

(1970) 06 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 520 of 1969

Ramesh Bhaichand Mehta and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-06-1970

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 8(2)

Maharashtra. Gujarat and Rajasthan.

2. It is relevant to quote Section 8 of the Act which deals with the manner of the constitution of the Board concerned with supervision of the proper management of the trusts. Sub-section (1) of Section 8 of the Act provides for the manner of constitution of the Board for looking after the religious trusts of general Hindu community. It runs thus:

"8. President and members of the second and every subsequent Board and their term of office. (1) Of the members of the second and every subsequent Bihar State Board of Religious Trusts--

(a) seven shall be persons appointed by the State Government: Provided that, of the persons so appointed--

(i) one shall be a person who is, or has been, a member of the Bihar Civil Service (Executive or Judicial Branch) or a member of the Bihar Superior Judicial Service or the Indian Administrative Service or a lawyer of at least ten years' standing, if no such person has been elected under Clause (c); and

(ii) two shall be sadhus;

(iii) four shall be persons elected in the prescribed manner by the trustees of religious trusts other than Jain Religious Trusts registered under this Act; and

(c) eight shall be persons elected in the prescribed manner by the Hindu members of the State Legislature and the Hindu members of the Parliament from the State of Bihar:

Provided that of the persons to be so elected, one shall be a Buddhist, unless there is no Buddhist candidate for such election."

Sub-section (2) contains the provision in regard to the Svetamber Jains and runs thus:

"(2) Of the members of the second and every subsequent Bihar State Board of Svetamber Jain Religious Trusts-

(a) two shall be persons appointed by the State Government;

"(c) The electoral roll in respect of election of the members under Clause (c) of Sub-section (2) of Section 8 shall be prepared in Hindi" in Devanagri script by the President. The President shall publish a notice in at least two Hindi newspapers having circulation in the State, specifying the date, which shall not be less than 30 days from the date of publication of the notice, within which applications shall be received for enrolment of members in the electoral roll. No fee shall be charged for such applications and they may be presented in person to the office of the Board or sent by post."

3. I have dealt with this point in C. W. J. C. No. 759 of 1969 (Pat) and held that so far as Shree Sangh (an assembly of Jains) is concerned, it must be held that the Bihar Legislature meant by this the Shree Sangh to be formed in Bihar only and not outside Bihar. It may be that the Swetamber Jains are in larger number residing in the three States mentioned above and a very small number reside in Bihar, and it may also be that some important shrines and places of pilgrimage of Swetamber Jains are to be found in Bihar at Pawapuri Raj-grih and Parasnath. The fact, however, remains that the Bihar Legislature which, under the Hindu Religious Trusts Act passed by it, has provided for the constitution of the Board to look after the proper management of these Trusts, can constitute a Trust only out of the Trustees in Bihar u/s 8 (2) and the Bihar Legislature which exists in Bihar cannot order an electorate to be formed of Shree Sanghs outside Bihar. The broad contention, therefore, based on the term "Shree Sangh" in general must fail. In consequence, the further grievance that the notification for preparation of the electoral roll inviting adults belonging to this sect to get themselves enrolled as electors u/s 8 (2) (c) of the Act cannot be regarded as in any way invalid.

4. The only ground, however, on which I have come to the conclusion that Section 8 (2) (c) is unworkable is that no age-limit of voters is prescribed either in the Act or in any of the rules issued u/s 8 (2) of the Act. The petitioners' grievance, therefore, that the Special Officer had no power to lay down the age-limit of 21 years or majority for a voter of the Swetamber Jain sect, before he could be regarded as qualified for enrolment, appears to be well-founded. It is true, no doubt, that the petitioners have alleged in the petition that the Shree Sangh (an assembly of Swetamber Jains) of any locality consists of all the adults, men and women of the community, but

to the limit of a minor, who may just be a small child, to be a voter, which cannot be taken to be the intention of the Legislature.

5. For the reasons stated above, the application must succeed and the notification Annexure 1 must be quashed. It is open to the State Government to amend Section 8 (2) (c) of the Act suitably so as to define its scope preferably to avoid ambiguity to make it confined to Bihar or as the case may be, and also to lay down the age-limit. Rule 4 may also provide for enrolment not only of the various Shree Sanghs but also for enrolment of the members of a local Svetamber Jain sect men and women, who have attained the requisite age to be sent out and who will be entitled to cast their votes in the election of their representatives u/s 8 (2) (c) of the Act.

K.B.N. Singh, J.

6. I agree.