

(2000) 03 PAT CK 0020
In the Patna High Court
Case No : L.P.A. No. 515 of 1999

Swamy Jai Krishnacharya

APPELLANT

Vs

Bihar State Board of Religious Trust and Others

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 28(h), 38

Citation : (2000) 4 PLJR 645

Hon'ble Judges : B.P. Singh, J;A.K. Ganguly, J

Bench : Division Bench

Advocate : K.N. Chaubey, Nagendra Dubey, Dhananjay Kumar and Sunil Kumar Singh, for the Appellant; A.P. Jittu and Deepak Dayal, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the patties. The appellant claiming to be the trustee of Takanpur Mathia filed a writ petition before this Court challenging the order of the Chairman of the Bihar State Hindu Religious Trust Board dated 20.8.1998 (Annexure-5) to the writ petition removing him from the office of the Trustee of the aforesaid Trust and appointing the Circle Officer as the temporary Trustee till further orders. The matter came up before a learned Judge of this Court who vide his order dated 5.4.1999 dismissed the writ petition. In fairness it must be noticed that the appellant had impugned the order removing him from the office of the trustee on the ground that by a composite order a trustee could not be removed and a temporary trustee appointed. According to him, it was only after a trustee was removed that another order could be passed appointing a temporary trustee. This submission was negated by the learned Judge. In our view rightly.

2. The point urged before us is that the power to remove a trustee vests in the Board and not in the President of the Board. The impugned order dated 20.8.1998 (Annexure-5) was passed by the Chairman of the Board. As such the order of the Chairman is without jurisdiction.

3. It is not disputed before us by the learned counsel for the respondent Board that the power to remove the Trustee vests in the Board itself and it is so provided u/s 28 (h) of the Bihar Hindu Religious Trust Act, 1950 (hereinafter called the said Act). However, u/s 38 of the said Act where immediate action is called for and it is not possible to convene a meeting of the Board, the President may exercise any power that could be exercised under this Act by the Board. This is, however, subject to the condition that the President shall at the next meeting of the Board report in writing of the action taken by him under this section and the reasons for taking such action, for confirmation of the action taken. Learned counsel states that such action has not been taken by the President and his order has not been ratified by the Board in its next meeting. This is also not a case where the Chairman of the Board has been delegated by the Board to exercise its power to remove a trustee. Such delegation is permissible u/s 39 of the said Act but in absence of such delegation of power the President of the Board cannot exercise the power of the Board to remove a trustee.

4. Learned counsel for the respondent Board relies upon bye-laws framed under the Act and in particular clause 43 (zii). In our opinion the aforesaid bye-law is of no assistance to the Board. Clause 43 provides that the powers and duties of the Board specified in the said bye-laws shall be exercised and performed by the President. Sub-clause (zii) of clause 43 relates to giving opinion, advice or direction to a trustee of religious trust on any question affecting the management or administration of the property of such trust. Learned counsel for the respondent Board submits that in exercise of its power to give such direction, the trustee has been asked to hand over the property of the trust to the temporary trustee appointed by the President. In our opinion, the submission urged is misconceived. The power under the aforesaid clause of bye-law 43 is only to give advice, opinion or direction to a trustee on any question affecting the management or administration of the property of such trust. Such a power does not include the power of removing the trustee himself. We are, therefore, satisfied that the impugned order dated 20.8.1998 (Annexure-5) passed by the Chairman of the respondent Board is without jurisdiction. The same is accordingly quashed. This appeal is allowed and it is directed that the impugned order Annexure-5 dated 20.8.1998 shall not be given effect. The appellant would be entitled to continue to function as a trustee of the aforesaid trust unless removed in accordance with law.