

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20280 of 2013

Along with

Interlocutory Application No. 326 of 2014

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Kameshwari Priya Poor Home, Darbhanga through its General Secretary Dr. Raman Kumar Verma, resident of village/Mohalla- Mirjapur, P.O.- Darbhanga, Police Station- Darbhanga Town, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Bihar Human Rights Commission, Baily Road, Patna
2. The Deputy Secretary, Bihar Human Rights Commission, Baily Road, Patna
3. Jai Shankar Jha S/O Late Bhudeo Narayan Jha behind Dada Motor Garage, Mirzapur, Darbhanga, Pin Code- 846004

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Prasad, Sr. Advocate.
Mr. Prakash Sahay, Advocate.

For the State : Mr. P.N. Sahi, AAG-6
Mr. Mritunjay Kumar, AC to AAG-6

For the Respondent : Mr. Anil Kumar Jha, Sr. Advocate.
Mr. Ashok Kumar Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 18-11-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 326 of 2014

2. The petitioner is a Society registered under the provisions of the Societies Registration Act, 1860 (hereinafter referred to as the 'Act'). The petitioner, who has filed this writ application, claims to be the General Secretary of the Society. As the Society was



created by the erstwhile Maharaja Darbhanga and lands were given to it, the object of the Society was to do social and humanitarian services. A complain was made by the respondent no. 3 before the Bihar Human Rights Commission (hereinafter referred to as the 'Commission') alleging that the lands, buildings and other assets of the Society were being misused by the petitioner and the Society was being thoroughly mismanaged and turned into a private body by the petitioner. The Commission, upon receipt of such complain, issued notice to the petitioner, against which the present writ application was filed. Thereafter, pursuant to a spot inspection made by the then Chairman of the Commission, final order was passed on 22.10.2013 in File No. BHRC/COMP. 374/13. By the said order, the Commission constituted a fresh committee of 11 persons. The petitioner has impugned the said order in the present Interlocutory Application by seeking amendment in the writ application.

3. In view of the fact that final order is in continuation of the initial notice issued to the petitioner, Interlocutory Application No. 326 of 2014 stands allowed. Challenge to the order dated 22.10.2013 of the Commission shall form part of the challenge in the main writ application.

Re.: Civil Writ Jurisdiction Case No. 20280 of 2013

4. Learned counsel for the petitioner submitted that it is a



private Society registered under the Act and its constitution and work is Governed by the provisions of the Act and most importantly, the Commission has no such power to constitute the Committee. It was submitted that the Act itself provides for ways and means to deal with the situation where the concerned Society is not run in accordance with the provisions of the Act or its bye-laws.

5. Learned counsel for the respondent No. 3 submitted that the Commission has to function under the provision of the Protection of Human Rights Act, 1993, (hereinafter referred to as the 'H.R.Act'), especially Section 12. It was submitted that the Society is meant for the benefit of the weaker sections of the society and the person, who is representing it in the present writ application, has thoroughly misused and abused his position and has turned it into a private organization for self benefit.

6. Learned counsel, drawing the attention of the Court to the order of the Commission dated 22.10.2013, submitted that the then Chairman of the Commission, after himself visiting the spot and upon detailed hearing, held that the Society was being mismanaged by the Managing Committee.

7. Having considered the rival submissions, this Court is of the considered opinion that the contention of the learned counsel for the petitioner, to the extent that the Commission has no power to

constitute a committee of a Society, is sustainable. The power of the Commission is enumerated in Section 12 of the H.R. Act, which reads as under:

“12. Functions of the Commission.- The Commission shall perform all or any of the following functions, namely:-

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any Court, into complaint of-

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government.

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.”

8. Thus, it is clear that the Commission has only the power to inquire and thereafter make recommendation to the Government. That being the position, the portion of the order dated 22.10.2013 of the Commission passed in File No. BHRC/COMP. 374/13, constituting the Committee, stands set aside.

9. However, the Court, under its prerogative writ jurisdiction under Article 226 of the Constitution of India, having been made aware of the ground realities, cannot shut its eyes to such position. The fact, which cannot be denied, is that the Society was set up for the object to do social and humanitarian services.

10. The Memorandum of Association of the Society, which was registered under the Act in January, 1942, reads as under:-

“4. Objects: to do social and humanitarian services by reclaiming and bringing out moral, material, social and economic uplifts of the downtrodden people, specially destitute persons, beggars, abandoned children, widows, handicapped, aged; sick and infirm person and to help the suffering humanity by reclaiming and providing them with

shelter and helping them to pick up independent means of livelihood in such a manner that they would never depend on charity and remain burden on the family so as to lead a pure, normal healthy and happy life.

5. To arrange for the education either general, vocational or technical for the inhabitants in general and of the inmates of the Home in particular, and for which no fee will be charged.

6. To plan, initiate, organize; undertake, operate, carry on and undertake voluntary services in the matter of welfare activities for the people independently or in co-operation of other charitable agencies.

7. To prevent professional begging by educating public opinion or by seeking legislation or otherwise.

8. To reclaim children generally found with beggars and to settle them in society after proper education and training and do find suitable employment for them when they grown up.

9. To create, promote and foster healthy and intelligent interest among the people in general in the matter of voluntary services, welfare activities and to render help and assistance to others particularly the people in distress and need.

10. To affiliate, take over and to receive aid from any other Society, Association, Government and other person engaged or interested in the objects with a view for obtaining advantages or benefits for the purposes of furtherance of its objects.

11. To education public opinion regarding the aims and objects of the Home and to obtain provisional order or act of legislatures for enabling the Home to obtain all the powers and authorities necessary or expedient to carry out or to extend any of the objects of the Home or for any other purposes which may seem expedient and to oppose

proceedings or applications which have been calculated directly or indirectly prejudicial of the Home's interest.

12. And generally to do all other lawful acts and things as are incidental and conducive to the attainment of the above cognate objects."

11. From the materials on record, it appears that there is a clear cut indication that the object was not being achieved and further, that there was also a private Eye Hospital running, but with regard to nature of its functioning, there is no concrete finding. Thus, from the above, it is clear that all is not well in running of the Society in question.

12. Thus, the Court would direct the Commissioner, Darbhanga Division, to hold an enquiry into the functioning of the Society, after giving due notice to all concerned and take all steps in accordance with law for ensuring that the object for which it was registered is actually served and the Society is run and acts in furtherance of those objects. The Commissioner shall take corrective remedial measures. He shall also satisfy himself with regard to the *bona fide* of the complainant.

13. The Commissioner, Darbhanga Division shall ensure that the exercise is taken to its logical conclusion within four months from the date of production of a copy of this order upon him. In the meantime, the functioning of the Society shall be under the over all

charge of the Commissioner of Darbhanga Division.

14. The Court deems it expedient to indicate that it has passed the order in the special facts and circumstances of the present case, for securing the ends of justice and in the overall interest of the deprived sections of the society at large, being persuaded by the following finding in the order impugned of the Commission dated 22.10.2013:

“The distant history of the Poor Home as to the time the poor and the destitutes lived in the Poor Home is not clear. But this much is clear- and more or less admitted- that not a single destitute or beggar etc. has lived in the premises of the Poor Home in the last few decades or is living at present. The Poor Home/Society was to be managed by a Committee, and how person- presently managing the ‘Poor Home’ came in control of its affairs is also not a quite clear. It is however apparent that a group of persons has taken control of the Poor Home for their personal gains-in total disregard of the aims and objects for which the Poor Home was founded.

In course of hearing the management of the ‘Poor Home’ produced documents to show that it has been functioning in accordance with law and returns are being filed as per law. On behalf of the applicants/complainants on the other hand, it was stated that the documents are sham; the fact is that the present managing committee did not hold any Annual General Meeting between 19879 and 2010. On behalf of the Darbhanga Raj, it was submitted that the Poor Home was set up as a ‘Society’ but it was illegally converted into a ‘trust’ and the status of the managing committee itself is questionable.”

15. The writ application stands disposed off in the
aforementioned terms.

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	
CAV DATE	
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