
(2012) 06 PAT CK 0002
In the Patna High Court
Case No : CWJC No. 12564 of 2004

Ravindra Prasad Chourasia

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 29(2), 38, 5

Citation : (2013) 1 PLJR 98

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Basant Kr. Choudhary, Rajesh Kumar Mishra in 12564, M/s. Mahesh Narayan Parbat and Shyameshwar Kr. Singh in 13397, for the Appellant; Prashant Pratap (in both) and M/s. Mahesh Narayan Parbat, Shyameshwar Kr. Singh, Nawneet Kr. Ojha (in 12564); M/s. Basant Kr. Choudhary, Rajesh Kumar Mishra (in 13397); Mr. Shekhar Singh, for Resp. 2 to 4 in 12564 and Resp. 3 and 4 in 13397, for the Respondent

Judgement

Ravi Ranjan, J.—C.W.J.C. No. 12564 of 2004 has been filed for quashing of the Memo Nos. 1687 and 1689 both dated 24.8.2004 issued by Respondent Nos. 3 and 4 respectively as contained in Annexures-7 and 8 whereby the earlier committee constituted for management of "Kaniram Kejriwal Charity Trust Shree Janki Market (Dharamshala), Bhabhua, District-Kaimur" (hereinafter referred to as "the Trust") had been dissolved and a new Committee headed by the Respondent No. 5 (Ramesh Kumar Kejriwal) had been constituted. Whereas, C.W.J.C. No. 13397 of 2004 has been filed for a direction to the respondents to hand over possession of the properties of the aforesaid Trust to the newly appointed trustees as per the decision dated 7.8.2004 communicated to the respondents by letter contained in Memo No. 1687 dated 24.8.2004 issued by the Chairman of the Bihar State Board of Religious Trusts (hereinafter referred to as "the Board"). Both the matters have been heard and considered together and are being disposed of with this order.

2. Facts emanating from the averments made in both the writ applications are

being summarized as under:-

In the year 1922 late Indar Chand Kejariwal had constructed two Dharmshala, one at Bhabhua and another at Sasaram to satisfy the charitable wishes of the family. According to the writ petitioner of C.W.J.C. No. 13397 of 2004, who has filed this writ application being Manager of the Trust that has been constituted vide order dated 18.6.2004, his predecessor-in-interest had created the trust on 6.2.1945. Later on, i.e., in the year 1970, Ramesh Kumar Kejriwal the descendant of settler was appointed as managing trustee and he had appointed Sri Muralidhar Ojha as his lawful attorney-cum-Manager for looking after the day to day affairs of the aforesaid Dharamshala and the Trust. However, the petitioner of C.W.J.C. No. 13397 of 2004, Navin Kumar Ojha has stated in the writ application that the aforesaid Manager, Sri Murlidhar Ojha fell ill and, thereafter, the petitioner was given power for management of the day to day affairs of the Trust. Later on, certain properties associated with the Trust were alienated as that was required for the development of the Dharamshala. However, on 1.6.1999, in view of certain allegations regarding mismanagement of the Trust properties including the alleged illegal sale of plot no. 405 in place of plot no. 406, Ramesh Kumar Kejriwal and others were removed from the post of trustees and a new committee was formed headed by the Deputy Collector, Land Reforms, Bhabhua as its Chairman and others as members and treasurer. Aforesaid Committee was also dissolved upon allegation made by one Subhash Singh Yadav, Ex-Ward Commissioner of Ward No. 10 of Bhabhua Municipality and a new Committee was constituted vide Annexure 1 to the C.W.J.C. No. 12564 of 2004 appointing the petitioner thereof as Secretary of the Committee. The Sub-Divisional Officer, Bhabhua has been nominated as Ex-officio Chairman of the Committee. However, vide its resolution dated 18.4.2004 the order of constitution of the aforesaid Committee was not approved by the Board in its meeting dated 18.6.2004 and, thus, was recalled and at the same time the respondent no. 5 to the aforesaid writ application was given responsibility of the management of the Trust. It appears that one Subhash Singh Yadav, one of the members of the Committee constituted in the year 2002, had requested the President/Chairman of the Board to reconsider the issue as the Board had taken its decision without hearing the said Committee. Upon that notices were issued to the aforesaid Subhash Singh Yadav as well as the Ravindra Prasad Chourasia and Navin Kumar Ojha, the respondent no. 6 being the representative of the respondent no. 5 and petitioner of C.W.J.C. No. 13397 of 2004. Thereafter, again vide its decision dated 7.8.2004 on the proposal no. 26, the earlier order dated 18.6.2004 had been upheld by the Board after observing that the earlier Trust Committee was constituted on 4.1.2002 by President of Board only and not by the Board. The Board, vide its decision dated 18.6.2004 has not approved the aforesaid Committee constituted by the President. Hence, the petitioner of C.W.J.C. No. 12564 of 2004 has sought quashing of the aforesaid letters as contained in Annexures-7 and 8 through which the decision of the Board dated 18.6.2004 as well as 7.8.2004 have been communicated. However, even after

passing the aforesaid order in favour of Ramesh Kumar Kejriwal, the possession of the property of the Trust was not being handed over by the State Respondents even though the aforesaid order has already been communicated vide memo no. 1687 dated 24.8.2004. The petitioner Navin Kumar Ojha as Manager of the newly constituted committee of the Trust of which Ramesh Kumar Kejriwal has been made Managing Trustee, has filed this writ application for direction to the State-Respondents to hand over the possession of the Trust property. It has been stated that despite of such communication the Collector of the District-Kaimur had written a letter No. 1260 dated 17.9.2004 to the President of the Board for giving specific direction for handing over the possession of properties of trust in question to the trust committee headed by Ramesh Kumar Kejriwal on the ground that an objection in this regard had been received from Subhash Singh Yadav. During the pendency of this writ application another writ application has been filed by Navin Kumar Ojha, the petitioner of C.W.J.C. No. 13397 of 2004, being C.W.J.C. No. 6757 of 2005 for quashing the letter no. 241 dated 10.5.2005 issued by the Superintendent of the Board whereby the implementation of order as contained in letter No. 85 dated 19.4.2005 issued by the Board for handing over the charge of the Trust properties to the newly appointed trustee had been stayed on the direction of the President of the Board. The aforesaid writ application has been disposed of vide order dated 28.6.2005. While disposing of the writ application this Court had taken into notice that the petitioner had filed another writ application seeking implementation of the decision dated 18.6.2004, i.e., C.W.J.C. No. 13397 of 2004 and at the same time one of the private respondents had filed C.W.J.C. No. 12564 of 2004 challenging the decision of the Board dated 18.6.2004 which were pending and no interim order had been passed by this Court in the aforesaid cases. It had also been noticed that the writ petitioner in C.W.J.C. No. 12564 of 2004 had not even made any attempt for getting any interim relief from this Court. It has also been noticed that the decision dated 18.6.2004 had been taken by the Board after hearing the lawyers of the writ petitioner as well as the private respondents. It had further been observed by this Court that though it could be appreciated that the writ petitioner would be interested in the Trust for the reason that his predecessor-in-interest had created the same but it was not understandable as to why the private respondent was fighting tooth and nail for the purpose of remaining in the helm of the affairs of the trust. However, in view of the allegations made by each other regarding mismanagement and misappropriation as well as illegality committed by both the Trust Committees, the learned single Judge had directed the Collector to takeover the management of the trust and to remain in the helm of the affairs of the trust for a period of two years from the date of passing of the order and not to allow either the petitioner or the private respondent to come near the properties of the Trust. Further, a direction was given for getting the complete and full auditing of the trust done within two months and within six weeks therefrom the Collector was directed to institute appropriate proceedings against the appropriate persons who would be found to have defalcated the money and assets of the trust. Finally, it has been held that the decision dated

18.6.2004 as well as the decision dated 10.5.2005 passed by the authorities would have no effect at all. C.W.J.C. No. 13397 of 2004 as well as C.W.J.C. No. 12564 of 2004 were directed to be listed after two years after filing of the report by the Collector on the basis of the audit having been carried out by him as regards the activities of the petitioner as well as the private respondent in relation to the trust so that while deciding those writ petitioners, the Court can give appropriate directions against the petitioner and the private respondent.

3. Counter affidavit has been filed on behalf of the respondent nos. 2 to 4 as well as respondent no. 6 and rejoinder to the counter affidavit filed on behalf of respondent nos. 2 to 4 has also been filed on behalf of the petitioner. He has also filed reply to the counter affidavit filed on behalf of respondent no. 6 in C.W.J.C. No. 12564 of 2004. Similarly a supplementary affidavit has been filed on behalf of the petitioner and a counter affidavit has been filed on behalf of respondent no. 6 Ravindra Prasad Chourasia in C.W.J.C. No. 13397 of 2004.

4. The petitioner of C.W.J.C. No. 13397 of 2004 had challenged the aforesaid order passed by the learned single Judge by preferring L.P.A. No. 824 of 2005. The audit report had been produced by the Collector, Bhabhua by appending it as Annexure-D to the counter affidavit filed by him in the aforesaid appeal. It appears from the documents and further affidavits filed on behalf of the parties that both the sides have been indicted in the report for committing irregularities and first information reports have also been lodged against both the parties bearing Bhabhua P.S. Case No. 335 of 2006 as well as Bhabhua P.S. Case No. 336 of 2006. The appellant had filed affidavit with a view to explain the charges leveled against him in the audit report to impress upon the Court that the same were not so serious. However, it does not appear that the audit report has been seriously challenged by the parties and ultimately on 4.7.2007, upon a prayer made on behalf of the appellant that by efflux of time the claim of the appellant virtually had become infructuous also for the reason that the issue was pending in the two writ applications, the appeal was dismissed without prejudice to the claim of the parties to the pending litigations.

5. In the above backdrop, I have heard the parties of the writ applications and have perused the records of the case.

6. For better appreciation of the matter relevant passages from the order dated 28.6.2005 of C.W.J.C. No. 6757 of 2005 are reproduced as under:-

x x x....

It appears from the decision of the Board dated 18th June, 2005 that the said order was passed when lawyers appearing on behalf of the writ petitioner as well as the private respondent argued the case of their respective clients before the Board. I quite appreciate that the writ petitioner herein may be interested in the trust for his predecessor-in-interest had created the same but I fail to understand as to why private respondent is fighting tooth and nail for the purpose of remaining in the helm of the affairs of the trust. Despite asking I have

not been able to find out the reason why the private respondent wants to remain in the helm of affairs of the trust except that the private respondent has contended that he wanted to expose and has tried his level best to expose the illegal deeds of the petitioner in connection with the trust. In relation to the writ petition filed by the private respondent, it was submitted that the challenge thrown therein against the order dated 18th June, 2004 was primarily for non-compliance of the statutory mandate of giving notice of hearing to the private respondent. When that matter will be considered in the hearing, I will consider this aspect of the matter on its merits.

The fact remains that the trusts in question is a public trust and the same is required to be managed in the manner conducive for public interest. In such view of the matter while disposing of this writ petition, I direct the Collector to takeover the management of the trust and to remain in the helm of the affairs of the trust for a period of two years from today and not to allow either the petitioner or the private respondent to even come near the trust. It shall be open to the Collector to take such opinion as he requires from any person he deems fit and proper for managing the trust. Within two months from today, the Collector shall complete the full audit of the trust. Within Six weeks therefrom he shall institute appropriate proceedings against the appropriate persons who shall be found to have defalcated the money and assets of the trust. In view of the directions as above, the decision dated 18th June, 2005 as well as the decision dated 10th May, 2005 shall have no effect at all.

The writ petition filed by the petitioner for enforcement of the decision dated 18th June, 2004 being C.W.J.C. No. 13397 of 2004 and the writ petition filed by the private respondent challenging the decision dated 18th June, 2004 being C.W.J.C. No. 12564 of 2004 shall be listed two years hence when the Collector shall file a report on the basis of the audit carried out by him as regards the activities of the petitioner as well as the private respondent in relation to the trust so that while deciding those writ petitions, the Court can give appropriate directions against the petitioner and the private respondent.

7. From perusal of aforesaid order as well as records of both cases it appears admitted that the Trust in issue a Public Trust. It is also apparent that the earlier committee constituted by the President/Chairman of the Board in the year 2002 was not approved and the order was recalled by the Board in its meeting held on 18.6.2004. In the same meeting respondent no. 5 of C.W.J.C. No. 12564 of 2004, namely, Ramesh Kumar Kejriwal was accepted as Managing Trustee by the Board but the possession of the trust properties was not handed over to him as the Superintendent of the Board, later on, vide letter No. 241 dated 10.5.2005, had informed the District Magistrate, Bhabhua that the earlier direction for handing over possession of the Trust properties in favour of Ramesh Kumar Kejriwal had been stayed and it would be considered in the next meeting of the Board. As a result, the earlier Committee, of which the petitioner in C.W.J.C. No. 12564 of 2004 was Secretary, remained in the helm of affairs till passing of the

order dated 28.6.2005 by this Court in C.W.J.C. No. 6757 of 2005.

8. Learned counsel appearing for the petitioner in the C.W.J.C. No. 12564 of 2004 has submitted that earlier Committee constituted by the President/Chairman of the Board was dissolved without giving notice or intimation to the Committee which is required under proviso to Section 29(2) of the Bihar Hindu Religious Trust Act, 1950 (hereinafter referred to as "the Act") thus, the same is liable to be set aside on that ground alone.

9. Learned counsel appearing for the respondent no. 6 submitted that, in fact, the earlier Committee has not been dissolved but the same has not been approved by the Board. The committee was constituted by the President/Chairman of the Board without such power vested in him. Even if it is assumed that such power is vested in him u/s 38 of the Act, such decision taken by the President/Chairman is required to be approved by the Board in the next meeting but the approval was not given. It has been stated in paragraph no. 21 of the counter affidavit that the State Government in exercise of powers u/s 5 of the Act constituted the Bihar State Board of Religious Trusts and appointed its members for a period of 5 years, i.e., from 1995-2000. In the year 2000 the term of the members expired and no new member could be appointed by the State Government. Therefore, the day to day functioning on ad hoc basis in terms of powers u/s 38 of the Act was being performed by the President. During that period 11 members Trust Committee was constituted by the then President on 4.1.2002 appointing the petitioner Ravindra Prasad Chourasia as its Secretary. Subsequently, the Board was again constituted by the State Government in the year 2003 and the decision taken by the President u/s 38 of the Act was duly considered by the Board in its next meeting on 18.6.2004 and due to gross mismanagement and misappropriation of Trust property at the hands of the members of the said committee the Board did not accord confirmation. It has been stated on behalf of the private respondent that though this Court had directed that the parties to the writ application should not be allowed to come near the trust properties, however, the management of the trust properties was handed over to one Gopal Prasad, who has been appointed by the writ petitioner and was his close associate, thereby permitting the petitioner to manage the Trust by proxy. After expiry of two years, i.e., the period granted in the aforesaid order passed by this Court in C.W.J.C. No. 6757/2005, the District Magistrate, Bhabhua had again been made Ex-officio trustee for one year. However, from letter dated 11.5.2011 issued by the President of the Board addressed to the District Magistrate, Kaimur (Bhabhua) as contained in Annexure-E, it appears that it proposes to reconstitute the Trust Committee by inducting people of good and clean image from various fields of the society. From averments made in the affidavit filed on behalf of the respondent nos. 2 to 4 it appears that the present set up of the Board is not even satisfied with the audit report submitted by the District Magistrate, Bhabhua in compliance of the order of this Court. It has been submitted that the order dated 28.6.2005 of this Court passed in C.W.J.C. No. 6757 of 2005 has not been carried out in its letter and spirit, thus, further audit

of the trust for the period 2005-2007 is also required.

10. From the proceeding of the Board dated 7.8.2004 specially regarding the proposal no. 26, it appears that the Board has not approved the constitution of the Committee by the earlier President in the year 2002 as certain allegations against the members of the committee were made and they were issued show cause notices u/s 29(2) of the Act. Their replies to the show cause notices were not found satisfactory and, hence, were rejected. Thereafter, the petitioner of C.W.J.C. No. 13397 of 2004, whose predecessor-in-interest had created the Trust, was accepted as Managing Trustee. It has already been noted down in the order dated 28.6.2005 passed in C.W.J.C. No. 6757/2005 that the Board had taken the aforesaid decision in 2005 after hearing the advocates of the parties. Thus, the objection raised in this regard by the petitioner Ravindra Prasad Chourasia does not appear to be tenable. However, considering all the aspects a learned single Judge of this Court, in the aforesaid C.W.J.C. No. 6757/2005, had already directed the Collector of the District to takeover the management of the Trust and remain in the helm of affairs of the Trust by not even after allowing any of parties to even come near the trust properties and get the full audit of the trust be done and, further, that in view of the aforesaid, the decisions dated 18.6.2004 as well as the decision dated 10th May, 2005 passed by the authorities would have no effect at all.

11. Parties in their affidavits filed in these writ applications have made allegations upon each other to the extent that the audit report has indicted them and first information reports have been lodged against the parties bearing Bhabhua P.S. Case No. 335 of 2006 as well as Bhabhua P.S. Case No. 336 of 2006. However, Navin Kumar Ojha has taken a stand that, so far he and Ramesh Kumar Kejriwal are concerned, only minor discrepancy has been found and accordingly the Superintendent of Police, Kaimur has issued direction to close investigation against the answering respondent and submit final form in the matter. Similarly petitioner, Ravindra Prasad Chourasia has stated that a final form exonerating him in the Bhabhua P.S. Case No. 336 of 2006 has been submitted by the police. However, none of them have informed as to whether such final form has been accepted by the concerned Court or not. The audit report has also not been seriously challenged by them before any appropriate forum. Navin Kumar Ojha, the appellant of L.P.A. No. 824 of 2005, by filing affidavit in the aforesaid appeal had only tried to explain his indictment by the auditor by stating that the charges are not very serious against him. However, nothing has been decided in this regard by the Division Bench due to the reason that it had been urged that by efflux of time the claim of the appellant virtually had become infructuous.

12. In above view of the matter, in my considered view, since there have been allegation of illegality and irregularity committed by both the Trust Committees and admittedly the auditor has indicted both the parties and the first information reports have been lodged against them coupled with the fact that the trust in

question is a public trust and the same is required to be managed in the manner conducive for public interest, I do not find it proper to allow any of the contesting parties, i.e., the petitioner or the private respondent to remain in the helm of affairs of the trust in question. In view of the fact that there is already a proposal on behalf of the Board for constitution of 7 to 11 members Trust Committee by inducting persons of clean and fair image from different aspects and fields of the society, this court would agree to such proposal which would be in public interest also. Thus, I direct the respondent no. 2 the Bihar State Board of Religious Trust (Respondent No. 3 in C.W.J.C. No. 13397 of 2004) to constitute such Trust Committee in accordance with law within three months from the date of receipt/production of a certified copy of this order. If needed it would be open for the respondent Board to get further audit of accounts of the trust be done in accordance with law. Let the arrangement made for management of the Trust vide Annexure-B to the counter affidavit filed on behalf of the Respondent Nos. 2 to 4 continue till the aforesaid exercise is completed by the Respondent No. 3. Accordingly, both the writ applications stand disposed of.