

(2016) 02 OHC CK 0015

In the Orissa High Court

Case No : Writ Petition (C) No. 23640 of 2015

Raghunath Gochhikar

APPELLANT

Vs

Odisha Information Commission

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Right To Information Act, 2005 — Section 6(1)
Sri Jagannath Temple Act, 1954 — Section 11, Section 13, Section 15, Section 21(2) (j), Section 34

Citation : (2017) 172 AIC 787

Hon'ble Judges : Biswajit Mohanty, J.

Bench : Single Bench

Advocate : Mr. B.S. Tripathy-I, Advocate, for the Petitioner; None, for the Opposite Parties

Final Decision : Dismissed

Judgement

Biswajit Mohanty, J.—This writ application has been filed by the present petitioner for quashing the order dated 17.11.2014 of the learned Odisha Information Commission passed under Annexure-8. The petitioner has further prayed for a direction to the opposite party nos.1 to 3 to forthwith collect the copy of the resolution dated 11.6.2013 from the Pratihari Nijoga Palia Committee and supply the same to the petitioner.

2. The facts leading to the present writ application are as follows;

The petitioner filed an application under Section 6(1) of the Right to Information Act, 2005 for short the ("R.T.I. Act") on 12.6.2013 before the P.I.O. Pratihari Nijoga Committee, Srimandir, Puri under Annexure-1 seeking supply of a copy of the resolution passed on 11.6.2013 with regard to engagement of one Anil Gochikar Asadhibandha Dhukudi Pratihari-36 in some seva. When the P.I.O. of Pratihari Nijoga Committee did not respond to the same, the petitioner filed an application under Section 6(1) of the R.T.I. Act before the P.I.O., Shri Jagannath

Temple Administration, Puri i.e. opposite party no.3 seeking supply of the above noted information relating to Pratihari Nijoga Palia Committee. Vide Annexure-3 it was intimated by the opposite party no.3 that resolution dated 11.6.2013 as requested by the petitioner was not available in the office of Shri Jagannath Temple Administration. Being aggrieved the petitioner filed First Appeal No.11 of 2013 before opposite party no.2 vide Annexure-4. The said appeal was disposed of by opposite party no.2 vide Annexure-6 with an observation that as there was no provision to submit the resolution passed in any Nijog for approval of the Public Authority, no such resolution was available in the office of Shri Jagannath Temple Administration. Again being aggrieved, the petitioner preferred Second Appeal No.2107 of 2013 before opposite party no.1. The same was disposed of vide Annexure-8 on 17.11.2014 observing that the requested information was not available in the office and it could not be claimed by the petitioner that the P.I.O. or First Appellate Authority should take steps to collect a copy of the resolution as asked for from Pratihari Nijoga Palia Committee. According to opposite party no.1 only such information as was held by the Public Authority i.e. Shri Jagannath Temple Managing Committee/Administration could only be furnished by the P.I.O. However, the opposite party no.1 further directed opposite party no.3 to search the office records once again thoroughly and furnish the information, if retrieved, to the petitioner. In case the same was not available in the office records, the opposite party no.1 should file an affidavit with the Registry of the Commission regarding non-availability of the requested information and a copy of such affidavit be sent to the petitioner. With such direction the opposite party no.1 disposed of the Second Appeal. Thereafter, vide Annexure-9 the copy of the affidavit indicating nonavailability of the information asked for was sent to the petitioner. Being aggrieved, the petitioner has filed the present writ application with the earlier noted prayers.

3. Mr. B.S.Tripathy-I, learned counsel for the petitioner argued that under the Jagannath Temple Act, 1955 for short, "the Temple Act". Pratihari Nijoga Palia Committee was obliged to furnish the copy of its resolution to the Temple Administration as well as to the Government and if Pratihari Nijoga Committee has not furnished the copy of the resolution asked for by the petitioner, the Chief Administrator in exercise of powers under Section 21(2)(j) of "the Temple Act", should have directed the Pratihari Nijoga Palia Committee to furnish a copy of the resolution dated 11.6.2013 passed by it and accordingly the same should have been supplied to the petitioner. With regard to the legal obligation on Pratihari Nijoga Palia Committee to supply copies of its resolution to Shri Jagannath Temple Managing Committee, Mr. Tripathy, learned counsel for the petitioner took this Court through various provisions of "the Temple Act" like Sub-Clauses-(a), (a-1),(d-1) of Sub-Section-1 of Section-4, Section-11, Section-13, Sub-Sections-(1) and (10) of Section-15, Section-15-B, Sub-Clauses-(i) and (j) of Sub-Section-(2) of Section-21, Section-21-A and Section 34 of "the Temple Act". For ready reference, all the above noted provisions relied on by Mr. Tripathy are quoted hereunder;

"4. Definitions - (1) In this Act, unless there is anything repugnant in the subject or context :-

(a) "Committee" means the Shri Jagannath Temple Managing Committee constituted under this Act;

(a-1) "Nijoga" means an association of Sevaks recognised as such by the Committee.

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(d-1) "Sevak" means any person who is recorded as such in the record of rights or is recognised by a competent authority as a Sevak or his substitute or has acquired the rights of a Sevak by means of any recognised mode of transfer and includes a person appointed to perform any niti or Seva under Clause (i) of Sub-section (2) of Section 21"

"11. Dissolution of supersession of the Committee - (1) If in the opinion of the State Government the Committee is not competent to perform, or makes default in performing the duties imposed on it under this Act, or exceeds or abuses its powers the State Government may, after due enquiry, by notification dissolve the Committee and reconstitute another Committee within a period of six months from the date of dissolution or supersede the Committee for such period not exceeding six months, as the State Government may deem fit.

(2) Before issuing a notification under Sub-section (1), the State Government shall, communicate to the Committee the grounds on which they propose to do so, fix a reasonable time for the Committee to show cause against the proposal, and consider its explanations or objections, if any.

(3) Where a Committee is dissolved or superseded under this Section the State Government shall appoint a person in the active service of the State Government and professing the Hindu religion to perform the functions and exercise the powers of the Committee until the constitution of another Committee or till the expiry of the period of supersession, as the case may be:

Provided that the period during which the Committee remains superseded shall not have the effect of extending the term of office of a member beyond the period of three years as specified in Section-9".

"13. Meetings of the Committee - (1) The Committee shall maintain its office at such place or places at Puri as the Committee may determine for the transaction of its business.

(1-a) The Committee shall meet not less than six times during a calendar year and a period of more than two months shall not be allowed to elapse two successive meetings.

(1-b) Chief Administrator may, sou motu, and shall, when so required by the Chairman or in his absence by the (Working Chairman), convene an emergent or special meeting of the Committee for consideration of any urgent matter.

(2) The Chairman and in his absence the Working Chairman shall preside over the meetings of the Committee and in the absence of both any other member elected by the members present shall preside over such meeting.

(3) No business shall be transacted at any meeting unless at least (nine members) are present.

(4) Questions arising at a meeting of the Committee shall be decided by a majority of the votes of the members present thereat and the Chairman or the person presiding, as the case may be, shall have no right to vote at the first instance but shall have and exercise his casting vote in the case of equality of votes.

(5) The Secretary of the Committee shall be responsible for the due record and maintenance of the minutes of the proceedings duly countersigned by the Chairman or the person presiding as the case may be, and shall submit a copy of the said minutes to the State Government for their information.

(6) The State Government may call upon the Committee to submit report on any matter concerning the business of the Committee and management of the Temple and its affairs. Noncompliance in this behalf will be treated as a default in performance of duty within the meaning of Section 11".

"15. Duties of the Committee - Subject to the provisions of this Act and the Rules made thereunder, it shall be the duty of the Committee

"(1) to arrange for the proper performance of Seva-Puja and of the daily and periodical Nitis of the Temple in accordance with the record-of-rights;

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(10) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Temple and its endowments or to the convenience of the pilgrims".

"15-B. Revision of record of rights and appeal against order for revision - (1) Chief Administrator may either on his own motion or on an application made in that behalf by any Sevak, other than the Raja of Puri, and after making an enquiry in the prescribed manner, make an order effecting any change in any entry made in the record-of rights on all or any of the following grounds, namely:

(a) that such change is necessary in view of any new materials which have come to notice; or

(b) that any entry therein bears no relationship to the existing facts; or

(c) that any such entry is incomplete or incorrect; Provided that no order under this sub-section shall be made without giving the parties concerned a reasonable opportunity of being heard.

(2) Any person aggrieved by an order under Sub-section (1) may, within thirty days from the date of communication of the order to him, prefer an appeal before the State Government and thereupon the State Government may, after making such enquiry as may be necessary and after giving the parties concerned an opportunity of being heard, make such order as they deem fit.

(3) No order made under Sub-section (1) or under Sub-section (2) shall debar any person aggrieved thereby from establishing his right, if any, in a Court of competent jurisdiction but no Court shall have power to stay the operation of the said order pending the final disposal of the proceedings before such Court or of any appeal or application arising therefrom or in relation thereto".

"21. Powers and duties of Chief Administrator - (1) Chief Administrator shall be the Secretary of the Committee and its Chief Executive Officer and shall, subject to the control of the Committee, have powers to carry out its decision in accordance with the provisions of this Act.

(2) Notwithstanding anything in Sub-section (1) or in Section 5 Chief Administrator shall be responsible for the custody of all records and properties of the Temple, and shall arrange for proper collections of offerings made in the Temple and shall have power -

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(i) in the absence of any sevak or his substitute or on the failure on the part of any such person to perform his duties, to get the Niti or seva performed, in accordance with the records-of rights by any other person;

(j) to issue instructions or directions, from time to time, for controlling the activities, conduct and management of all institutions including Mukti Mandap and Pandit Sabha functioning within the premises of the temple".

"21-A. Control of Sevaks, etc. - All sevaks, office-holders and Employees attached to the Temple or in receipt of any emoluments or perquisites therefrom shall, whether such service is hereditary or not, be subjected to the control of Chief Administrator who may, subject to the provisions of this Act and the regulations, made by the Committee in that behalf, after giving the person concerned a reasonable opportunity of being heard-

(a) withhold the receipt of emoluments or requisites;

(b) impose a fine of an amount not exceeding two thousand rupees;

(c) suspend; or

(d) dismiss;

any of them for breach of trust, incapacity, disobedience of lawful orders, neglect of or wilful absence from duty, disorderly behaviour or conduct derogatory to the discipline or dignity of the Temple or for any other sufficient cause".

"34. Public officers to furnish copies of or extracts from certain documents - All public officers having custody of any record, register, report or other documents relating to the Temple or any movable or immovable property thereof shall furnish such copies of or extracts from the same as may be required by Chief Administrator".

Relying on the above statutory provisions, Mr. Tripathy, learned counsel for the petitioner submitted that Nijoga is an association of Sevaks which is recognised by the Jagannath Temple Managing Committee. As per Section-21(2) of "the Temple Act", the Chief Administrator is responsible for the custody of all records and properties of the Temple and he has got power to issue instructions or directions, from time to time, for controlling the activities, conduct and management of all institutions including Mukti Mandap and Pandit Sabha functioning within the premises of the Temple. As per Section-13(5) of "the Temple Act", the Secretary of the Committee is responsible for the due record and maintenance of the minutes of the proceedings duly countersigned by the Chairman or the person presiding as the case may be, and is required to submit a copy of the said minutes to the State Government for their information. As per Section 13(6) of "the Temple Act", the State Government may call upon Shri Jagannath Temple Committee to submit report on any matter concerning the business of the Committee and management of the Temple and its affairs. Non-compliance in this behalf would be treated as a default in performance of duty within the meaning of Section-11 of "the Temple Act". Further, as per Section-15(1) of "the Temple Act", it is the duty of the Committee to arrange for the proper performance of Seva-Puja and of the daily and periodical Nitis of the Temple in accordance with the record of rights. As per Section-21-A of "the Temple Act", all Sevaks, office holders and employees attached to the temple are subject to the control of the Chief Administrator. Relying on the aforesaid provisions as indicated in Para-9 of the writ application he submitted that a combined reading of the above noted provisions makes it clear that Administrator of the Temple Administration is the main custodian of all records including that of Pratihari Nijoga Palia Committee and Secretary of the Committee is obliged to maintain all records including resolutions of Pratihari Nijoga Palia Committee and thus is obliged to furnish a copy of the resolution of the Pratihari Nijoga Palia Committee to the petitioner. Since the Pratihari Nijoga Palia Committee has not discharged its obligation by furnishing its resolution dated 11.6.2013 to the Temple Administrator, the Chief Administrator under Sub-Clause (j) of Sub-section-(2) of Section-21 of "the Temple Act" should have issued instructions/directions to the Pratihari Nijoga Palia Committee to supply a copy of the resolution dated 11.6.2013 and thereafter the same should have been supplied

to the petitioner. According to Mr. Tripathy, learned counsel for the petitioner, the opposite party no.1 has not considered the provisions relating to "the Temple Act" and record of rights in its proper prospective. For this reason, the order of the learned Commission (opposite party no.1) under Annexure-8 is liable to be quashed and opposite parties should be directed to collect the resolution dated 11.6.2013 from the Pratihari Nijoga Palia Committee and supply the same to the petitioner.

4. After giving anxious consideration to the above submissions of the learned counsel for the petitioner, this Court is not inclined to accept such submissions. The statutory provisions as relied on by the learned counsel for the petitioner nowhere cast a legal duty on the Nijogas operating inside Shri Jagannath Temple, Puri to furnish copies of their resolutions to the Temple Administration or Shri Jagannath Temple Managing Committee constituted under "the Temple Act". Clause-(a-1) of Sub-section 1 of Section-4 of "the Temple Act" only indicates that

5. Nijoga is an association of Sevaks recognised by Shri Jagannath Temple Managing Committee.

Similarly, Clause (d-1) of Sub-section 1 of Section 4 only defines "Sevak". Mr. Tripathy, learned counsel for the petitioner despite query from the Court could not point out any provisions under "the Temple Act" dealing with functions of such Nijogas and their obligation to provide copies of resolution which may be passed by such Nijogas. His reliance on Sub-section-5 and Sub-section-6 of Section-13 of "the Temple Act" is wholly misconceived as Sub-section (5) of Section 13 of "the Temple Act" deals mainly with responsibility of the Secretary of the Committee which means Shri Jagannath Temple Managing Committee not the Committee of Pratihari Nijoga. This is clear from the definition of the "Committee" as contained in Sub-clause-(a) of Sub-section-1 of Section-4 of "the Temple Act". As per the above mentioned Sub-clause-(a), "Committee" means Shri Jagannath Temple Managing Committee only not a Committee like Pratihari Nijoga Palia Committee. The definition "Committee" does not include any Nijoga Committee. Sub-section-6 of Section-13 deals with the power of the State Government vis-a-vis Shri Jagannath Temple Managing Committee with regard to certain matters. Similarly, the Committee referred to under Sections 11 and 15 of "the Temple Act" relates to Shri Jagannath Temple Committee not to any Committee like Pratihari Nijoga Palia Committee or Palia Committee of Pratihari Nijoga. Thus Section-15 of "the Temple Act" does not deal with the duties to be discharged by Palia Committee of Pratihari Nijoga. Similarly, Sections-15(B), 21-A and 34 do not deal with any functions of Palia Committee of Pratihari Nijoga. It seems petitioner is labouring under a misconception that "Committee" referred to in Sections 11, 13 and 15 of "the Temple Act" can take within its ambit a Committee like Pratihari Nijoga Palia Committee. In such background, this Court is not satisfied that under "the Temple Act" there exists any legal obligation for the Pratihari Nijoga Palia Committee to supply its resolutions to the Temple Administration. In absence of any such legal obligation, there is no question of

opposite party nos.1 and 2 taking steps to collect the same from the Palia Committee of Pratihari Nijoga by using the powers under Clause-(j) to Sub-section-2 of Section-21 of "the Temple Act" and supply the same to the petitioner. Even otherwise under "the Temple Act" there is also no legal obligation on the Temple Administration to collect copies of all the resolutions of all the Nijogas operating inside the temple. In such background, the attempt by the petitioner to get a copy of resolution dated 11.6.2013 passed by the Pratihari Nijoga Palia Committee of Pratihari Nijoga through R.T.I. Act from Jagannath Temple Administration is wholly mis-conceived. The Temple Administration cannot be expected to supply a copy of the resolution which under law is not required to be in their possession. In such view of the matter, this Court does not find any merit in the writ application and accordingly, the same is dismissed. No costs.