
(1993) 02 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 9391 of 1992

Mahanth Motilal Goswami

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Citation : (1993) 02 PAT CK 0031

Judgement

S.B. Sinha, J.—The petitioner in this application has sought for issuance of a writ of certiorari for quashing the order dated 31- 8-1992 passed by Sri Radha Kant Yadav special officer whereby he removed the petitioner as a trustee of Nosetarih Math.

2. The fact of the matter lies in a very narrow compass,

3. The petitioner is said to be a Chela of Mahant Madhaw Goswami who was the previous Mahanth of the Nosetarih Math. The said Mahanth Madhaw Goswami died in July, 1991.

4. A village committee allegedly in a meeting held on 9-7-1989 in that regard appointed the petitioner as a Mahanth of the said Math. A letter dated 24-9-91 to the aforementioned effect was also sent to the respondent No. 2 which is contained in Annexure-2 to the writ application.

5. The petitioner thereafter was appointed a temporary trustee by the Special Officer in terms of S. 33 of the Bihar Hindu Religious Trust Board Act by an order contained in the letter dated 24-9-1991 as contained in Annexure-3 thereof.

6. The respondent No. 4 thereafter filed an application before the respondent No. 2 to declare him as a Mahanth of the said Math. A notice dated 25-5-1992 which is contained in Annexure-5 to the writ petition was issued to the petitioner pursuant thereto. He filed his show cause.

7. By reason of the impugned order dated 31-8-1992 as contained in Annexure-6 to the writ application, the petitioner has been removed as a temporary trustee

and in his place the respondent No. 4 has been appointed as a trustee.

8. A counter affidavit has been filed on behalf of the respondents, wherein it has been stated that the Math was founded by Late Acharya Hansh Kabir, a follower of Kabir Math.

9. According to the said respondent the Mahanth of the said Math can be appointed only by the descigles of the late founder of Kabir Math.

10. It has further been contended that there about 1000 different branches of Kabir Math throughout the country under the administration head of "Dhanauti Math" situated in the district of Siwan and the Mahanth of different branches of Kabir Math are elected by the members of Sadhus and Mahanths of various Maths who are eligible under the bye-laws and the trust deed prepared in the year 1920.

11. It has further been contended that in terms of clause (5) of the said deed a person in order to be eligible to become a Mahanth must be unmarried and renounce the Grihast Ashram for service to the society and the Kabir panthi followers.

12. A copy of the said deed of trust has been annexed and marked as Annexure-A to the counter-affidavit.

13. It has been stated that till 25-5-1991 Mahant Madhav Goswami was the duly elected Mahanth for the Nause Tand Kabir Math.

14. It has been contended that on the death of late Mahanth Madhav Goswami, Mahanth Siya Ram Goswami was duly elected as a Mahanth of Nause Tand Math upon performance of the prescribed religious ceremony on 9-6-1991.

15. According to the petitioner Motilal Yadav alias Moti Lal Singh son of Manglal Singh who had an evil "eye on the trust properties and having crimmal background along with his muscle men got a letter prepared in the name of Chief Minister, Bihar and got his name recommended through the member of Parliament Tej Narain Singh and the said letter was forwarded to the Special Officer, Bihar State Board of Religious Trust for recognising him as a Mahanth of the Nause Tand Kabir Math. A copy of the said letter is contended in Annexure-B to the counter-affidavit.

16. It has further been stated that one Ramji Keshri who is politician in connivance with the petitioner falsely prepared proceedings of the meeting showing names of several persons including those who were dead and forwarded the same to the Special Officer.

17. It has been contended that the Special Officer on the basis of the said forged minutes and without making any enquiry as contemplated under S. 33 of the Act issued the said letter dated 24-9-1991.

It has been stated that thereafter the petitioner forcibly dispossessed the

Mahanth Siya Ram Goswami for which a proceeding under S. 144 of the Cr. P.C. was initiated.

18. In this situation, according to the respondent No. 4, an application was filed before the Special Officer. It has been submitted that the Special Officer had no jurisdiction to issue the letter dated 24-9-91 as contained in Annexure-3 to the writ application as there existed bona fide dispute with regard to right of a person to act as trustee.

19. A supplementary affidavit has been filed on behalf of the petitioner by way of reply to the aforementioned counter-affidavit wherein inter alia it has been contended that the respondent No. 2 has no power to recall and/or review his earlier order dated 24-9-91 passed under S. 33 of the Act.

20. It has been contended that the petitioner's initial appointment could only be challenged before a competent court of law.

21. Mr. Abhay Kumar, the learned counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned counsel submitted that the petitioner having legally been appointed as a trustee, he could have been removed only in terms of Section 28(2)(h) of the Act.

22. It has further been submitted that if the respondent No. 4 was aggrieved by the order of his appointment as a temporary trustee, his remedy lay in filing an appropriate application under Ss. 47 and 48 of the Act.

23. Mr. Shukla, the learned counsel appearing on behalf of the respondent No. 4, on the other hand, submitted that it is a settled law that a Mahanth can be appointed only in terms of the provisions of the deed of endowment and in the manner prescribed there- under.

24. According to the learned counsel as the initial order of appointment of the petitioner as a Mahanth was void the special "Officer has the jurisdiction to review his order and thus in passing the impugned order dated 31-8-1992 as contained in Annexure-6 to the writ application, no illegality has been committed.

The learned counsel in support of this contention has relied upon *Sital Das Vs. Sant Ram and Others*, and *Baijaynanda Giri and Others Vs. State of Bihar and Another*, .

25. From a perusal of the impugned order as contained in Annexure-6 to the writ application, it appears that the Board by reason of an order dated 7-9-1992 directed the petitioner to deposit the arrears of fees payable to the Board but the petitioner had deposited only a sum of Rs. 4,000/- and a huge amount is in arrears. The respondent No. 2 held a local inspection on the complaint of the local people on 26-4-92 in respect whereof he prepared a memorandum of inspection. The respondent No. 2 further took into consideration the respective contentions of the parties and came to the conclusion that the Math in question

is a branch of. Dhantori Nath at Siwan and the same is a Kabir Panthi Math.

26. The respondent No. 2 further took into consideration the document filed by the parties indicating the deed of trust of 1920, executed by the founder of the trust Late Acharya Hansh Kabir and other document including the first information report lodged against the petitioner.

27. The petitioner before the respondent No. 2 inter alia contended that he is in charge of the Math in question. He further accepted that he was appointed pursuant to the recommendations of a member of parliament Tej Narain Singh to the Chief Minister. He in support of his contention relied upon the receipt showing deposit of fees, the minutes of the village meeting and the letter of recommendations of Tej Narain Singh and the order passed under S. 144 of the Code of Criminal Procedure. The respondent No. 2 by reason of his impugned order has come to the conclusion that the matter in question is a branch of Dhanoti Math although in the records of the Board its separate existence has been noted. He further held that the papers filed by Moti Lal Yadav appeared to be by way of after thought and unbelievable. He further found that the petitioner has failed to discharge his duties as a trustee. It was further held that for the local inspection, the function of the petitioner as a trustee was found unsatisfactory.

28. It has further been pointed out that he had sold lands without obtaining prior permission of the Board. It was apprehended that in future also he would do the same thing.

29. Sections 28(2)(h) and 33 of the Act read thus:--

"28(2) :-- Without prejudice to the generality of the provisions of Sub-section (1), and subject to the other provisions of this Act, the powers and duties of the Board shall be-

(h) :-- to remove a trustee from his office if such trustee-

(i) Is convicted of any such offence or is subjected by a Criminal Court to any such order as implies moral turpitude which in the opinion of the Board, unfit him to hold office;

(ii) is convicted more than once of the same or different offences under this Act;

(iii) refuse to act, or wilfully disobeys the directions and orders of the Board under this Act; or

(iv) applies for being adjudged or is adjudged an insolvent;

33:-- Power to appoint temporary trustee; (1) Where there is a vacancy in the office of trustee of a religious trust and there is no one competent to be appointed as trustee under the terms of the deed of such trust or where there is a bona fide dispute as to the right of any to act as trustee and in the opinion of the Board there is likelihood of a breach of the peace or serious interference with

the management of the property of such trust (or where there is a vacancy caused by the order of the Board passed under clause (h) of subsection (2) of Section 28 of this Act) the Board may, subject to any order of a competent court appoint any person to act as trustee of the said trust for such period and upon such conditions as it thinks fit. (2) In appointing a person as a trustee under Sub-section (1), the Board shall, if possible select a person of the section to which the last trustee belonged."

30. From a bare perusal of the S. 33 of the Act, it is evident that a temporary trustee can be appointed if the conditions precedent there for exist. Admittedly Mahanth Madhav Goswami died on 25-5-1991. The respondent No. 4 was appointed as a Mahanth in terms of the trust deed of 1920 on 9-6-1991.

31. Thus the post of Mahant was not vacant on 24-9-91 when the respondent No. 2 appointed the petitioner as a temporary trustee.

32. In *Baijaynanda Giri v. State of Bihar* reported in 1954 Pat 266 it has been held as follows:--

"These authorities emphasise that the position of a Mahanth or Shebait is a combination of office and proprietary right and though the position is anomalous, it is an anomaly which has been recognised and accepted in Hindu Law from a very early date. But it is important to remember that though a Mahanth has a beneficial interest and though he has large administrative powers, his control is always subject to certain obligations and duties governed by the custom and usage of the particular muth. A Mahanth is not a trustee in English Sense of the term but a Mahant is nevertheless in view of the obligation and duties resting upon him answerable as a trustee in the general sense for proper administration. The Mahanth in fact occupies a fiduciary position in respect of the endowment and he has duties and obligations of certain kinds of discharge."

33. It was further held :--

"It is clear therefore that though a Mahanth is not a trustee in the strict sense of English law, he is a trustee in the general sense occupying a fiduciary position in respect of the endowment and having obligations of certain kinds to discharge. He holds the muth property for certain religious and charitable purposes which are laid down by the founder in the original grant or sanctioned by custom and usage of the muth. A Mahant has no authority to alienate trust properties except for benefit or legal necessity of the muth. A Mahant has authority to borrow money but he may do so only for the purposes connected with the muth. A Mahant is not entitled to grant lease in perpetuity and fix an unalterable rate of rent. A Mahant has a large discretion in spending the surplus over the objects connected with the institution. But it is not permissible for the Mahant to spend the surplus for his personal use. He is not bound to save the surplus: it is only for the purpose connected with the objects of the institution."

34. From a bare perusal of the provisions contained in Section 33 of the Act, it is

evident that even in a case where a temporary trustee can be appointed, a duty has been cast upon the Board to see that such person is appointed who could be appointed in terms of the deed of endowment.

35. From a perusal of the Annexure-3 to the writ application, it does not appear nor does the petitioner contend that while passing the order dated 24-9-91 as contained in Annexure-3 to the writ application such an enquiry had been made. The said order evidently was passed on wholly extraneous consideration namely on the basis of a purported letter of some persons who allegedly were representing the villagers, the petitioner also does not contend in his supplementary affidavit which has been filed by way of reply to the counter affidavit filed on behalf of the respondent No. 4 that he was eligible for appointment in terms of the deed of endowment as contained in Annexure-1 to the counter affidavit or he was appointed as a Mahanth in the manner prescribed therein.

36. In *Sital Das Vs. Sant Ram and Others*, it was held :--

"The law is well settled that succession to Mahantahip of a math or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment."

37. As in this case, rule of succession had been created by the founder of endowment, a Mahanth has to be appointed only in the manner laid down under paragraph 5 of the deed of endowment.

38. The petitioner does not contend that either he is a Kabir panthi or fulfils the other criteria for being appointed as a Mahanth.

39. Further, it has been found by the respondent No. 2 in his impugned order, as noticed hereinbefore, that the petitioner had produced forged documents and guilty of his mismanagement of the property. He also transferred some property which is ex facie illegal and thus evidently he has violated the provisions of the Act and on that ground too he was liable to be removed.

40. Even according to the petitioner himself he was appointed as a Mahanth pursuant to the recommendations made by a member of parliament to the Chief Minister which was forwarded by the Chief Minister to the respondent No. 2.

41. The function of the Board is a statutory one. Such a statutory functionary cannot act on the basis of the recommendations of a person who has no role to play under the statute. Even consultation with any person who has no role of play under the statute by statutory functionary must be held to be illegal.

42. In *Bijoy Kumar Santhalia Vs. State of Bihar and Others*, it has been held as follows :--

"In view of the fact that the order as contained in Annexure-6 to the writ petition has been passed by the Land Acquisition Officer on the basis of the direction of

the Commissioner as contained in Annexure-5 to the writ petition, the same also cannot be sustained although the Land Acquisition officer is one of the statutory functionaries under the Land Acquisition Act."

43. Yet recently in *Damodar Prasad Singh v. State of Bihar* reported in (1993) 1 LJR 194 a Division Bench of this Court held as follows :---

"It is well settled that an authority exercising statutory functions must act in accordance with the provisions of the Statute which vests in him, the power which he seeks to exercise. The statutory authority must seek guidance for his action from the provisions of the Act itself, and should not be guided by any consideration which can be said to be extraneous."

44. In view of the fact that the appointment of the petitioner as a temporary trustee itself was illegal, in our opinion, the impugned order as contained in Annexure-6 to the writ application cannot be held to be illegal or without jurisdiction.

45. Further in any event, it is now well known that when by quashing of an illegal order by this Court in exercise of (sic) jurisdiction under Article 226 of the Constitution of India another illegal order may revive, it may not quash the impugned order or may quash both the illegal orders.

Reference in this connection may be made to *Pramod Kumar v. State of Bihar* reported in 1988 LJR 923(HC) and *Suku Mahto v. State* reported in (1992) 2 LJR 134

46. For the reasons aforementioned, no case has been made out for interference with the impugned order.

47. Before parting with this case, however, we may mention that by an order dated 1-10-1992 we directed maintenance of status quo subject to the conditions that the petitioner shall not alienate the property or enter into any transaction which would be contrary to the interest of the trust.

48. According to the petitioner, however, despite the said order, the properties in question had been delivered by the respondent No. 4 on 14-10-1992.

49. In that view of the matter, we initiated a proceeding under the contempt of Courts Act against the respondents Nos. 2 and 4 and directed the Sub-Divisional Magistrate Arrah and Block Development Officer Bihian to see that the possession of the disputed property as existing on 1-10-1992 is restored back to the petitioner.

50. The respondent No. 2 has filed a supplementary counter-affidavit wherein it has been contended that although the petitioner was approached to take back the possession of the property but he evidently did not do so.

51. According to the respondent No. 4 the petitioner started harvesting the paddy crop for which a complaint petition has been lodged.

52. It has further been contended that the petitioner had harvested paddy and sold the same despite the order dated 1-10-1992 and upon resistance offered by the respondent No. 4 he was threatened with dire consequences by him and his criminals friends for which a written information was given to the local police station on 30-12-1992.

53. Before us a statement had been made by the Government pleader No. 1 upon taking instructions from the Sub-divisional Magistrate that the petitioner was being in physical possession of the property harvested the standing crops and used the same for his own use purposes.

54. In this view of the matter, the contempt proceedings initiated against the Sub-divisional officer/Circle officer as also the respondent No. 4 is dropped. The respondents would now be free to take possession of the property of the math if the petitioner is still in possession thereof.

55. It would also be open to the concerned respondents including the respondent No. 4 to take such action as against the petitioner as is permissible in Law.

56. However, before parting with this case, we may observe that we are not expressing any opinion on the allegations made by the respondent No. 4 in his supplementary affidavit against the petitioner as in relation thereto criminal cases have been instituted,

57. These applications are, therefore, dismissed with the aforementioned observations with costs.

58. Advocate fee quantified at Rupees 1000/-.

G.C. Bharuka, J.

59. I agree.