

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4739 of 1998

=====

Mahanth Ram Ayodhya Das Ji Chela of Lazte Sri Sri 108 Baldev Dasji, resident of Rampur Nur Nagar, P.S/. Lalalpur, District Chapra (Saran).

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.Mr. Ram Kripal Yadav president Bihar State Board of Religious Trust, Vidyapati Marg, Patna.
- 3.The Circle Officer, Lalalpur, P.S. Jalalpur District Saran.
- 4.Abhay Raj Kishore, MLA , residing in MLA Club, Patna.
- 5.Bihar Religious Trust Board, through its Secretary at Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sudhir Singh & Raibindra Kumar Tiwary, Adv.
For Res.No. 2 Mr. Shekhar Singh,
For the Respondent/s : Mr. (GP8)

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-02-2015

Shivaji Pandey,J

In the present case, petitioner has claimed for quashing the order dated 8th October 1997 whereby and whereunder the Circle Officer, Jalalpur has been appointed as temporary Sebait and directed to take over the control of the property in question but this Court vide order dated 13th July 1998 stayed the operation of the impugned order and, accordingly, the original petitioner, namely , Mahanth Shatrughna Dasji continues to discharge the duty of Sebait as has been claimed by the petitioner that after his death as Chela of Mahanth Sahatrughna Dasji continues to manage the affairs of the trust.

The short facts of the case is that Ramjanji Thakurbari was established in the end of 19th century which was subsequently developed by Late Bhagwan Das. This Thakurbari had 53 bigha, 19 katha and 15 dhurs of land spread in village Rampur Nur Nagar, P.S.Jalalpur district Saran. Late Bhagwan Das was Chela of Sioyaram Das who executed the deed of dedication of three



deities, namely, Ram, Janki and Hanuman on 3rd May 1929 in equal share and he became the Mutwalli of the trust. Condition was imposed that no one will dispose of the dedicated property in any situation. After Bhagwan Das, Baldeo Das became the successor and Chela on his death on 22nd April 1930 and later on Baldeo Das declared Shatrughna Das him as his Chela by executing registered deed of dedication on 21st February 1983. After the death of Baldeo Das, Sri Sri 108 Sri Shatrughana Das was looking after the management of the temple and deities. He was 90 years old and felt difficulty in managing the affair of the said *Thakurbari*, he handed over the management to Ram Ayodhya Das, his sole Chela as a future Mahanth of the *Thakurbari* after his death, as per practice of *Thakurbari*, the present petitioner is Mahanth of *Thaurbari* and the management is under his control.

It appears that on complaint of one Banaras Singh, Ex-MLA and his brother Nirsu Narayan Sigh by duping late Baldeo Das, got some Farzi sale-deed executed in favour of his minor sons and nephews.

Under Section 28 and 33 of the Bihar Religious Trust Act the Shatrughna Das was removed and in his place the Circle Officer was appointed as temporary Sebait which is under challenge before this Court in the present petition.

Claim has been made that before passing the impugned order, the petitioner was not heard nor any show cause was given and without giving any opportunity of placing his case, the Board illegally removed him.

From the counter affidavit it does not appear that before passing the impugned order, petitioner was given any opportunity of hearing.

It is well known principle of law that when any order is affecting civil right with respect to holding office, it requires before passing the

order, he should be given a fair hearing.

Reliance may be placed on the judgments reported in AIR 1970 SC 150 (A.K.Kripak v. Union of India) and AIR 1867 SC 1269 (State of Orissa v. Dr. (Miss.) Binapani Dei). It is relevant to quote Para-13 and 14 of A.K.Kraipak's case (supra) which are as follows:

Para-13 *“The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions*



in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker, C. J. in Reg. v. Criminal Injuries Compensation Board; Ex parte Lain, 1967-2 QB 864 at p. 881 are instructive.

"With regard to Mr. Bridge's second point I cannot think that Akin L. J. intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners case, the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the commissioners had to be approved by the Minister of



Transport and by resolutions of Parliament. The commissioners nevertheless were held amenable to the jurisdiction of this court. Moreover, as can be seen from Rex v. Postmaster-General; Ex parte Carmichael, 1928-1 KB 291 and Rex v. Boycott; Ex parte Keasley, 1939 2 KB 651 the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.

The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a lis inter parties. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived

solely from contract, that is from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended see Reg. v. Manchester Legal Aid Committee Ex parte R.A. Brand and Co. Ltd., 1952-2 QB 313, to cases in which the decision @page-SC155 of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this court has jurisdiction to supervise that process.

We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this court. It is, as Mr. Bridge said, 'a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown'. It is clearly, therefore, performing public duties.



Para-14. *The Court of Appeal of New Zealand has held that the power to make a zoning order under Dairy Factory Supply Regulation 1936 has to be exercised judicially, see New Zealand and Dairy Board v. Okita Co-operative Dairy Co. Ltd., 1953 NZLR 366. This Court in Purtabpore Co. Ltd. v. Cane Commissioner of Bihar, Civil Appeal No. 1464 of 1968, D/- 21-11-1968 (SC) held that the power to alter the area reserved under the Sugar-Cane (Control) Order, 1966 is a quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, Courts are gradually evolving the principles to be observed while exercising such powers. In matters like these public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. But for the purpose of the present case we shall assume that the power exercised by the*

selection board was an administrative power and test the validity of the impugned selections on that basis.

Para-20 *The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse iudex propriae causae), and (2) no decision shall be given against a party without affording him a reasonable hearing (Audi alter partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it*



functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No. 890 of 1968, D/- 15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the



law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

Where the Hon’ble Court held that even the order which has affect of civil consequence, in that case also the parties will be entitled to be given fair treatment in shape of giving hearing before passing the order.

In such view of the matter, the impugned order dated 8th October 1997 is hereby quashed and the matter is remanded back to the Bihar Religious Trust Board to pass a fresh order after giving opportunity of hearing to the parties. The petitioner will continue to discharge his duty as temporary trustee, subject to the order passed by the Board.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

Jay/-

U			
---	--	--	--