
(1985) 12 OHC CK 0018
In the Orissa High Court
Case No : Misc. Appeal No. 117 of 1981

Mahant Sri Raghunath Das and Another	APPELLANT
Vs	
Commissioner of Hindu Religious Endowments	RESPONDENT

Date of Decision : 07-12-1985

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 3, 41(6)

Citation : (1986) 61 CLT 189 : (1986) 1 OLR 225

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : R.C. Misra, for the Appellant; A.S. Naidu, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—This is an appeal u/s 44(2) of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as "the Act" before its amendment in the year 1976.

2. On 6.5.1970, an application was filed by the Mahant (appellant No. 1) for removing the impediment in his managing the Math independently by withdrawal of the Scheme framed for the Math under the Orissa Hindu Religious Endowments Act, 1939 in the year 1948. The appellant No. 1 and a large number of villagers, who were present on 7.11.1970 pursuant to the notice for consultation, were heard by the Commissioner. The villagers strongly objected to the prayer for cancellation of the Scheme and suggested modification thereof for better management of the institution. The Commissioner accordingly rejected the prayer for cancellation of the Scheme where after the appellant No. 1 (petitioner before the Commissioner) indicated three terms for the Scheme as reflected in the order-sheet. A written consent was filed being signed by the appellant No. 1 and some of the villagers agreeing to a Scheme indicating four terms therein. In case the Scheme would have been framed incorporating the said four terms, the question would have been examined in a different context since the appellant No, 1 consented to the terms of the Scheme, The Commissioner, however, did not act

in accordance with the agreed terms and fixed the matter to 4.12.1970 for consultation. The order-sheet dated 4.12.1970 gives a clear picture of the action of the Commissioner which reads as follows :

"Consultation made. Draft be prepared accordingly and published in the Gazette and the spot."

A draft Scheme was prepared which was signed by the Commissioner on the same day, i e , 4.12.1970. Shortly thereafter, the Mahant filed an application on 1.3.1971 to set aside the Scheme prepared which was registered as Misc. Case No. 14 of 1971. This application was rejected on 9.10.1971. As the record discloses, the Scheme was kept in an incubator till 6.2.1981 when on receipt of the extract of the order passed by the Endowment Commissioner in the management file No. 494-G (Major) dated 4.12.1980, an order has been passed to send a copy of the order to the Government press and the spot for publication. This order dated 6.2.1981 in the order-sheet is unsigned. Even then, the Secretary complied with the same. Publication of the order at the spot on 1.5.1981 has led the appellants to prefer this appeal.

3. The Commissioner being a creature of the Act is required not only to act within the scope of the powers given under the statute but also in the manner provided therein. If the statutory authorities keep in mind that they cannot act beyond the scope of powers given under the statute and are only to act in the manner provided therein the much cherished rule of Jaw in the Republic can be established. Whenever an authority exercises power beyond authority, arbitrariness creeps in even in matters of benevolence. far worse are the cases where regulatory powers are exercised in excess of authority without keeping to the guidelines laid down by the Legislature.

4. In the absence of consultation as per the mandatory provision in Section 42(6) of the Act, the modification of the Scheme was set aside by this Court in appeal in a decision reported in Rama Chandra Palo Vs. Kala Palo and Others, . u/s 42 of the Act, the Commissioner is required to make consultation with persons having interest. The phrase persons having interest" has been defined in Section 3(x) of the Act. In the case of a Math, it means a disciple of the Math or a person professing the Hindu Religious or Sikh faith to which the Math belongs. In a decision of this Court reported in 25(1959) C.L.T. 98 (Mahant Jagarnath Ramanuja Das v. B. K. Patra, Commissioner of Hindu Religious Endowments and others) while considering the meaning this phrase in the light of the meaning given in the 1939 Act, it was observed :

"... I think both the definitions convey the same idea, i.e., "only those persons who belong" to the religious denomination to which the Math belongs", can be said to have an interest in the institution....."

This decision has been followed in the decision reported in (1960) 2 OJD 308 (Sri Gour Govind Das Goswami v. Commissioner of Hindu Religious Endowments) in 38 (1972) CLT 1295 (Gokulananda Mohanty v. The Minister of Law, Government

of Orissa, Bhubaneswar and others) considering the observation in (1959) CLT 98 it was observed :

"Mr. Misra for the opposite, party No. 2 contended that the view expressed by Narashnkam, C. J. should be accepted by us and should hold that a person having interest can be : (a) a disciple of the Math; (b) a person professing the Hindu Religion and (c) a person professing the Sikh faith to which the Math belongs. We are not prepared to accept this analysis of Mr. Misra. A proper analysis of the definition would be that a disciple of the Math, or a Hindi or a Sikh to whom the Math belongs would be a person having interest. The reasoning given by his Lordship, the Chief justice, therefore, rightly indicated the true meaning....."

5. Legislature vested the power of Commissioner on a judicial officer. Under Rule 17(2) made under the Act notice is to be given by publication Co the trustee or trustees and the persons having interest calling upon them to submit any representations they wish to make before a date to be specified in such) notice. After receipt of representations, the Commissioner is to fix a date for holding an enquiry and on the date so fixed for enquiry or as soon thereafter as may be convenient, the Commissioner is to examine the witnesses produced by either party. He is also to admit such of the documentary evidence which is relevant to the enquiry and in making. such an enquiry he is required, as far as may be, to follow the procedure under the provisions of the Code of Civil Procedure. The consultation is to be made as required under the Rules. Once consultation is said to have been made as reflected in the order dated 4.12.1970, the persons consulted must have made some statements. Any enquiry under the CPC required the statements to be recorded in writing. Perusal of the entire record does not disclose any statement of any person to have been recorded in any manner. These materials are also required to be in writing since the order is subject to appeal. In the appeal both the questions of fact and law are to be gone into, Unless the substance of the consultation and the description of the persons consulted are found on the record, the provision of appeal will become meaningless.

6. Mr. R.C. Misra, the learned counsel for the appellants, submitted that the Commissioner was to make consultation with the persons having interest and the trustee, and there was no scope for consultation with the entire body of villagers without a finding that they are the persons having interest. In the absence of the phrase "or such other persons as the Commissioner may deem fit" there was no scope for consultation with the villagers. From the record, I am not able to find that there is any finding that the villagers are the persons having interest.

7. In the circumstances, it is meet and proper that the order is set aside and the matter is remitted back to the Commissioner for making the consultation as required under law keeping in view the observations of this Court relating to the persons having interest.

8. In the result, the appeal is allowed. There shall be no order as to cost.