

(1987) 11 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 4494 of 1987

Rajasthani Dharamshala

APPELLANT

Vs

The Bihar State Board of Religious Trust and Others

RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 32

Citation : (1988) PLJR 333

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

Bench : Division Bench

Advocate : G.C. Bharuka, N.P. Singh and R.K. Agarwal, for the Appellant; P.K. Shahi, for the Respondent

Judgement

1. This writ application has been filed on behalf of the petitioner for quashing a communication dated 29.8.87 passed by the Special Officer, Bihar State Board of Religious Trust, appointing a Committee for the management of Rajasthani Dharamshala at Rajganj Road, Katrasgarh, Dhanbad, in exercise of the powers u/s 32 of the Bihar Hindu Religious Trusts Act (hereinafter referred to as "The Act"). The said communication has been challenged on behalf of the petitioner as unauthorised. Section 32 of the Act is as follows:--

32. Power of Board to settle schemes for proper a administration of religious trusts--(1) The Board may, of its own motion or on application made to it in this behalf by two or more persons interested in any trust:--

(a) settle a scheme for such religious trust after making such enquiry as it thinks fit and giving notice to the trustee of such trust and to such other person as may appear to the Board to be interested therein;

(b) in like manner and subject to the like conditions, modify any scheme settled under this section or under any other law or substitute another scheme in its stand:

Provided that any scheme so settled, modified or substituted shall be in

accordance with the law governing the trust and shall not be contrary to the wishes of the founder so far as such wishes can be ascertained.

(2) A scheme settled, modified or substituted instead of another scheme under this section shall, unless otherwise ordered by the District Judge on an application, if any, made under sub-section (3), come into force on a day to be appointed by the Board in this behalf and shall be published in the Official Gazette.

(3) The trustee of, or any other person interested in, such trust may within three months from the date of the publication in the Official Gazette of the scheme so settled, modified or substituted instead of another scheme, as the case may be, make an application to the District Judge for varying, modifying or setting aside the scheme; but subject to the result of such application, the order of the Board under sub section (1) and (2) shall be final and binding upon the trustee of the religious trust and upon every other person interested in such religious trust.

(4) An order passed by the District Judge on any application made under subsection (3) shall be final.

In view of section 32 aforesaid the Board may, of its own motion or on application made to it in this behalf, settle a scheme for such religious trust after making such enquiry as it thinks fit and giving notice to the trustee of such trust and to such other person as may appear to the Board to be interested therein. Thereafter, the other conditions mentioned in sub-sections (2) and (3) have to be complied with.

2. At the stage of admission itself the counsel for the Bihar State Board of Religious Trust appeared and accepted notice on 25.9.87 when it was directed that an affidavit be filed on behalf of the Special Officer of the Board as to how he has issued the impugned order in exercise of the powers u/s 32 of the Act. However, no counter affidavit has been filed.

3. It is not the stand of the Board that any scheme had, been settled in accordance with section 32 of the Act before which a Committee had been appointed by the Special Officer to manage the Dharamshala in question. We fail to understand as to how before complying with the other conditions mentioned in section 32 of the Act including framing and then settling a scheme for any such religious trust a committee could have been appointed by the Special Officer.

4. Accordingly, we are left with no option but to allow writ application and to quash the impugned communication dated 29.8.87. This writ application is 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 deciding the question as to whether the Dharamshala in question shall be deemed to be a religious trust within the meaning of the Act. We have proceeded on the assumption that even if the Dharamshala is held to be a religious trust within the meaning of the Act whether the conditions prescribed u/s 32 of the Act have

been fulfilled.