

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14567 of 2016

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Sharfuddin Khan, Son of Late Khan Bahadur Abdul Gafur Khan, Resident of 28
Komedan Bagan Lane, P.S- Park Street, Kolkatta- 16, District- Kolkata (West
Bengal).

.... 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 Joint Secretary to the Government of India, Ministry of Culture, Government of India, New Delhi.
4. The Under Secretary to the Government of India, Ministry of Culture, Government of India, New Delhi.

..... Respondents 1st Set

5. The Director Khuda Bakhsh Oriental Public Library, Ashok Raj Path, Patna.
6. The Secretary, Khuda Bakhsh Oriental Public Library, Ashok Raj Path, Patna.

..... Respondents 2nd Set

7. Smt. Rahmat Ara, Wife of Not know to the petitioner, Presently Member of Board of Khuda Bakhsh Oriental Public Library, Ashok Raj Path, Patna through the Director Khuda Bakhsh Oriental Public Library, Ashok Raj Path, Patna.

..... Respondents 3rd Set

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Mushtaque Ahmad and Mr. Humayou Ahmad Khan, Advocates
For the Union of India	:	Ms. Nivedita Nirvikar, CGC
For the Respondent No. 7	:	Mr. Raghieb Ahsan, Sr. Advocate Mr. Md. Abu Haider and Mr. Md. Abu Shajar, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 09-02-2017

Heard learned counsel for the petitioner, the Union of
India including the respondents no. 5 and 6 and learned senior
counsel for the respondent no. 7.

2. The petitioner has moved the Court seeking a
direction to nominate him as a member of Khuda Bakhsh Oriental
Public Library Board (hereinafter referred to as the 'Board') in terms



of Section 5 (1) (c) of the Kudha Bakhsh Oriental Library Act, 1969 (hereinafter referred to as the 'Act').

3. The petitioner claims to be the grandson of the founder of the library namely, Maulvi Khuda Bakhsh Khan Bahadur and as per the provisions of the Act, the management of the library is vested in the Board and composition thereof is given in Section 5 of the Act. As per the provisions, one person shall be nominated by the Central Government who shall be a member of the family of late Maulvi Khuda Bakhsh Khan Bahadur. The petitioner applied for such nomination in the year 1986, initially for his brother and later, on 02.09.1992 for himself. It appears that the petitioner followed up his representation a few times. The respondent no. 7, who is the grand-daughter of the brother of the founder also made an application in the year 1992 and the Board thus, having two applicants, sought legal opinion from its counsel.

4. The petitioner also represented to the Union of India and the Union of India forwarded the name of the petitioner as well as the respondent no. 7 to the Board for making appropriate recommendation in favour of one person from the category of member of the family of the founder. The Board, faced with the situation, sought legal opinion and the same was rendered on 13.07.2009 giving the opinion that the respondent no. 7 be nominated



to the Board. The Central Government initially nominated the respondent no. 7 as the member of the Board under notification dated 01.06.2010 and upon the end of the tenure again nominated her under notification dated 12.08.2013, by which the nominees under Clause (d) of sub-Section 5 of the Act were notified. The petitioner being aggrieved by the notification of the year 2010 moved this Court in C.W.J.C. No. 5131 of 2010 which was dismissed on 10.03.2015 primarily on the ground that the respondent no. 7 was not made a party and by that time the subsequent notification dated 12.08.2013 had come and in that view, the Court held that the said writ petition had practically become infructuous. The petitioner then assailed the notification dated 12.08.2013 in C.W.J.C. No. 4562 of 2015, in which the Court by its order dated 02.05.2016 permitted the writ petition to be withdrawn to enable the petitioner to ventilate his grievance before the appropriate/Competent Authority of the Central Government. The petitioner accordingly, filed an application before the respondent no. 2 and also before the respondent no. 5 on 16.05.2016. The petitioner, by Letter No. 327 dated 22.06.2016, on behalf of the respondent no. 5, was informed that the earlier decision to nominate respondent no. 7 was correct and that there were no question of appointing the petitioner as a member of the Board. The said communication is under challenge in the present writ application.



5. Learned counsel for the petitioner submitted that after the death of the founder, for many years, there was no representation of any family member who was in the direct line of descendant of the founder and only in the year 1982, when the father of the petitioner had visited the library, the authorities became aware that a living son of the founder existed. It was submitted that thereafter in the year 1986, the petitioner under Letter No. 5092 dated 22.11.1986 was informed about there being a vacancy in the Board with regard to a family member of late Khuda Bakhsh and asking for his or his brother's details for being considered for such nomination. The petitioner submitted the details under Letter dated 01.12.1986 with regard to his elder brother. However, in the year 1999, both the petitioner as well as the respondent no. 7 applied for nomination to the Board under the category of family member of the founder, which was also duly acknowledged. Learned counsel submitted that pursuant to the application made by the parties to the Central Government, the respondent no. 5, wrote to the respondent no. 4 informing that the respondent no. 6 was not a direct descendant of the founder and also that the petitioner had submitted his claim in 1992 and had also submitted certificate of heirship issued by the Metropolitan Magistrate, Kolkata and other papers to substantiate his claim whereas no such certificate was provided by the respondent no.



7 and also that there was no authentic geological table available. Learned counsel submitted that the Board thereafter sent the matter for legal opinion to its counsel who opined that the respondent no. 7 be nominated as her claim is more strong and genuine and that the petitioner is a non Matric and has no knowledge and experience in matters relating to the administration of library and thus in his view, he did not deserve to be appointed or nominated either as librarian or member of the Board. However, it was submitted that the petitioner being the direct descendant of the founder was not disputed even in the legal opinion. Learned counsel submitted that the Central Government had sent the matter to the Governor of Bihar, who is the Chairman of the Board and the Board therefore asked for legal opinion and relying on the same, the matter was sent to the Governor of Bihar who, in turn, relied upon the legal opinion given and recommended the name of the respondent no. 7 and accordingly, the Central Government has appointed her. Learned counsel submitted that in the face of facts which have come on record and the petitioner being the direct descendant of the founder being also reflected in a book published on the founder of the library in the year 1985, the issue of the petitioner being the grandson of the founder is not in dispute. He further relied upon the certificate issued by the Metropolitan Magistrate, Kolkata which establishes that he is the



grandson of the founder and also other documents in support of such claim. Learned counsel submitted that even as per the recitals of the deed of the original donor i.e., the founder of the library, it is the son of the founder who has to be made the Liberian and accordingly, the line has to go on and only when there is no descendant in the direct line/lineage of the founder, the brother's side would also be considered. Learned counsel submitted that the said deed was followed by enactment of the Act in which one member to the Board would be a family member of the founder, and in the present case, the petitioner being in the direct and straight lineage of the founder, being the grandson, the respondent no. 7, being the granddaughter of the brother of the founder, does not have a better claim, as it is the petitioner who has the first and rightful claim in law for such membership. Learned counsel submitted that even the respondent no. 7 has nowhere in her petition before the authorities disputed the fact that the petitioner is the grandson of the founder. Learned counsel submitted that the role of the respondent no. 5 has been partisan and biased as right from the beginning he has supported the respondent no. 7, without there being any material which would put her on a better footing as compared to the petitioner.

6. Learned counsel for the Union of India, who has filed two counter affidavits, submitted that as per the scheme the



library is run by an autonomous body in terms of the Act and the Central Government's role is limited to nominate the member of the Board in terms of the provisions of the said Act. She submitted that in the present case, there being two claimants, the matter was referred to the Governor of Bihar, who, as the ex-officio Chairman of the Board, in turn, had sought information from the library but there being no conclusive evidence or material in favour of either of the parties, the Governor considered it proper to seek legal opinion and in that context such opinion was sought and the Board/library had sent the application forms and representations submitted by both the claimants, along with the legal opinion to the Governor, and at his level, the Governor, relying upon the legal opinion given, had recommended the name of the respondent no. 7, and pursuant thereto the Central Government has notified respondent no. 7 as a member of the Board. She submitted that the role of the Central Government being limited, the manner in which the nomination has been notified, is reasonable, for the reason that the concerned authorities i.e., the Board and the library were asked to send their recommendation but because there was more than one claimant and only one name had to be sent, the exercise of seeking legal opinion was resorted to.

7. Learned senior counsel for the respondent no. 7 submitted that he had sought specific instructions on certain points



from his client but unfortunately, the same have not been made available to him. However, he took a fair stand that the Central Government is required to consider the matter taking into consideration the merit of the claim of either party.

8. Having considered the rival contentions, in the opinion of the Court, the petitioner has been able to establish that he is the grandson of the founder as no fact has come on record or any averment made even by the respondent no. 7 that he is not the grandson. This is one aspect of the matter. The other aspect of the matter is as to whether if it is assumed that the respondent no. 7 is the granddaughter of the brother of the founder, her nomination can be said to be proper. In this connection, the Court would like to observe that at the relevant time, when the Act was not in force, the founder of the library stipulating that he would be the Librarian and after his death any of his sons and thereafter the descendant would be the Librarian and only failing such sons, a person from the brother's side and other heirs would be made the Librarian, clearly indicates that the intention of the founder was specific that when there was a direct descendant, he shall be given priority as far as appointment of Librarian is concerned. At the time of framing of the Act, the sentiment of the founder was incorporated by making the provision that a family member shall be nominated on the Board, which clearly



implies that the said has to be read harmoniously with the original will of the founder relating to the appointment of Librarian. Even otherwise, when a person in the direct line of succession is available, the descendant from a lateral branch cannot get preference. In the present case, the petitioner, being the grandson of the founder, on the one hand and the granddaughter of the brother of the founder on the other hand, the Court has no hesitation to hold that the petitioner shall take precedence over the respondent no. 7. The Court painfully takes note of the legal opinion tendered by the learned counsel, as contained in his opinion dated 13.07.2009, copy of which has been brought on record, with regard to the discussions made therein and the reasons for holding that the respondent no. 7 has a more strong and genuine claim compared to the petitioner, since he was non-Matric and thus, he does not deserve to be appointed or nominated either as Librarian or member of the Board, which, in the considered opinion of the Court, is nothing short of being myopic. The Court cannot shut its eyes to such legal opinion which has absolutely no relevance or connection with the opinion which had been sought. The reason to unsuit the petitioner is totally arbitrary, unreasonable and without any basis. Just because the respondent no. 7 is a qualified lady and may have held the post of Librarian earlier, would not mean that she would have a more strong and genuine claim as a member of



the Board for the simple reason that for being a member, no qualification is prescribed, save and except the relationship to the founder. In the present case, as the Court has held that it is the petitioner who is the direct descendant, in view of the materials on record which have not been disputed even by the respondent no. 7, and the only stand in this regard is that the official respondents have acted in terms of the legal opinion, such nomination is clearly erroneous. Moreover, learned counsel for the petitioner has also produced the book published in the year 1985 namely 'Mashriq Bordly' written by Ataullah Palwi on the founder in which the genealogical table clearly discloses the fact that the petitioner is the grandson of the founder of the Library.

9. In view of the discussions made hereinabove, the Court finds that the nomination of the respondent no. 7 to the Board, in the face of the claim of the petitioner, cannot be sustained. Accordingly, the nomination is set aside. The notification as contained in F.No. 9-4/99-Lib. (Vol. II) of the Government of India, Ministry of Culture dated 12th August, 2013 where nomination under Clause (d) of sub Section (1) of Section 5 of the Act, as far as it relates to the nomination of the respondent no. 7, at serial no. 5 of the said notification, as member of the family of the founder of the library is set aside. As a result all consequential orders, including that



contained in Letter No. 327 dated 22.06.2016, are also set aside. The matter is remanded to the Secretary, Ministry of Culture, Government of India, New Delhi (respondent no. 2) for passing fresh order in relation to nomination of a person or the family of the founder of the library, in light of the discussions made in this order and in accordance with law. The same be done within one month from the date of production of a copy of this order before respondent no. 2.

10. Before parting, in view of the apology tendered by Mohammad Asghar, the Assistant Librarian and Information Officer of Khuda Bakhsh Oriental Public Library, Patna for having stated incorrect facts, in the first counter affidavit, the Court is not taking action against him. However, he is cautioned to be careful in future, especially with regard to giving instructions and filing of affidavits particularly, in judicial proceeding.

11. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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