

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5131 of 2010

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Sharfudin Khan S/O Late Khan Bahadur Abdul Gafur Khan R/O Vill 28, Komidean
Began Line, P.S.Park Sreet, Kolkata-16 Petitioner/s

Versus

1. The Union of India through the Ministry of Art and Culture, Government of India, New Delhi
 2. The Secretary , Ministry of Culture, Government of India, New Delhi
 3. The Under Secretary to the Government of India, Ministry of Culture, Government of India, New Delhi
 4. The State of Bihar through the Secretary, Department of Art and Culture Government of Bihar, Patna
 5. The Director , Khudabaksh Oriental Public Library Patna
 6. The Secretary, Khudabaksh Oriental Public Library Patna.... Respondent/s
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Appearance :

For the Petitioner/s : Mr. S.B.K.Manglam, Advocate
Mr. Ravi Ranjan, Advocate

For the Respondent No.1 to 3 : Mrs.Kanak Verma, CGC

For the Respondent No.4 : Mr.Kumar Alok, SC 8
Dr.Raj Kumar Singh, AC to SC 8

For the Respondent Nos. 5 & 6 : Mr.Sadat Ali Khan, Advocate
Mr.Abu Haider, Advocate
Mr.Abu Shajar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 10-03-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondent Ist Set for nominating him as a Member of The Khuda Bakhsh Oriental Public Library Board under the provisions of Section 5 (1) (c) of The Khuda Bakhsh Oriental Public Library Act, 1969 on the ground that he is the descendant and the family member of Late Moulvi Khuda Bakhsh Khan Bahadur of Muradpur, Patna. The petitioner has further prayed for a direction to the respondents to grant him all other benefits which he would have been entitled as a Member of the aforesaid Board.

3. It is the case of the petitioner that The Khuda Bakhsh Oriental Public Library (in short, "Library") was established at Patna

by Late Moulvi Khuda Bakhsh Khan Bahadur as he had donated the valuables for the purposes of the establishment of this Library. It is also the case of the petitioner that Late Moulvi Khuda Bakhsh Khan Bahadur was the president of the aforesaid Library during his lifetime. The petitioner claims to be the great grand son of the aforesaid Late Moulvi Khuda Bakhsh Khan Bahadur.

4. It is not in dispute that the aforesaid Library is an Institution of national importance and administration of the aforesaid Library was taken over by an enactment of the Parliament known as The Khuda Bakhsh Oriental Public Library Act, 1969 (in short, “Act, 1969”). Under Section 4 of the aforesaid Act, a Board is required to be constituted for the purpose of holding and disposing of the property and contract for the Library in question. The Board has to be a body corporate with the name aforesaid having perpetual succession and a common seal with power as enumerated in Section 4 of the aforesaid Act, 1969. Section 5 of Act, 1969 provides composition of the Board for the Library in question which reads as follows:

“ 5. (1) The Board shall consist of the following persons, namely:-

- (a) The Governor of Bihar, ex- officio, Chairman;
 - (b) The Accountant General, Bihar, ex- officio;
 - (c) A person to be nominated by the Central Government, who shall be a member of the family of the Late Maulvi Khuda Bakhsh Khan Bahadur of Muradpur;
 - (d) Eight persons, four each to be nominated by the Central Government and the State Government, who shall, as far as possible, be persons having knowledge of and experience in, matters relating to the administration of libraries;
 - (e) The Director, Khuda Bakhsh Oriental Public Library, ex-officio Member-Secretary;
- (2) Every nomination under this section shall take effect as soon as it is notified by the Central Government in the Official Gazette.”



5. The grievance of the petitioner is that he, being the great grand son of Late Moulvi Khuda Bakhsh Khan Bahadur of Muradpur and being a family member, is not being nominated as a Member of the Board and he is not being provided the benefits and facilities which are admissible to a Member of the Board. Therefore, the present writ petition has been filed on behalf of the petitioner seeking a direction to the respondent Ist set to consider his claims in terms of Section 5 (1) (c) of the Act, 1969 for being nominated as a Member of the Board.

6. The case of the petitioner has been contested by the respondents. A counter affidavit on behalf of the respondent nos. 5 and 6 was filed way back on 19.01.2012, after service of its copy upon the learned counsel for the petitioner. The facts stated in the aforesaid counter affidavit have not been controverted by the petitioner till date. It has been asserted in the aforesaid counter affidavit that the claim of the petitioner vis-a-vis the claim of one Smt. Rahmat Ara, for being nominated as a Member of the Board, was considered as both of them claimed to be the family members of Late Moulvi Khuda Bakhsh Khan Bahadur of Muradpur. Finally, on consideration of the entire materials, by notification dated Ist June, 2010 issued under the signature of Joint Secretary, Government of India, Ministry of Culture, the aforesaid Smt.Rahmat Ara was nominated as a Member of the Board in exercise of powers under Section 5(1) (c) of the Act, 1969. Though more than three years have elapsed since the date of filing of the aforesaid counter affidavit, as noticed earlier, the petitioner has not filed any rejoinder affidavit. The petitioner has also not filed any petition for impleading the aforesaid Smt.Rahmat Ara as party respondent. Evidently, the present writ petition suffers from non-joinder of the necessary party as Smt.Rahmat Ara has not been impleaded as party respondent.

Furthermore, by way of a supplementary counter affidavit filed on behalf of the respondent nos. 5 and 6 it has been stated that the Board was re-constituted by notification dated 12th August, 2013 and in that re-constituted Board also Smt. Rahmat Ara has been made a Member of the Board being a family member of the founder of the Library. The aforesaid notification dated 12th August, 2013 has been brought on the record as Annexure-F to the aforesaid supplementary counter affidavit filed on behalf of the respondent nos. 5 and 6.

7. After having heard the parties, this Court finds that the claim of the writ petitioner is based on disputed question of facts. He claims to be a family member of Late Moulvi Khuda Bakhsh Khan Bahadur of Muradpur. Therefore, he claims that he is entitled to be nominated as a Member of the Board. Smt. Rahmat Ara also raised that claim and her claim was accepted and she has been nominated as a Member of the Board in terms of Section 5 (1) (c) of the Act, 1969. Despite all these developments, neither Smt. Rahmat Ara has been impleaded as party respondent nor the validity and correctness of the aforesaid two notifications, referred to above, have been challenged by the present petitioner.

8. In above view of the matter, this Court is of the opinion that the petitioner is not entitled to grant any relief in the present writ petition. The present writ petition practically has become infructuous in view of the aforesaid developments and issuance of two notifications, referred to above, nominating Smt. Rahmat Ara as a Member of the Board.

9. In the result, the writ petition has to fail and is, accordingly, dismissed. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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