

(2021) 03 PAT CK 0261

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1491 Of 2020

Mahanth Ramesh Giri @ Ramesh Giri

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-03-2021

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 8, 8(4), 8(a), 28, 32, 39, 83

Citation : (2021) 03 PAT CK 0261

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : K.N. Choubey, Subodh Kumar Jha, Awadhesh Kumar Singh, Pranav Kumar Jha, Rajesh Kumar, Ganpati Trivedi, Shailendra Kumar Jha

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the Bihar State Religious Trust Board and learned counsel for respondent no.13.

2. In the present case, the petitioner is challenging the order dated 13.10.2020 (Annexure-10 to this writ petition), by which the respondent no.3 decided the complaint filed by respondent nos. 8 and 9 against the petitioner as also the order dated 31.10.2020 (Annexure-12) passed by respondent no.3, by which the Trust has been reconstituted.

3. The petitioner is challenging the power and authority of Mr. Akhilesh Kumar Jain, respondent no.3, who has been appointed as President of Bihar State Religious Trust Board, has exercised his power as President under Section 8 of the Bihar Hindu Religious Trust Act, 1950 without being constituted the Board as other members were not appointed by the Government of Bihar.

4. It has been submitted by learned senior counsel for the petitioner that in January, 2021 the Bihar Religious Trust Board (hereinafter referred to as "the Board") has been constituted and before that the Board was not in existence, so

in absence of the Board, the exercise by the President is completely devoid of any jurisdiction and power. It has further been submitted that Section 8 (4) of the Bihar Hindu Religious Trust Act, 1950 postulates that the State Government shall appoint one from amongst the members appointed under Clause (1), (2) or (3), as the case may be, the President of the Board. So, the submission has been made that prerequisite that there must be a Board and only then the person can be appointed as the President of the Board. As the Board was not in existence, the question of exercise of power by the President of the Board does not arise.

5. Learned senior counsel for the petitioner has drawn the attention of this Court to Section 8(a) of the Bihar Hindu Religious Trust Act, 1950 and submits that in absence of the Board, the power of the Board can be exercised by the Administrator not by the President. It has further been submitted that Sections 28 and 32 of the Act itself show that the power lies with the Board not to any individual including the President of the Board, so the impugned orders passed by the President of the Board are completely without jurisdiction.

6. The question has been framed that whether the President alone can be said to be Board in absence of other members of the Board and can he pass order in absence of the Board.

7. Learned counsel for the Bihar Religious Trust Board has drawn the attention of this Court to Section 83 of the Bihar Hindu Religious Trust Act, 1950, which postulates that Board has jurisdiction to frame by-laws which should not be inconsistent with the Act and the rules made thereunder for any matter necessary for carrying into effect the objects of the act, and submits that the Board has delegated the power to the President to act for and on behalf of the Board.

8. Learned counsel for the Bihar Religious Trust Board also drawn the attention of this Court to Section 39 of the Bihar Hindu Religious Trust Act, 1950, which talks about delegation of power of Board and states in the prescribed manner "the Board may delegate any of its powers and duties under this Act to the President to be exercised and performed in such special circumstances as the Board may specify, and may likewise withdraw any such delegation" and submits that this section itself shows that the power lies with the Board and Board is only authority to confer jurisdiction to the President to exercise the power on behalf of the Board. He has also drawn the attention of this Court to Section 32 of the Bihar Hindu Religious Trust Act, 1950, which prescribes the power of Board to settle schemes for proper administration of the religious trusts itself shows that the power has been conferred to the Board.

9. Of course, the President can exercise the power subject to the condition that the Board is in existence in terms of the regulations framed by the Board itself. So long the Board is there, the President in terms of the regulation can act on behalf of the Board but, in absence of the Board, it is the Administrator who has to act and do needful on behalf of the Board. It is not so that the scheme of the

Board has not taken care of the situation if the Board is not there, who would exercise the power. Admittedly, in the present case, the Board was not there, recently the Board has been constituted on 2nd January, 2021, so in such circumstance, the power cannot be exercised by the President but, the same should have been exercised by the Administrator.

10. In such view of the matter, the impugned orders dated 13.10.2020 & 31.10.2020 passed by the respondent no.3 (Annexure 10 & 12) are not sustainable in law and, accordingly, the same are set aside. However, this Court is making it very clear that as the Board has been constituted, now the President of the Board is at liberty to exercise the power and act as per the Act and Regulations and pass appropriate orders.

11. Accordingly, this writ petition is allowed to the aforesaid extent.