

(1987) 11 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 4453 of 1987

M/s. Agrawal Dharamshala and Others	APPELLANT
Vs	
Bihar State Board of Religious Trust and Others	RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 2(1), 28(2), 33

Citation : (1988) PLJR 212

Hon'ble Judges : S.B. Sinha, J; N.P. Singh, J

Bench : Division Bench

Advocate : G.C. Bharuka, N.P. Singh and R.K. Agrawal, for the Appellant; J.P. Shukla, G.P.I., for the Respondent

Judgement

1. This writ application has been filed on behalf of the petitioners for quashing a communication dated 29.8.87 issued by the Special Officer, Bihar State Board of Religious Trust, to the Anchal Adhikari, Jharia, Dhanbad, appointing him a trustee for Agrawal Dharmshala, at Dharamshala Road, Jharia, in exercise of the powers u/s 33 of the Bihar Hindu Religious Trusts Act (hereinafter referred to as "the Act"). The Special Officer has mentioned in that communication that Sri Shankarlal Kejriwal, who was the Secretary of the Board of Managing Committee of the said Dharmshala, was not complying with the directions of the Bihar State Board of Religious Trust, so the Anchal Adhikari (Circle Officer) was being appointed as the trustee, for managing the Dharamshala aforesaid. At the stage of admission itself the counsel for the Bihar State Board of Religious Trust accepted notice and by order dated 25.9.87 this Court stayed the operation of the impugned communication. On behalf of the petitioners it was urged that the Dharamshala in question shall not be deemed to be a religious trust within the meaning of section 2(1) of the Act and the provisions of the Act are not applicable to it. However he submitted that even if it is assumed for the purpose of this application that the provisions of the Act were applicable, the impugned communication could not have been issued in exercise of the powers u/s 33 of the Act.

2. Section 33 of the Act is as follows:--

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 bonafide dispute as to the right of any person 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.

On a plain reading of the said Act it appears that whenever there is a vacancy in the office of trustee of a religious trust and no one is competent to be appointed as trustee under the terms of the deed of such trust or where there is a bonafide dispute as to the right of any person 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, the Board may, subject to any order of a competent Court, appoint any person to act as trustee of the said trust. A trustee can be appointed u/s 33 of the Act even if in cases where vacancies have been caused by passing an order under clause (h) of sub-section (2) of section 28 of the Act. Section 28(2)(h)(i), (ii)(iii) & (iv) is as follows:--

28. General, powers and duties of the Board:--

(1) xx xx xx

(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--

XX XX XX

(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, unfits 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;

In view of the aforesaid clause (h) of subsection (2) of section 28 of the Act. the

Board can remove a trustee from his office, if such trustee is convicted or if he refuses to act or wilfully disobeys the directions and order of the Board or is adjudged an insolvent. In the present case it does not appear that at any stage the trustee of the Dharamshala in question, even if it is held to be a public trust within the meaning of the Act had been removed in exercise of the power u/s 28(2)(h) of the Act. It need not be pointed out that power u/s 33 of the Act can be exercised only after removal of the trustee in accordance with section 28(2)(h)(iii) of the Act. As in the order, which is under challenge, simply it has been stated that the trustee had failed to obey the order of the Board and Anchal Adhikari was being appointed as trustee u/s 33 of the Act, we need not go into the question as to whether there was any bonafide dispute as to the right of any person to act as trustee and in the opinion of the Board there was likelihood of a breach of the peace or serious interference with the management of the property of such trust. The Special Officer before appointing the Anchal Adhikari as trustee of the Dharamshala in question should have first taken the steps in accordance with section 28(2)(h)(iii) of the Act for removal of the trustee. In such a situation, we are left with no option but to allow this writ application and to quash the impugned communication dated 29.8.87 at the stage of admission itself, after hearing the counsel for the petitioners and the Board.

3. This writ application is, accordingly, allowed. In the circumstances of the case, there shall be no order as to costs. Before we part with this order, we make it clear that we are not expressing any opinion as to whether the Dharamshala in question will be deemed to be a religious trust within the meaning of the Act.