

(1970) 06 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 580 of 1969

Savailal Keshavlal Shah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-06-1970

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 14, 81A
Constitution of India, 1950 — Article 311

Citation : AIR 1971 Patna 146

Hon'ble Judges : S.C. Misra, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Ray Paras Nath and Krishna Chandra, for the Appellant; Tarakant Jha, Bishwanath Agarwal and Shrinath Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.B.N. Singh, J.—This writ application, under Articles 226 & 227 of the Constitution of India, has been filed for quashing the Government Notification dated the 22nd May, 1969 (Annexure "11") and the letter of the even date (Annexure "12") of Respondent No. 1, terminating the appointment of the petitioner as Special Officer, with effect from the date of the notification, and appointing Respondent No. 3 as Special Officer to exercise all the powers and perform all the duties of the Third Bihar State Board of Svetamber Jain Religious Trusts and its President under the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as the Act.)

2. The Bihar Legislature, with a view to provide for better administration of Hindu religious trusts and for protection and preservation of the properties appertaining to such trusts, enacted the Bihar, Hindu Religious Trusts Act, 1950 (Bihar Act 1 of 1951). u/s 2(e) of the Act, the expression "Hindu" has been defined so as to include a Jain and a Budhist, but not a Sikh. u/s 5(2) of the Act, a Board, known as the Bihar State Board of Svetamber Jain Religious Trusts, has to be constituted to discharge, in regard to Svetamber Jain Religious Trusts, the

functions assigned to the Board under the various provisions of the Act. u/s 7 of the Act, all the members of the first Board were to be appointed by the State Government of Bihar, and one of such members was to be appointed as the President of the first Board by the State Government, and the term of the office of the first Board was to be five years. The second and the subsequent Boards were to be constituted in the manner as laid down in Section 8 (2) of the Act. Under Clause (a) of that sub-section, two members have to be appointed by the State Government, under Clause (b) four have to be elected by the Registered Swetamber Jain Religious Trusts and under Clause (c) five have to be elected in the manner prescribed by Shree Singh. Section 8(4) lays down that the President of the second and all subsequent Boards have to be appointed from amongst the members nominated by the State Government under Clause (a) of Section 8(2). It may be mentioned that u/s 28 of the Act the general superintendence of all the religious trusts in the State of Bihar vests in the Board and the Board shall do all that is necessary to ensure that such trusts are properly supervised and administered and the income from such trusts is duly appropriated and applied to the objects of such trusts.

3. It is not disputed that after the constitution of the first Board, the second Board was constituted in the year 1958 and was superseded on the 24th October, 1962. The third Board was constituted on the 2nd April, 1964. Certain schemes prepared by the third Board, as well as the constitution of the third Board were, however, challenged in writ petitions filed in this court, which were allowed on the 29th August, 1968 (vide *Labh Chandra Reisurana and Others Vs. State of Bihar and Others*,). A Bench of this Court held that as the election u/s 8(2) (c) was on the basis of an invalid electoral roll, the constitution of the Board was illegal and also quashed the scheme prepared by the said Board. Attention of the State Government was also drawn to the provisions contained in Clause (c) of Section 81-A of the Act, which lays down as follows:--

"81-A. Where an injunction has been issued by a competent Court restraining the Board from discharging its functions or where the constitution of the Board has been declared illegal by such Court, the State Government may direct that--

... .. (c) Where the constitution of the Board has been declared illegal election shall be held and appointment made for the purpose of reconstituting the Board within a period of six months from the date of the orders of the Court."

4. Thereafter, on the 18th November, 1968, it is averred in the writ application that, with prior consent of the petitioner, a Swetamber Jain Social Worker of repute and high status in life, the State Government published a notification under Clauses (a) and (b) of Section 81-A of the Act, appointing the petitioner as Special Officer, to exercise all the powers and perform all the duties of the third Board or the President thereof, till the first meeting of a validly constituted Board (a copy of the notification is Annexure "1" to the writ application). On the 21st November, 1968, the petitioner assumed charge of the duties assigned to him,

and, with the concurrence of Respondent No. 1, he maintained the office at Calcutta at his own cost and worked in honorary capacity. He took steps for election of members of the Board, as required under Clauses (b) and (c) of Section 8(2) of the Act, and directed Shree B.C. Jain, Superintendent of the Board to take necessary action, in consultation with the Deputy Secretary to the Government of Bihar in the Law Department. It is alleged in the application that the petitioner received no cooperation from the Superintendent of the Board, Shree B.C. Jain, in the work of preparation of electoral rolls, and Shree B.C. Jain "was not only derelict" in discharge of his duties, but his attitude was also destructive, and the petitioner sent two letters to Respondent No. 2 on the 7th April, 1969 (Annexures "2" & "3") pointing out these facts. To the same effect he sent two more letters, one on the 21st April 1969, and the other on the 5th May, 1969 (Annexures "4" and "6", respectively), to Respondent No. 2. It may be mentioned that he had also suggested in those letters to amend the Act by extending the period for election, as provided under Clause (c) of Section 81-A of the Act from 6 months to 18 months. Thereafter the petitioner was informed that Respondent No. 2 wanted to meet him, and, accordingly, he came to Patna by the afternoon flight from Calcutta on the 17th May, 1969 and wanted to meet Respondent No. 2 on the 18th of May, 1969, as the petitioner had some urgent work at Calcutta on the days subsequent thereto. As Respondent No. 2 was not willing to meet him on the said date, the petitioner flew back to Calcutta in the morning of the 19th May, 1969, and sent a letter to Respondent No. 2 (Annexure "8"), but he received no reply. On the 31st May, 1969 the petitioner was informed by Shree K. S. Badalia that Respondent No. 1 had appointed Respondent No. 3 as the Special Officer of the Board, terminating the petitioner's appointment as Special Officer. The petitioner has alleged that the impugned notification (Annexure "11"), removing the petitioner and appointing Respondent No. 3 as Special Officer was illegal, arbitrary and capricious and mala fide, with a view to shield the Superintendent Shree B.C. Jain, by appointing his relation as the Special Officer. The petitioner also averred that the actions of Respondents 1 and 2 have caused great harm and irreparable loss to the petitioner in his office and the status that he occupies.

5. Respondents 1 and 2 have filed a counter-affidavit to the writ application, denying the imputations and allegations against them, followed by a reply to the same by the petitioner.

6. Mr. Ray Paras Nath appearing on behalf of the petitioner, has urged that u/s 14 of the Act the State Government could remove the President or a member of the Board only under the circumstances and on conditions as laid down in the said section, which requires a show cause notice before removal, which has not been done in the instant case, and, therefore, the order terminating the appointment of the petitioner as Special Officer, contained in the Notification (Annexure "11") is illegal and must be quashed. He urged that as the Special Officer he was not only to discharge the functions of the Board, but also of the President.

7. Section 14 of the Act, which has been relied upon, reads thus:--

"The State Government may remove from office--

(i) the President or any member, if the President or such member--

(a) is or becomes subject to any of the disqualifications specified in Section 9; or.

(b) refuses to act or becomes incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of religious trusts;

(ii) the President, if he fails, without an excuse which is in the opinion of the State Government sufficient, to attend two consecutive meetings of the Boards and,

(iii) any member, if he fails, without any excuse which is in the opinion of the State Government sufficient, to attend three consecutive meetings of the Board."

Reading the aforesaid provision, it is apparent that Section 14 deals with the removal of the "President" or "member of the Board". The term "President" in Section 14 obviously has reference to the President nominated by the State Government in exercise of powers as provided u/s 8(4) of the Act. Section 7, as already pointed out, provides for the constitution of the first Board and lays down that the State Government shall appoint all the members and will appoint one of them to be the President of the Board. Section 8 deals with the President and members of the second and subsequent Boards and under Clause (4), the State Government has to appoint one from amongst the two members nominated by it on the Board to be the President. u/s 81-A of the Act, what the State Government has been authorised to appoint is not a "President" of a Board, but to appoint one or more persons to exercise and perform powers and functions of the Board or the President, commonly described as "Special Officer", as mentioned by the petitioner himself in the writ application.

8. Section 81-A of the Act reads thus:--

"Where an injunction has been issued by a competent Court restraining the Board from discharging its functions or where the constitution of the Board has been declared illegal by such court, the State Government may direct that

"(a) all the powers and duties which under the provisions of this Act are to be exercised and performed by the Board or the President shall, during the continuance of such injunction, or as the case may be, till the first meeting of a validly reconstituted Board, be exercised and performed by such person or persons as the State Government may appoint in this behalf;

Provided that when the State Government have already appointed a person or persons to exercise the powers and perform the duties of the Board or the President during the continuance of an injunction, such person or persons shall continue to do so till the first meeting of a validly reconstituted Board;

(b) all property vested in the Board shall, during the continuance of the injunction or as the case may be, till the first meeting of a validly reconstituted Board, vest in the State Government; and,

(c) where the constitution of the Board has been declared illegal, election shall be held and appointment made for the purpose of reconstituting the Board within a period of six months from the date of the orders of the Court."

A bare reading of the aforesaid provision (and the relevant expressions underlined by me) makes it apparent that the State Government may appoint one or more persons to exercise and perform all the powers and duties, which under the provisions of the Act are to be exercised and performed by the Board or the President. The expression "President" in the Act has reference to a member of the Board nominated as President of the Board. The provision for appointing more than one person to perform the above functions also clearly shows that the "person" or "persons" so appointed is not "President" of a Board, so as to attract Section 14. Obviously, therefore, the provision contained in Section 14 of the Act for removal of President of a Board has got no application to removal of a person or persons appointed u/s 81-A of the Act to exercise the powers or perform the duties of the Board or the President by the State Government. It is also significant to note that while a person so appointed discharges the functions of a Board or the President, all the properties vested in the Board, vest in the State Government under Clause (b) of Section 81-A of the Act.

9. Learned counsel for the petitioner, in support of his submission that the petitioner's appointment could not be terminated without a show cause, has also sought aid from Article 311 of the Constitution and urged that its principles should be applied. The said provision obviously has no application, as a person appointed u/s 81-A of the Act is not a Government servant so as to attract the provisions of Article 311 of the Constitution. There is no provision in the Act or the Rules framed thereunder, entitling the petitioner to a show cause notice before he is removed. Therefore, the question of application of the principles of Article 311 of the Constitution does not arise. The appointment of the petitioner being a conditional appointment was in substance a temporary one and could be terminated by the State Government without any show cause notice. There is also no stigma attached to the removal of the petitioner, as is apparent from the impugned notification (Annexure "11"). There is nothing in the Act or the Rules, which requires that a Special Officer appointed u/s 81-A of the Act should be given a show cause notice before he is removed. These are after all purely administrative orders and no question of violation of the principles of natural justice also is involved.

10. Learned counsel has next urged that the appointment of the petitioner would continue for the period till the constitution of the third Board and he could not be removed earlier by the State Government, and has laid emphasis on the use of the word "shall" in the proviso to Clause (a) to Section 81-A of the Act. I do not

find any substance in this submission of the learned counsel as well. The use of the word "shall" in that provision does not put any limitation on the powers of the State Government for removing the persons so appointed and appointing another person in his place. It only lays down that a person or persons so appointed by the State Government will continue to exercise the powers and perform the duties of the Board or the President, till the first meeting of a validly constituted Board. If learned counsel's contention were correct that a person once appointed u/s 81-A must continue to function till the first meeting of the validly constituted Board and the Government has no option in the matter, it would mean that having exercised the option of appointing someone as a Special Officer u/s 81-A the Government will have no power to rescind that appointment and exercise the option for a second time, even if that person resigns or is incapacitated from working. This interpretation would frustrate the very purpose for which Section 81-A has been incorporated in the Act by amendment in the year 1957 and would defeat the object for which this Act has been enacted. Such a contention would hardly be tenable on the established principles of construction of statutes that out of two constructions the one which aids in carrying out the purposes of the Act should be preferred. In the context, the word "shall" only means that till the constitution of the Board its affairs shall be looked after by a Special Officer. It does not prescribe any limitation on the powers of the State Government. Any other interpretation will make the whole provision unworkable and will be against the spirit of the Act. The power of the State Government to appoint a Special Officer to discharge the functions of the Board has inherent in it, the power to cancel that appointment and issue fresh notification appointing someone else.

11. Learned counsel for the petitioner has urged that the impugned notification was a mala fide one to shield the Superintendent, Shree B.C. Jain, whom the petitioner wanted to remove for his gross neglect in discharge of duties and obstruction in the holding of the election. This allegation has been denied in the counter-affidavit filed on behalf of Respondent No. 2. It has been stated in the counter-affidavit which has been sworn by Shree Jitendra Narain, Law Secretary to the Government (Respondent No. 2), that the petitioner was appointed Special Officer on his assurance to complete the election by February, 1969, but, save publishing notices on the 21st February, 1969 for enrolment of voters, he took no effective steps for holding the election within the period of six months, and was all along pressing for amending the law by extending the period of six months, as laid, down in Section 81-A (c) to one and a half years for election and reconstitution of the Board. The other averments made against the respondents have also been denied, which are not necessary to be mentioned. It is also stated in the counter-affidavit that on the 10th of May, 1969, a telegram was sent to the petitioner by his Calcutta address asking him to meet the respondent on the 12th May, 1969, and attempts were made to contact him on telephone, but he was not available. The petitioner, however, did not meet the respondent on the 12th May, 1969. On the 13th May, 1969, again the petitioner was

attempted to be contacted on phone, but he could not be available. The petitioner ultimately sent message to meet the respondent on the 18th May, 1969, which being a Sunday and the papers being in the office, the petitioner was requested to meet the respondent on the 19th May, 1969, but he did not meet the respondent either on the 19th or on any subsequent date. It has also been averred that as the period of six months for reconstitution of the Board expired on the 28th February, 1969, it was extended by an Ordinance up to the 28th August, 1969, as the petitioner did not complete the election. In paragraph 6 of the counter-affidavit it is stated that the State Government, by a letter dated the 26th March, 1969 (Annexure "B") rejected the contention of the petitioner that the period of six months for reconstitution of the Board was too short and directed him to complete the election by July, 1969. This was also reiterated in the letter dated the 25th April, 1969 (Annexure "E") but from the time-table of election submitted by the petitioner along with his letter dated the 5th May, 1969 (which letter has been annexed with the writ application as Annexure "6", without enclosure), it appeared that the petitioner was in no mood to complete the election within the time extended by Ordinance III of 1969, issued by the Governor of Bihar, extending the period to the 28th August, 1969, and the petitioner wanted to carry the election up to November or December, 1969, as would be apparent from a copy of the election programme (Annexure "H") sent by the petitioner to the respondent along with his letter (Annexure "6" to the writ application.) It was in this background that respondent No. 2 made several attempts to contact the petitioner, but in vain. The Government, therefore, had no option but to appoint someone else to finish the election within the time extended i.e., by the 28th August, 1969. It is also stated in the counter-affidavit that the matter against Shree B.C. Jain was enquired into, but the Government decided not to take any action by suspending him at that stage, as his presence was necessary to complete the election within the time extended by the Ordinance. The aforesaid averments have not been seriously challenged in reply to the counter-affidavit.

12. From the facts stated above, it is apparent that there is no substance in the submission of the learned counsel for the petitioner that the action of the State Government in removing the petitioner and appointing Respondent No. 3 was actuated by any mala fide intention. The State Government was anxious to complete the reconstitution of the Board within the time extended by the Ordinance and the petitioner, in spite of his assurance to complete the election within six months, was in no mood to complete it even within the extended time. In such a situation, if the State Government appointed another person as Special Officer obviously there was no mala fide intention.

13. In the result, there is no merit in this application and it is accordingly dismissed, but, in the circumstances of the case, there will be no order as to costs.

Misra, C. J.

14. I agree. The short answer to the entire contention on behalf of the petitioner is that he was appointed a Special Officer by the Government to carry on the administration of the Trust as a matter of convenience. If the Government felt that he was not doing his duties properly and that some one else would be more suitable for the work, he could be removed and another person could be appointed. The Special Officer has no legal right of any kind under the Act to continue in office. What the Act provides in Section 81-A(a) is that pending the first meeting of the Board a Special Officer shall perform the duties laid on the Board and does not guarantee the status of any particular individual to continue in the office for a particular period or till the happening of a particular contingency. No other question is relevant in the circumstances of the case.