
(2008) 06 OHC CK 0021
In the Orissa High Court

Swami Shree Dutta Yogeshwar Dev Tirtha Maharaj APPELLANT
Vs
State of Orissa and Others RESPONDENT

Date of Decision : 20-06-2008

Acts Referred:

Constitution of India, 1950 — Article 19, 25, 26

Citation : AIR 2008 Ori 187 : (2008) 2 OLR 719 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The dispute in the present Writ Petition is with regard to succession to the office of the hereditary trustee of Gobardhan Math, Puri. The said Math is a public religious endowment governed under the provisions of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as "the Act").

2. Admittedly Jagatguru Shankaracharya Niranjana Dev Tirthaswami was the last hereditary trustee of Gobardhan Math. During his lifetime he had voluntarily relinquished his office and had intimated the said fact in writing to the Commissioner of Endowments, Orissa, opposite party No. 2, by registered post. While matter stood thus, Shri Nischalananda Saraswati Dev Tirthaswami claiming to be the successor of late hereditary trustee Jagatguru Shankaracharya Niranjana Dev Tirthaswami filed an application u/s 36 read with Section 39 of the Act before the Commissioner of Endowments to recognise him as the hereditary trustee of the Math. The said application was registered as O.A. No. 67 of 1994 (II). Notices were issued and published in the newspapers inviting objections in accordance with the provisions of the Act and the Rules framed thereunder. No objection was, however, received to the claim made by Shri Nischalananda Saraswati Dev Tirthaswami. In the proceeding before the Commissioner of Endowments, Nischalananda Saraswati Dev Tirthaswami got himself examined as P.W. 1 and proved a Will executed in his favour by Jagatguru Shankaracharya

Niranjan Dev Tirthaswami. After perusing the management file, the pleadings and evidence; and taking a holistic view, the Commissioner by order dated 1st July, 1995 allowed the O.A. and recognized Nischalananda Saraswati Dev Tirthaswami as the successor of Jagatguru Sankaracharya Niranjan Dev Tirthaswami in respect of the Math and disposed of O.A. No. 67 of 1994 (II).

3. Almost five years after the aforesaid order of the Commissioner of Endowments, a petition purported to be one u/s 36 and Section 39 of the Act was filed by the present petitioner Swami Shri Dutta Yogeshwar Dev Tirtha Maharaj with a prayer to recognise him as the successor of Jagatguru Shankaracharya Niranjan Dev Tirthaswami. The Commissioner kept the said petition on file as by then the O.A. had already been disposed of by order dated 27-5-1996 recognising Nischalananda Saraswati Dev Tirthaswami as the hereditary trustee and there was no vacancy, granting liberty to the petitioner to establish his right in proper Court of law. Being aggrieved by the said action the petitioner had earlier approached this Court vide OJC No. 7618 of 2000 challenging the order of the Commissioner which was filed as Annexure-6 to the said Writ application inter alia alleging that the Commissioner was maintaining stony silence and was not disposing of his application filed u/s 39 of the Act though the proceeding vide O.A. No. 67 of 1994 (II) was still pending. The said Writ Application was disposed of by order dated 27th April, 2006 and this Court observed as follows:

On consideration of the contention of the petitioner, we do not find any illegality or impropriety in the order communicated through Annexure-6. Thus we are not inclined to interfere with the order communicated vide Annexure-6.

4. This Court on the basis of the submissions made by the petitioner that the aforesaid O.A. filed on 7-3-2000 was still pending before the Commissioner of Endowments directed the same to be disposed of as expeditiously as possible on its own merit. In consonance with the said direction the Commissioner once again went through the records and on being satisfied that no application filed u/s 36 or Section 39 of the Act registered as O.A. was pending and that a petition u/s 36 would be maintainable only if a vacancy occurred in the office of the hereditary trustee, by his order dated 1st August, 2006 informed the said fact to the petitioner, vide Annexure-1 to this Writ Petition. Being aggrieved by the said information, the petitioner has filed the present Writ Petition seeking the following relief:

...this Hon''ble Court may be pleased to issue writ/writs/order/orders/direction/directions/declaration under Art. 226 of the Constitution of India and more particularly may issue:

(i) Writ of Certiorari calling the opp. parties to produce the relevant records along with returns;

(ii) Writ of Certiorari declaring Annexure-1 (dated 1-8-06) read with Annexure 7 (dated 1-5-1995) as bad, illegal and unconstitutional;

(iii) Writ of Mandamus directing the opp. party No. 2 to recognise the petitioner as 145 Shankaracharya in accordance with law;

(iv) Order allowing all/any other relief as would be available to the petitioner under law;...

5. Dr. Panda, learned Counsel for the petitioner, strenuously submitted that the petitioner being the next in the line of legal successor to the office of the hereditary trustee of the Math, ought to have been recognized as such u/s 36 of the Act. He submitted that though the petitioner had filed an application on 26th December, 1995 before the Commissioner of Endowments, the latter by communication dated 27th January, 1996 intimated the petitioner to establish his claim in proper Court of law. He submitted that the aforesaid communication of the Commissioner was not received by the petitioner personally, but then by one of his devotees and thereafter he had filed an application before the Commissioner in the year 2000 but then the Commissioner did not pass any order thereon. Being aggrieved the petitioner had earlier approached this Court vide OJC No. 7618 of 2000 and this Court directed the Commissioner to dispose of the O.A. if the same was pending.

6. Dr. Panda further strenuously submitted that in spite of aforesaid direction of this Court the Commissioner neither registered the application filed by the petitioner as an O.A. nor did dispose of the same, and instead by a cryptic letter Annexure-1 communicated to the petitioner that as no petition u/s 36 or u/s 39 was pending and the successor hereditary trustee had been recognized, nothing more was left to be done in the matter in accordance with the provisions of law. The petitioner was however granted liberty by the Commissioner to put forth his grievance in proper Court of law, if so advised. Dr. Panda submitted further that such action of the Commissioner was unjust, illegal and contrary to law, *moreso* because the Commissioner had received a declaration nomenclatured as "Ghosana Patra" dated 8th December, 1994 through telegram nominating the petitioner as the 145th Shankaracharya, Puri. It is alleged that without considering all these facts, the Commissioner only relying upon a Will dated 3-2-1992 proceeded to recognise opposite party No. 3 as the successor hereditary trustee. In short, according to Dr. Panda, the order dated 1st July, 1995 passed in O.A. No. 67 of 1994(II) in a proceeding initiated u/s 36 read with Section 39 of the Act, vide Annexure-7, was null and void for the following reasons:

- (1) There was no vacancy at the relevant point of time;
- (2) There was no dispute regarding the issue at that time;
- (3) A Will cannot be executed particularly when the testator is alive and active;
- (4) The opp. party No. 3 was not the latest nominee;
- (5) The opp. party No. 3 had not nominated as per Vedic custom of the Math.

(6) No opportunity was given to the petitioner, who was validly and duly nominated and designated as the 145th Sankaracharya of Puri Math on 8-12-1994;

(7) It contravenes Article 19, 25 and 26 of the Constitution as well as Section 72-A of the OHRE Act, 1951. Thus the order dated 1-7-1995 bears error apparent on the face of record.

According to Dr. Panda it is a fit case where the impugned order may be quashed by this Court.

7. Dr. A. K. Rath, learned Counsel appearing for the Endowment Commissioner, produced the management file before this Court and while supporting the order passed by the Commissioner submitted that the petitioner has absolutely no locus standi to file the Writ Petition which is otherwise not maintainable. According to Dr. Rath, the petitioner did not appear before the Commissioner in the aforesaid O.A. though notices were published in different daily newspapers inviting objections. The O.A. was disposed of on the basis of a Will executed in favour of opposite party by the last hereditary trustee and other materials and evidence adduced in the proceeding and the Commissioner did not commit any illegality or irregularity. That apart, OHRE Act is a self-contained legislation with a provision that a person aggrieved by any order of the Commissioner may establish his right in a properly constituted suit. The petitioner did not take recourse to that provision of law. Further, the document relied upon by the petitioner cannot be accepted on its face value and further several disputed questions of fact are involved in the matter which cannot be adjudicated under Writ Jurisdiction and, as such, it is a fit case where the Writ Petition may be dismissed in limine.

8. This Court patiently heard the learned Counsel for the parties and diligently considered all the submissions. Gobardhan Math is a public religious endowment. "Maths" were established for inculcating particular religious doctrines and instructions in the tenets and for observance of particular system of philosophy. A Math is presided by a "Mathadhis", a person who exercises or claims to exercise headship over a body of disciples and spiritual fraternity. The office of trustee of a religious institution, succession to which devolves by hereditary right since the time of its founder or is regulated by customs or is specifically provided for by the founder, so long as such scheme of succession is in force and is nomenclatured as an institution with hereditary trustee. "Gobardhan Math" is admittedly a public religious Math with a hereditary trustee. Section 39 of the OHRE Act deals with appointment of successor by the hereditary trustee. Admittedly Jagatguru Shankaracharya Niranjana Dev Tirthaswami was the last hereditary trustee and was recognized by the Commissioner of Endowments as such. According to opposite party No. 3, the last hereditary trustee, i.e. Jagatguru Shankaracharya Niranjana Das Tirthaswami has executed a Will nominating opposite party No. 3 as his successor.

9. The scenario of facts reveals that the last recognized hereditary trustee Jagatguru Shankaracharya Niranjan Das Tirthaswami during his lifetime had voluntarily relinquished his office and had intimated the said fact in writing to the Commissioner of Endowments by a registered letter. Thus the office of the hereditary trustee of the Math was vacant. In consonance with Section 36 of the Act as and when a vacancy occurs in the office of the hereditary trustee of the Math and there is dispute respecting the right of succession to the said office, the Commissioner, after being satisfied that an arrangement for the administration of the Math and its endowment is necessary, is required to make such appointment and arrangement, as he thinks fit until the dispute is settled or another trustee succeeds to the office, as the case may be.

10. A reading of Section 36 reveals that a vacancy in the office of the hereditary trustee must occur so as to enable the Commissioner to exercise his power to fill it up. Sub-section (3) of Section 36 clearly stipulates that any action taken by the Commissioner shall not affect the right of a person aggrieved by the order of the Commissioner to establish his right of succession to the office of the trustee in a Court of law. In the case at hand, as stated earlier, after the last recognized hereditary trustee intimated in writing to the Commissioner that he had relinquished the office of the hereditary trustee, a vacancy did occur. Thereafter opposite party No. 3 filed a petition claiming his right of succession to the said office by virtue of a Will said to have been executed in his favour by his Guru which petition was registered as O.A. No. 67 of 1994 (II). After observing all paraphernalia and publishing notice in daily newspapers and inviting objections, the Commissioner disposed of the said O.A. on the basis of the Will and other evidence and recognized him as the successor hereditary trustee of the Math. The said order Annexure-7 was passed in July, 1995. In the year 2000, the petitioner had filed an application before the Commissioner claiming succession to the office of the hereditary trustee. Admittedly on the date of filing of the said application, the office of the hereditary trustee was not vacant and thus no action on the said application of the petitioner could be taken. Accordingly the Commissioner intimated the petitioner to work out his remedy in a proper Court of law. Thereafter the petitioner filed yet another application purported to be one under Sections 36 and 39 of the Act and approached this Court inter alia with a prayer to direct the Commissioner to dispose of the O.A. This Court declined to interfere with the communication issued by the Commissioner to the petitioner to work out his remedy before a civil Court, but then on the basis of the averments made, this Court observed that if the O.A. in question was pending, the same was to be disposed of. Thereafter the Commissioner once again examined the files and in view of the fact that O.A. No. 67 of 1994 (II) had already been disposed of way back in the year 1995, vide Annexure-7 intimated the petitioner on 1st June, 2006 that no petition u/s 36 or u/s 39 of the Act was pending and the successor of the Math had been properly recognized after following all paraphernalia and the Commissioner had nothing to do in the matter in accordance with law and the petitioner was at liberty to approach the proper

Court of law if he was so advised.

11. As stated earlier, jurisdiction of the Commissioner of Endowments u/s 36 of the Act accrues when a vacancy occurs in the office of the hereditary trustee of the Math. As stated earlier, a vacancy which occurred way back in the year 1994-95 had been filled up as per order dated 1st July, 1995 passed in O.A. No. 67 of 1994 (II) and opposite party No. 3 was recognized as the successor of the previous hereditary trustee. Filing a subsequent application u/s 36 or u/s 39 of the Act in the year 2000, when admittedly no vacancy was there in that office, was not maintainable in the eye of law. If according to the petitioner the aforesaid order in O.A. No. 67 of 1994 (II) recognizing opposite party No. 3 as the successor hereditary trustee was unjust or illegal, it was open to him to work out his remedy in consonance with Sub-section (3) of Section 36. Filing successive applications u/s 36 or u/s 39, moreso after an earlier application had been disposed of and no vacancy existed in the office in question, was not tenable in law and thus the Commissioner did commit no illegality or irregularity.

12. So far as the claim of the petitioner to succeed to the office of the hereditary trustee is concerned, though much argument was advanced by Dr. Panda, this Court refrains from delving into the said submission, moreso because the same involves disputed questions of fact which cannot be adjudicated under Writ Jurisdiction and also because in consonance with Sub-section (3) of Section 36 of the Act the petitioner has the liberty to agitate his grievance before the competent Court of law and establish his right. This Court feels that any opinion expressed at this stage may amount to prejudging the issue:

13. In view of the discussions made above, this Court is not inclined to interfere with the communication dated 1st January, 2006 vide Annexure-1 or the order of the Commissioner of Endowments dated 1st July, 1995 vide Annexure-7. In the result, this Court dismisses the Writ Petition.