

ORISSA HIGH COURT: CUTTACK

W. P.(C) NO. 12197 OF 2008

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Pramod Behera and others Petitioners

-Versus-

Commissioner of Endowments
and others Opp. Parties

For Petitioners : M/s. A.A.Das, M.B.Ray,
A.K.Behera, S.Mohanty &
B.Sahu.

For Opp. Parties : Dr. A.K. Rath
(For O.P.No.1.)
Mr. A.K.Bose & Mr. K.K. Dash
(For intervenors).

Decided on 22.04. 2009.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J. The petitioners, who are some of the Hindu public of the locality of Telenga Bazar in the millennium city of Cuttack, which is the cultural heart-throb of the State, have called in question the order of the Deputy Commissioner of Endowments constituting a non-hereditary Trust Board for a period of two years from the date of issuance of the said

order to administer the affairs of the centuries old monumental temple of Shri Raghunath Jew Bijee, Telenga Bazar built by the Marahata Kings during their reign in this State.

2. A Scheme Order was passed under sections 38 and 39 of the Old Hindu Religious Endowments Act, 1939 (for short, 'the Old Act') on 03.10.1951. Section 38 of the said Act, which continued to exist in the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as 'the New Act') was omitted by Orissa Act 18 of 1954. However, under section 79 of the New Act, which provides Repeal and effect of repeal was Orissa Hindu Religious Endowments Act, 1939, the Scheme framed on 3.10.1951 remains valid, as under section 79 (2) (a) , it has been provided that all rules made, notifications issued, orders passed, decisions made, proceedings or actions taken, Schemes settled and things done by the State Government or the Commissioner under the Old Act shall in so far as they are not inconsistent with the New Act be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of the New Act and shall have effect accordingly.

(Emphasis supplied).

3. The Schemes settled for Shri Raghunath Jew in 1951 being not inconsistent to the New Act, still remains valid. From the Scheme along with the records produced by Dr. A.K.Rath, learned counsel for the Commissioner of Endowments, it appears that the Scheme was framed by order No. 58 dated 3.10.1951, which in clause 3 (a) provided thus:-

“3.(a) The said temple with the connected shrines and their endowments shall be administered by a Board of Trustees consisting of not more than five members who shall hold office for such period not exceeding five years as may be fixed by the Commissioner.

(b) xx xx xx”

4. By order dated 23.5.2006, a Trust Board was constituted by the Deputy Commissioner of Endowments, Orissa to manage the affairs of the temple as per the provisions under the Scheme which was to remain valid for two years from the date of issue of the said order. After expiry of the term of the said Trust Board, by the impugned order, the present Trust Board has been constituted. The petitioners have alleged that before constituting the scheme Trust Board, no enquiry whatsoever has been conducted by the opp. Parties and no opportunity whatsoever has been given to the present petitioners and other objectors, who represented

against formation of a new Trust Board and claimed for continuation of old Trust Board on the ground that many developmental works have been undertaken by the Old Trust Board and the Management of the institution was being smoothly carried out by the said Trust Board for which the tenure of the said Trust Board should be extended for five years which is the maximum period prescribed under the Scheme. The intervenor, who has been added as opp. Party no. 4 being the alleged Managing Trustee of the newly constituted Trust Board under the impugned order, pleaded that several representations were also filed before the Commissioner against the action of the previous Trust Board whose term has expired.

5. Upon hearing the learned counsel for the parties, this Court finds that there are no modalities prescribed in the Scheme with regard to framing of the Trust Board under Clause 3(a) of the Scheme

6. Section 27 of the New Act deals with non-hereditary Trustees, their number and appointment. Sub-sections (1) and (2) thereof provides as follows:-

“27. Non-hereditary trustees, their number and appointment – (1) The Assistant Commissioner shall, in cases where there is no hereditary trustee, (with the prior approval of the

State Government) appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained.

(Provided that the Assistant Commissioner shall, before sending any proposal to the State Government for such prior approval, publish a notice in the notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from the date of such publication and forward to the State Government the suggestions and objections, if any, received, along with such proposal.

(1-a) On receipt of a proposal made under Sub-section (1) for the appointment of a Non-hereditary Trustee, the State Government may either accord the required approval or reject or modify the proposal of the Assistant Commissioner as it may deem fit in the interest of the persons belonging to the religious denomination for whose benefit, the concerned religious institution is chiefly maintained.)

(2) A non-hereditary trustee shall, unless he is sooner removed or dismissed or otherwise ceases to be a trustee, hold office for a period of two years from the date of his appointment:

Provided that the Assistant Commissioner may, for sufficient reasons to be recorded by him, from time to time, extend the aforesaid term of a trustee, so, however, that the total extension so granted shall in no case exceed six months in the aggregate.

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A reading of the proviso to sub-section (2) clearly shows that the Assistant Commissioner may, for sufficient reasons to be recorded from time to time, extend the term of a trustee, but such term cannot be extended beyond a period of six months.

7. In the case of ***Narayan Sahu and others v. The Commissioner of Endowments, Orissa and others***, 1996 (I) OLR 279, this Court interpreting section 27 of the O.H.R.E. Act held that the Assistant Commissioner's power to extend the term of office of non-hereditary trustee is indicative of the legislative intent that it is not to be exercised in a routine or casual manner. Sub-section (1) of section 27 clearly stipulates that while appointing non-hereditary trustee in respect of a religious institution, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denominations for whose benefit the said institution is chiefly maintained.

8. A conjoint reading of section 27 of the O.H.R.E. Act with Clause 3 (a) of the Scheme would show that the provision in Clause 3 (a) of the Scheme is not inconsistent with the provisions of section 27 of the O.H.R.E. Act. But, however, since no modalities have been prescribed in the Scheme with regard to constitution of the Trust Board,

the intent of the legislature, as expressed in section 27 (1) of the O.H.R.E. Act that the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefits the said institution is maintained, should be applied while framing a Trust Board under Clause 3 (a) of the Scheme. This conclusion is fortified for the reason that no modalities having been prescribed to appoint a Trust Board in Clause 3 (a) of the Scheme, if the prescription of section 27 is not followed, it would amount to giving an unfettered jurisdiction to the Assistant Commissioner/Deputy Commissioner to frame the Trust Board which would eventually leave enough scope for arbitrarily constituting the Trust Board without hearing the persons belonging to the religious denomination for whom, the institution is maintained.

9. On perusal of the records produced by Dr. A.K. Rath, learned counsel for the Commissioner, as I find that no such enquiry has been made before issuing the impugned order under Annexure-3 and no opportunity of hearing to the Hindu public of the locality have been afforded, the said impugned order under Annexure-3 cannot be sustained. Accordingly, the said order constituting the

Trust Board under Clause 3 (a) of the Scheme is quashed and the matter is remitted back to the Deputy Commissioner of Endowments, who shall issue a general notice inviting objection to the constitution of the Trust Board by appointing the persons named in the impugned order under Annexure-3 as trustees and, in the event, any objection is filed, to give opportunity of hearing to such objector/objectors. After hearing on such objections, if filed, in the event, the Deputy Commissioner over-rules the same, he may maintain the names of the trustees mentioned in the impugned order under Annexure-3 and constitute a new Trust Board. If, however, he finds any objection to be substantiated against the appointment of any of the Trustee/trustees, he shall substitute the said trustee/trustees by any other befitting person/persons. The entire exercise shall be completed within a period of four months from the date of production of a certified copy of this order before the Deputy Commissioner of Endowments. For a period of four months/till a final decision is taken by the Deputy Commissioner, the Commissioner of Endowments shall make arrangement for smooth management of the affairs of the temple of Shri Raghunath Jew by either extending the term of the existing

Trust Board for the said period or may direct the concerned Inspector of Endowments, who shall act as the Executive Officer to manage the affairs of the temple.

10. With the aforesaid observation and direction, the writ petition is disposed of. No costs.

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M.M. Das, J.

*Orissa High Court, Cuttack.
April 22nd , 2009/Biswal.*
