

(2003) 02 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 12829 of 2002

Mahanth Vijay Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28, 28(2), 39

Citation : (2003) 51 BLJR 678 : (2003) 4 PLJR 710

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : M. Chatterjee, for the Appellant; A.P. Jittu, for Board, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. The petitioner being aggrieved by the order dated 18-9-2002 passed by the Chairman/President of the Religious Trust Board removing the petitioner from the office of the trustee and directing constitution of a Trust Committee, has come to this court, inter alia submitting that the order as contained in Annexure-12 is not only contrary to the provisions of law but is also contrary to the earlier direction issued by this Court. It is noteworthy that on an earlier occasion the petitioner came to this Court in CWJC No. 8305 of 1998. The petitioner had challenged his removal from the office of the trustee. The order was passed by the Chairman Bihar State Board of Religious Trust in exercise of his power u/s 28(2) h (III) of the said Act. This Court observed that the petitioner's removal was illegal because the order was passed before the petitioner's show cause reached the authority. This Court also observed that the order was passed without taking into consideration the show-cause, therefore, the petition deserved to be allowed. The Court accordingly allowed the writ application by its order dated 2-12-1999 and directed the Board for taking a fresh decision after giving an opportunity of hearing to the petitioner so also to the complainant or any other concerned

person.

3. From the said order it would clearly appear that the matter was remitted to the Board for taking a fresh decision. The matter was again heard and decided by the impugned order dated 18-9-2002 contained in Annexure-12.

4. Learned Counsel for the petitioner submits that Section 28 authorizes the Board to remove a trustee or appoint a Trust Committee u/s 32 but the Chairman alone is not entitled to exercise the powers u/s 28 because neither the powers after Board to remove the trustee have been conferred upon him nor have been delegated in his favour directly or under bye laws framed under the Act.

5. On the other hand learned Counsel for the Trust Board submits that a juxtapose reading of Sections 38 and 39 alongwith bye law No. 43(R) would show that the Chairman is entitled to exercise the powers of the Board in given circumstances and in cases of urgency and is also entitled to make scheme for proper and smooth running of the Trust or to appoint a temporary trustee. He submits that the Chairman was justified in issuing the order (Annexure-1).

6. Section 28 of the Act provides about general powers and duties of the Board. Sub-section 1 of Section 28 of Bihar Hindu Religious Trust Act, 1950 reads as under:

"The general superintendence of all religious trusts in the State shall be vested in the Board. The Board shall do all things reasonable and necessary to ensure that such trusts are properly supervised and administered and that the income thereof is duly appropriated and applied to the objects of such trusts and in accordance with the purposes for which such trusts were found or for which they exist, so far as the object and purposes can be ascertained."

Sub-section 2 of Section 28 of the Act says that without prejudice to the generality of the provisions of Sub-section (1), and subject to the other provisions of this Act, the power and duties of the Board shall be as detailed or described in Clause A to Clause T. Clause H says that the Board shall have power to remove the trustee from his office if such trustee is liable to be removed from his office on the ground as provided under Sub-clause 1 or Sub-clause 2 of Clause H of Section 28(2) of the Act Undisputedly, the Act provides that the powers to remove a trustee-vest in the Trust Board and not in Chairman. Section 32 of the Act refers to the power of the Board to settle the schemes for proper administration of Religious Trust. It talks of settlement of schemes, modification and substitution or so, it also says that if a trustee or any other person interested in such trust may challenge the scheme or settlement, modification or substitution in accordance with law before the District Judge in whose jurisdiction the land in dispute situate. The order passed by the District Judge under Sub-section 3 of Section 32 shall be final.

7. Section 32 refers to framing of the schemes. Assuming in favour of the Trust Board/Chairman and giving entire latitude in his favour that appointment of the

Committee is a part of the scheme then too it has to be shown by the respondent Board/Chairman that because of the vacancy of the trustee in the office a scheme is to be framed or a committee is to be constituted. Vacancy in the office of the trustee therefore, is a pre-condition for appointment of the committee. A vacancy in the office of the trustee would become available either on death of the trustee or on his removal or on acquiring some disqualification to continue in office. In the present matter the vacancy occurred in office because of removal.

8. The power to remove a trustee as observed earlier in accordance with Section 28 is not vested in Chairman but is vested in the Board. The question still would be whether the Board has conferred such powers or has delegated such powers in favour of the Chairman. If the answer is yes then the present matter will have to be appreciated from a different angle.

9. At this stage it would be necessary to refer to Sections 38 and 39 of the Trust Act. Section 38 refers to exercise of the Board's powers by the President which ordinarily can be exercised by the Board. It says that if any necessity arises for immediate action by the Board and a meeting of the Board cannot be arranged in time to take such action, the President may exercise any power that could be exercised under this Act by the Board, but the President shall at the next meeting of the Board make a report in writing of the action taken by him under this Section and the reasons for taking such action, for confirmation of the action taken. A proper understanding of Section 38 would make it clear that the President can exercise the Board's powers in cases of urgency/emergency looking to the exigency. It is not a general power which can be exercised at any point of time. The restriction also is that after exercising such power the President of the Board is required to put his order or the statement of the action before the Board of confirmation alongwith the reasons which persuaded him to pass an order or take action.

10. The petitioner was earlier removed on 5-8-1998. The order was challenged in CWJC No. 8305 of 1998 and was set aside on 2-12-1999. The urgency if there was any vanished because the matter remained pending before the High Court for almost one and half years and thereafter remained pending before the Board/Chairman for a period of almost about two years and nine months. If a matter remains pending for more than four years at different levels, can it be said that the matter is urgent, The submission of the learned Counsel for the Trust Board that the Chairman had exercised his emergency power conferred upon him u/s 38 of the Act is not palatable, it cannot be accepted.

11. Section 39 of the Act says that the Board may delegate any of its proper and duties under the 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. The Board cannot ordinarily delegate its power upon the president. The Board is not constituted simply to provide an office or honour to the members of the Board. The members of the Board are appointed to become the conscious keeper of the Board and the President. A decision by majority has

to be taken in the Board meeting. The President has one vote and ordinarily as provided under the law has one casting vote in case of equal distribution of votes.

12. Section 39 provides that the powers and duties under the Act can be delegated in favour of the President to be exercised and performed in such special circumstances. When such powers are conferred upon the President of the Board then special reasons must come out for delegation of such powers. Just for the sake of shirking the responsibility or just to avoid the work or not to sit in the meeting the Board members cannot delegated their powers in favour of the President. After all, they are members of the Board and have been so appointed to take care of the Trust and Trust Board, if every power is to be delegated in favour of the Chairman then there is no necessity of constituting a Board. The constitution of the Board pre-supposes that ordinarily the work shall be done and business would be discussed in the Board meeting and the Board shall not be sub-ordinate to or under the management of the Chairman of the Trust Board. In exercise of the powers conferred u/s 83 of the Act, the State Board of Religious Trust Bihar has made bye laws, which were previously published and duly approved by the State Government.

13. Bye law 43 is in relation to powers of the Board which have been delegated in favour of the Trust Board. Bye-law 43 says that the powers and duties of the Board specified in the said bye law as detailed in pause A to Z (ii) shall be exercised and performed by the president. When there is a delegation of power then the delegator delegates particular power in favour of the delegatee. The delegatee cannot assume jurisdiction beyond what has been conferred upon him under the delegation. The conferral of the powers in fact is in form of delegation. Bye-law 43 provides that 28 different powers and duties of the Board may be exercised by the President. In the considered opinion of this Court the President of the Trust Board cannot exercise any other power of the Board beyond these 28 powers.

14. The learned Counsel for the Trust Board has relied upon Clause (R) to substantiate his argument and defend the impugned order it is necessary to see the language employed in Clause "R". Clause "R" says" to settle schemes for proper administration of religious trust." Clause "S" may also be read at this stage. It says" to appoint temporary trustees." Bye-law 43 and the clauses referred in it do not cloth the President of the Trust Board with the powers to remove the trustee. If such powers have not been delegated in favour of the President then the Board continues to retain and can command power in accordance with Section 28 of the Act. The powers which have not been delegated in favour of the President cannot be assumed or exercised by him nor he can be allowed to usurp the jurisdiction of the Board. Clause "R" simply refers to settle schemes for proper administration of Religious Trust. I have already referred to this point earlier. Even for the sake of repetition I will say that present is not case of settlement of schemes for proper administration of Religious Trust. The President under the impugned order has removed the trustee and has then

appointed a Committee to maintain and look after the property belonging to the trust. Assuming appointment of the Committee is at par with framing of the scheme but that could be done only after the trustee is removed. If the office is already full then there is no room for any other person. In presence of the Trust there is no room for Trust Committee.

15. Clause "S" authorizes the Chairman to appoint a temporary trustee. A temporary trustee, according to the scheme of the Act can be appointed if there is a vacancy. If there is no vacancy, a temporary trustee cannot be appointed. In the present matter, the Chairman of the Board in his detailed order has found that the present petitioner has committed certain lapses and is guilty of omission and commission. He has also recorded that the petitioner committed fraud, sold the property and has also played fraud by amassing money and not giving proper account. On this foundation he has removed the trustee/writ petitioner. Unfortunately, in his zeal to pass the order against the petitioner and remove him he has stepped outside his jurisdiction, has exercised such powers which are not vested in him nor delegated in his favour.

16. The order of removal cannot be allowed to stand and if the order of removal cannot be allowed to stand then the constitution of the Committee also cannot be approved because there is no room nor any chair in the office to accommodate anyone else because the petitioner would continue to occupy the said office.

17. The order dated 18-9-2002 is quashed in its totality. The matter is remitted to the Board with a specific direction that the Board shall hear the petitioner and the Board in accordance with Section 28 of the Act shall pass the orders and the President alone shall have no power to pass any orders in matter like present unless the powers are delegated in his favour u/s 39 of the Act specially authorising him to take action u/s 28 of the Act. 18. The petition is allowed.