
(1979) 01 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No"s. 1431 and 1432 of 1978

Rajkishore Baral

APPELLANT

Vs

Commissioner of Endowment and Others

RESPONDENT

Date of Decision : 15-01-1979

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 27

Citation : AIR 1979 Ori 169 : (1979) 47 CLT 341

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : A.R. Tripathy, for the Appellant; S. Mohanty, A.S. Naidu, S. Misra-2, B. Das and N.K. Acharya, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—A common petitioner has filed these two separate writ applications challenging the order of the Additional Assistant Commissioner of Endowments constituting a board of non-hereditary trustees and the order of the Commissioner refusing to revise the same on an application u/s 9 of the Orissa Hindu Religious Endowments Act of 1951 (hereinafter referred to as the "Act") in respect of two separate deities. The first writ application is in relation to Sri Swapneswar Dev while the other one is in respect of Sri Kunjabehari Dev, both located in village Anda within Khurda area of the district of Puri.

2. Petitioner maintains that he is a member of the Hindu public interested in the good administration of the two endowments. The Additional Assistant Commissioner by his order dated 17-7-1978, constituted a board of non-hereditary trustees as provided u/s 27 of the Act, Petitioner maintains that there should have been an appropriate inquiry before the appointment was made and the members of the Hindu public of the locality should have been heard. As there has been no inquiry and members of the Hindu public have not been consulted and their opinion has not been gathered, the constitution of the board of non-hereditary trustees was bad. Aggrieved by the appointment, the petitioner along

with some others moved the Commissioner of Endowments in revision but the Commissioner erroneously refused to interfere.

3. Two affidavits have been filed in opposition -- one by the Commissioner of Endowments and the other on behalf of the board of non-hereditary trustees constituted under the impugned order. In the return filed by the Commissioner, it has been stated that there are three Hindu temples in the locality, being Sri Saileswar Dev, Sri Kunjabehari Dev and Sri Swapneswar Dev, and for the purposes of managing the affairs of all the three deities a board of non-hereditary trustees was being formed from 1950. Five non-hereditary trustees had been jointly appointed for all the three temples on 7-11-1969. Their terms expired on 5-11-1972, but no fresh appointment had been made. Several applications were received from the villagers making serious allegations regarding mis-management of the affairs of the three deities. The Inspector of Endowments of Khurda was deputed to enquire into the allegations and he submitted a detailed report after local inspection on 4-6-1978. It transpired that two of the non-hereditary trustees were already dead and the remaining ones were not looking after the affairs of the deity properly. The Inspector suggested that three sets of non-hereditary trustees -- one for each institution -- should be separately appointed and in his report of 30th of June, 1978, copy whereof is annexed to the counter affidavit of the Commissioner, he sent his recommendations. The Additional Assistant Commissioner took into consideration the said report and took his own decision in the matter of constitution of the board.

In the other counter affidavit by the members of the non-hereditary trustees, the constitution of the board has been claimed to have been in accordance with law.

4. Section 27 (1) of the Act provides for appointment of non-hereditary trustees and the provision runs thus :--

"The Assistant Commissioner shall, in cases where there is no hereditary trustee, appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained."

No inquiry as such has been contemplated by the statute in the matter of constitution of a board of non-hereditary trustees. Reliance is, however, placed by Mr. Tripathy for the petitioner on a Bench decision of this Court in the case of Bhramarbar Santra and Others Vs. State of Orissa and Others, , in support of his contention that an inquiry is contemplated before a board can be constituted. In the reported decision, the claim laid was that the institution was an excepted temple and had hereditary trustees. Therefore, no jurisdiction was vested in the authority to appoint a board of non-hereditary trustees to the detriment of the hereditary trustees in management. In that background, this Court observed (at

p. 145 of AIR) :--

"Section 27 (1) thus gives power to Asst. Endowments Commissioner to appoint non-hereditary trustees. The condition precedent to the exercise of jurisdiction is the non-existence of hereditary trustees in respect of the religious institution. Before the Asst. Commissioner seizes jurisdiction to appoint non-hereditary trustees in respect of a religious institution, he must have come to a finding that (i) institution is public and (ii) it has no hereditary trustees."

For the purpose of finding out as to whether these conditions are satisfied, obviously an inquiry becomes necessary. In the instant case, however, there is clear material to show that there have been several boards of non-hereditary trustees from 1950 and it is not claimed that the institution is a public one or that it has hereditary trustees. In such circumstances, we do not think the observations relating to inquiry in the reported decision of this Court can have any support to lend for Mr. Tripathy's submission. It is true that the decision of this Court has been upheld by the Supreme Court in *Hindu Religious Endowments and Others Vs. B. Samitra and Others*, , and in para. 26 of the judgment, keeping the facts in view, the Court observed (at p. 1064):--

"..... For the exercise of the power by the Assistant Commissioner under this section, it is, therefore, absolutely necessary that either there should be no dispute about the public nature of the institution and the non-existence of hereditary trustees or in case, there is a dispute about any of these matters, a prior determination of such dispute u/s 41 of the Act has been made. Without such preliminary determination if an appointment of a non-hereditary trustee is made u/s 27 of the Act and a direction is given regarding delivery of possession of the institution etc. u/s 68 of the Act, it would be manifestly illegal and without jurisdiction. A careful scrutiny of the provisions of the Act makes this position amply clear. As pointed out by the High Court, Section 27 does not in terms provide that Assistant Commissioner should make an enquiry as to whether the institution is public or private and whether there are hereditary trustees of the institution or not. These questions have to be gone into u/s 41 of the Act which specifically deals with the investigation and decision of disputes in respect thereof. Consequently, a prior determination u/s 41 that the institution is public and has no hereditary trustee is a sine qua non for appointment of trustees u/s 27 of the Act."

From the aforesaid para, it is very clear that where there is no dispute in regard to these two aspects, the necessity of an inquiry cannot be spelt out from the provision of Section 27 of the Act.

The Supreme Court dealing with the corresponding provision of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act of 1966 has laid down that in the matter of appointment of non-hereditary trustees of temples the authority do not perform a quasi-judicial function. Strictly speaking, therefore, the appointment is an administrative act. Therefore, there could be no

warrant for the contention of the petitioner that he was entitled to be heard and without affording a hearing the appointment could not have been made. 5. While the legal position is as indicated above, ordinarily an inquiry as to the fitness of the persons to be appointed as trustees would be necessary, otherwise undesirable persons and persons not fit enough to act as trustees or having disputes with the endowment itself may come into the management and thus the interest of the endowment would be prejudiced, Section 27 of the Act provides that in the matter of making of an appointment, due regard to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly maintained has to be given. In order to find out this aspect of the matter, very often an inquiry may also be necessary. In the instant case, the Endowment Inspector appears to have made an inquiry of that type. Since it is an administrative act, we cannot agree with Mr. Tripathy's submission that unless an inquiry is done by the Additional Assistant Commissioner himself, he was precluded from making the appointment on the basis of the report of the Inspector.

6. All the contentions advanced appear to be without force and the writ application must accordingly be dismissed. We make no order for costs.

P.K. Mohanti, J.

7. I agree.