

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8494 of 2013

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Mahanth Gautamanand Giri Chela Of Late Mahanth Haridwar Giri Resident Of
Bal Nath Mahadeo Math, Village - Toi, Post - Office - Paharpur Toi, Police Station
- Sahdei Buzurg, District - Vaishali

.... Petitioner

Versus

1. The State Of Bihar Through The Secretary, Department Of Revenue, Govt. Of Bihar, Patna -1
2. The Bihar State Board Of Religious Trusts, Vidyapati Marg, Patna -1, Through It's Chairman
3. The Chairman, Bihar State Board Of Religious Trusts, Vidyapati Marg, Patna -1
4. Mahanth Shankar Giri Chela Of Late Mahanth Pancham Giri Resident Of Gauri Shankar Mahadeo Math, Village Shitalpur Chak Masood, P.O. And P.S. - Biddupur, District - Vaishali
5. Brahma Narayan Puri Son Of 'Name Not Known' Mahanirani Akhara, Daraganj, Allahabad, Uttar Pradesh, Pin Code 211006 At Present Bal Nath Mahadeo Math, Village Toi, Police Station Sahdei Buzurg, District Vaishali

.... Respondents

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Appearance :

For the Petitioner : Mr. Najmul Hoda, Advocate
For the State : G.P. XI
For the Board : Mr. Shekhar Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 11-02-2016

I have heard the parties and have perused the records of
this case.

The petitioner seeks quashing of the Annexure 6 which
is an order dated 14.9.2012 passed by the President, Bihar State Board
of Religious Trusts (hereinafter referred to as 'the Board') holding
that the concerned Math is under Mahanirvani Akhara and, thereafter,
has asked the Principal Office of Mahanirvani Akhara to inform as to

who is to be considered as the Mahanth / Trustee of the concerned Math. The petitioner further seeks quashing of Annexure 7 dated 10.12.2012 by which respondent no. 5 has been appointed as Mahanth of Bal Nath Mahadeo Math, village Toi, District Vaishali.

It is contended that, after the death of Mahanth Haridwar Giri, the respondent no. 4 Mahanth Shankar Giri was appointed as Mahanth vide Annexure 1 dated 29.10.2003. However, the respondent no. 4 filed Succession Case No. 9 of 2004 before the Sub Judge I, Hazipur, Vaishali. The petitioner filed intervention petition in the Succession Case No. 9/2004 which was rejected then he approached this Court by filing civil revision bearing C.R. No. 28/2006 which was allowed on 23.7.2007 vide Annexure 4 directing the court below to allow the intervention petition of the petitioner and proceed further. Petitioner also assails the acceptance of respondent no. 4 as Mahanth by the Board by filing C.W.J.C. No. 16076/2005 which was disposed of vide Annexure 5 dated 6.7.2012 noticing that, in view of amended provision, life of temporary trustee is of one year only and also that the Board has already issued notice against respondent no. 4 with respect to certain irregularities having been brought to its notice and a decision was going to be taken in that regard, directed the Board to take early decision on the issue and also the status of temporary trustee. Thereafter, the petitioner had

appeared and the matter was heard by the President of the Board and the impugned decisions were taken by that.

Learned counsel for the petitioner assails the order impugned on the ground that the President of the Board did not have any power to hear the matter and dispose it of as the Board was the competent authority to take such decision specially in view of direction given vide Annexure 5 of this Court. It has next been contended that the petitioner was already appointed as Mahanth by the Panchayat Akhara Maha Nirvani in view of the fact that the last Mahanth Late Haridwar Giri had appointed him as his minor chela, thus, the petitioner is his successor which would be manifest from the certificate granted by the Mahanirvani Akhara, Daraganj, Allahabad appended as Annexure 8 to the rejoinder to the counter affidavit. Next submission on behalf of the petitioner is that though the petitioner has attained majority still he was considered to be the minor. That apart, it is also stated that even the Board can only appoint temporary trustee as there is no provision under the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as 'the Act') to appoint a permanent trustee save and except vacancy created by removal of the trustee under Section 28(2) (h) of the Act and that too would be the subject to the wishes of the founder or the mutual compromise between the Board and the Trust approved by the

competent court. Thus, it is contended that the President has overstepped his jurisdiction and the impugned orders being without jurisdiction, are fit to be quashed and set aside.

Learned counsel appearing for the Board has submitted that the petitioner did not produce the certificate before the President for its consideration at relevant point of time and the certificate has apparently not been issued under the letter head of the competent authority and also that its authenticity cannot be ascertained from the xerox copy of the certificate. It is contended that the petitioner could not even submit anything in his support to show that he was major and fit to hold the post of Mahanth.

After having considered the rival submissions of the parties, this Court does not find force in the submission made on behalf of the petitioner.

Vide Annexure 5, which is order dated 6.7.2012 passed in C.W.J.C. No. 16076/2005 filed by the petitioner, a Single Judge Bench of this Court had directed the Board to take early decision in the matter in view of the fact that life of temporary trustee after amendment in the concerned provision was only for one year and in addition thereto the Board had already issued notice upon the private respondent no. 4 with respect to certain irregularities committed and a decision was going to be taken in that regard.



The Board, under Section 83 of the Act, is fully empowered to make bye-laws, though not inconsistent with the Act and Rules, for carrying into effect the aims and objects of the Act. Under Clause 43 of the bye-laws, the powers and duty specified there under have already been delegated to be exercised and performed by the President. Clause 43 (ziii) empowers the President to make inquiry of any serious case, dispute or serious allegation and take a decision after hearing the concerned parties. In exercise of aforesaid power the President has decided the issue of dispute as to which sect the concerned Math belongs as there was serious dispute between the petitioner and the respondent no. 4 and also there were serious allegations against the respondent no. 4 with added fact that his term as temporary trustee had already expired. The petitioner claims himself to be the Mahanth of the Math but he could not produce any document though such averments had been made by him in the petition filed by him which is available in the original records.

The President has decided that Toi Math belongs to Mahanirvani Akhara and has held that Math does not belong to such Akhara, therefore, he cannot be entrusted such responsibility either. In such background a decision was taken that let Mahanirvani Akhara itself communicate the Board as to who is Mahanth of Toi Math belonging to that sect. Thereafter, it appears that vide



Annexure F the Panchayat Akhara Mahanirvani, Daraganj, Allahabad has informed that Mahanirvani Akhara has appointed the respondent no. 5 as Mahanth of 'Toi Math' and such information was already communicated to the Board. Therefore, a request was made to the Board to accept the respondent no. 5 as Mahanth. In that background of the matter annexure 7 came to be passed by the President. Though it appears from Annexure 7 that on the recommendation of the Panchayat Akhara Mahanirvani, Allahabad, respondent no. 5 has been appointed as Mahanth but for that reason Annexure 7 cannot be brushed aside as even though there was no power of appointment of Mahanth but the Board was having power to accept the Mahanth appointed by the concerned sect to recognize. There was no impediment in recognizing and accepting respondent no. 5 as Mahanth having been appointed by the concerned Akhara or sect. Merely stating that the respondent no. 5 is being appointed does not imply that there has been any application of mind by the President for appointing Mahanth as the records disclose in clear terms that respondent no.5 has been appointed by the concerned Sect and that has simply been recognized by the President vide Annexure 7. Thus Annexure 7 should only be read limited to the purpose that the President has accepted respondent no. 5 Brahma Narayan Puri, i.e., the Mahanth of Toi who was appointed as such by the Mahanirvani

Akhara Daraganj, Allahabad.



Apart from the above the respondent Board has also brought on record decision and the relevant proceeding of the Board dated 16.1.2013 as Annexure E to the supplementary counter affidavit filed on behalf of the respondent nos. 2 and 3 that the Board has approved several decisions taken by the President which includes the decision regarding “Toi Math”. Thus, on that count also the decision of the President having already been approved by the Board, in my considered opinion, cannot be faulted with on technical ground.

Now the question is whether the issue having been decided by the Board vide Annexure 6 should be examined by this Court in view of the claim of the petitioner that he has in fact been appointed Mahanth by the concerned sect? The answer has to be in negative as that aspect came to be considered and decided only after granting opportunity to the parties to lead evidence in support of their claim and after analysis of the same and that, in my considered view, can only be done by a Civil Court of competent jurisdiction.

Accordingly, the writ petition fails. However, the petitioner, if he so desirous would be at liberty to get a proper declaration by raising proper dispute regarding his claim to be the Mahanth of Toi Math before a civil court of competent jurisdiction.

Let the original records be returned to the learned
counsel appearing for the Board.

(Dr. Ravi Ranjan, J)

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