

(1973) 08 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 856 of 1970

Sri Harekrishna Das

APPELLANT

Vs

Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 02-08-1973

Acts Referred:

Orissa Hindu Religious Endowments (Amendment) Act, 1952 — Section 3, 42, 42(1), 42(2), 42(3)
Orissa Hindu Religious Endowments Rules, 1959 — Rule 17, 17(2), 17(3), 18

Citation : (1973) 39 CLT 1207

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; G. Rath, S. Mohanty and K.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The Petitioner is the sole hereditary trustee of the Deity Gopinath Thakur located within the Mulagaon Math in the Jagatsinghpur area of the district of Cuttack. On the application of opposite parties 2 to 5, who are co-villagers a proceeding u/s 42 of the Orissa Hindu Religious Endowment Act (Orissa Act 2 of 1952)(hereinafter referred to as the "Act") was initiated. The Commissioner of Endowments asked the Additional Assistant Commissioner to enquire and make a report as provided u/s 42 (1)(b) of the Act. In due course a report was submitted by the Additional Assistant Commissioner which was received by the Commissioner on 19-6-1968. Thereafter on 30th of July. 1968, the Commissioner passed the following order:

Call for lower 31-8-1968 for hearing. Court record and put up on Inform parties.

After various adjournments, by the impugned order, a scheme has been framed which the Petitioner impugnes in this application for a writ of certiorari.

The proceeding upto the stage of receipt of the report of the Additional Assistant

Commissioner is not of any material importance. Section 42(1)(b) of the Act provides:

(b) in the case of a religious institution presided over or managed by a hereditary trustee, the Assistant, Commissioner shall make such enquiry as he thinks fit and submit his report to the Commissioner who shall hold an enquiry in the manner prescribed and so far as may be, in accordance with the provisions of the Code of Civil Procedure, 1908 relating to the trial of suits and if he is satisfied that in the interests of the proper administration of such institution a scheme of administration should be settled, he shall consult in the prescribed manner the trustee and the persons having interest and by order settle a scheme of administration for the institution.

Rules 17 and 18 of the Orissa Hindu Religious Endowments. Rules (hereinafter referred to as the "(Rules)") have been made u/s 42 of the Act. Sub Rules (2) and (3) of Rule 17 which are relevant provide thus:

17(1)xx xx xx

(2) In the case of religious institutions falling under Clause (b) of Sub-section (1) of Section 42 of the Act, the Commissioner after receipt of a report from the Assistant Commissioner shall give notice by publication to the trustee or trustees and the persons having interest calling upon them to submit any representations they wish to make before a date to be specified in such notice. After receipt of representations the Commissioner shall fix a date for holding an enquiry. On the date so fixed for enquiry or as soon thereafter as may be convenient, the Commissioner shall examine the witnesses produced by either party. He will also admit such of the documentary evidence which is relevant to the enquiry. In making such an enquiry he shall, as far as may be, follow the procedure under the provisions of the Code of Civil Procedure, 1908. After the holding of such an enquiry if the Commissioner is satisfied that in the interest of the proper administration of the religious institution a scheme of administration should be settled, he shall pass an order accordingly.

(3) In the matter of settling a scheme, the Commissioner shall give notice by publication to the trustees and the persons having interest calling upon them to submit proposal as to how best such a scheme may be framed before a date to be specified in such notice. The commissioner shall consider such proposals and settle a scheme for the institution as provided in Sub-section (2) or (3) of the said section as the case may be.

2. From the various orders in the proceeding we find that after the report of the Additional Assistant Commissioner received no notice by publication to the trustee and the persons having interest had been given. It is true, some of the villagers had applied for framing of a scheme. But it cannot be said that they were the entire body of persons having interest. That term has a statutory definition appearing in Section 3(x) of the Act. The Commissioner or the other opposite parties do not take the stand before us that there are no other persons

interested. Even if we accept the contention of the opposite parties that the Petitioner has not been prejudiced because he was before the Commissioner and must be taken to be aware of the proceeding, we cannot hold that the proceeding is in accordance with law in view of the fact that there has been no publication of the notice. Similarly there has been a defect in the matter of consultation.

Notice of consolation had not been given. All that the commissioner has done is on 2-3-1970, while disposing of the application of the Petitioner in the matter of restoring the proceeding, he records that "formal consultation with the public present is made". This again is not in compliance with the requirements of the Act and the rules. The proceeding before the commissioner in the matter of framing of the scheme is, therefore, contrary to law.

3. It is true the Petitioner had associated himself in the proceeding at different stages as pointed out by the opposite parties. Ordinarily we would not have interfered at his instance in the matter. But since the framing of the scheme affects others including the Petitioner and the law requires strict compliance with the provisions of the Act and the rules and because we are satisfied that the proceeding of the commissioner is not in accordance with law, we quash it by issue of a writ of certiorari. It is open to the commissioner, to continue the proceeding on the basis of the report of the Additional Assistant Commissioner and dispose it of in accordance with law, unless he is of the view that circumstances have changed and the scheme is no more necessary in the interest of the institution.

4. The writ application is allowed. We however, award no costs to the Petitioner because his conduct in the matter is not above board.

B.K. Ray J.

5. I agree.