so gross that I do

not feel persuaded to uphold the constitution of the Board and the validity of the scheme framed by it in this case.

16. In the result, C. W. J. C. Nos. 436 and 483 of 1967 are allowed and after declaring the constitution of the third Bihar State Board of Svetamber Jain Religious Trust as illegal, I quash the scheme framed by the said Board, a copy of which is annexure "D" to the writ application in C. W. J. C. 436 of 1967. The respondents are directed by grant of a writ of mandamus not to give effect to this scheme or to withdraw it if they have already given effect to it. Attention of the State Government is drawn to the provisions of law contained in clause (c) of Section 81A of the Act which provides --

"Where the constitution of the Board has been declared illegal, election shall be held and appointment made for the purpose of reconstituting the Board within a period of six months from the date of the orders of the Court."

17. That facts of C. W. J. C. 437 of 1967 are similar to those of the other two cases. The group of Svetamber Jain temples situated at Rajgir in the district of Patna are known as Shri Jain Svetamber Bhandar Tirth and the management vested in the committee known as the Jain Svetamber Bhandar Tirth, Rajgir Vyavasthapak Samiti which was constituted and elected on the 8th of November, 1961 in the meeting of the Shree Sangh held at Pawapuri. A copy of the impugned scheme in this case is a part of annexure "C" of this writ application. For the reasons mentioned above, this scheme is also quashed and the respondents in this case also are commanded by grant of a writ of mandamus to the petitioners, not to give effect to the impugned scheme or to withdraw it, if effect has already been given. I shall make no order as to costs in any of the applications.

Wasiuddin, J.

18. I agree.