

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20622 of 2019

Rohit Kumar, Son of Sri Laxmi Nath Jha, Resident At C/o- Maheshwar Chandra Niwas, B.B. Srivastava New By Pass, P.O. Anisabad, Police Station- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Foreign Secretary Ministry of External Affairs Jawahar Lal Nehru Bhavan Shastri Bhavan, Patiala House, New Delhi.
2. The State of Bihar through the Additional Chief Secretary, Department of Home (Police) Government of Bihar Sardar Patel Bhawan New Police Head Quarter, 401, Bailey Road, Nand Gaon Bailey Road, Rajbanshi Nagar, Patna, Bihar.
3. The Additional Chief Secretary, Department of Home (Police) Government of Bihar Sardar Patel Bhawan New Police Head Quarter, 401, Bailey Road, Nand Gaon Bailey Road, Rajbanshi Nagar, Patna, Bihar.
4. The Principal Secretary, Department of Home (Police) Government of Bihar Sardar Patel Bhawan New Police Head Quarter, 401, Bailey Road, Nand Gaon Bailey Road, Rajbanshi Nagar, Patna, Bihar.
5. The Secretary, Ministry of External Affairs, Government of India, New Delhi Patiala House, New Delhi.
6. The Secretary, Ministry of Tourism Government of India, New Delhi Room No. 119, Transport Bhawan, 1, Parliament Street, New Delhi.
7. The Director General Archaeological Survey of India, 24 Tilak Marg, New Delhi.
8. The Principal Secretary Department of Tourism, Bihar Old Secretariat, Patna.
9. The Principal Secretary Department of Youth Art and Culture Department Vikas Bhawan, Bailey Road, Patna.
10. The Member of Paliament, Gaya.
11. The Member of Legislative Assembly, Bodh Gaya.
12. The Commissioner, Magadh Division, Gaya Cum- Member Secretary of Bodh Gaya Temple Advisory Board.
13. The Deputy Inspector General of Police Magadh Range Gaya.
14. The District Magistrate, Gaya Cum Chairman Bodh Gaya Temple Management Committee.
15. The Chairman Nagar Panchayat Bodh Gaya, District- Gaya.
16. The General Secretary, Mahabodhi Society of Kolkata, 4A, Bankim Chatterjee Street, Kolkata, West Bengal.
17. The Representative of International Buddhist Monasteries/ Temple in Bodh Gaya (Ven. U. Nyayeninda. Mahathera, Chief Monk Burmese Vihar) through the Bodh Gaya Temple Management Committee Post Office, Bodh Gaya, Gaya, Bihar.



18. The Secretary, Department of Ecclesiastical Affairs, Government of Sikkim, Government of Sikkim, Gangtok, Sikkim.
19. The Representative of his Holiness the Dalai Lama through the Bodh Gaya Temple Management Committee Post Office- Bodh Gaya, Gaya, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No. 13, Advocate Mr. Rohit Kumar, Advocate (In person)
Amicus Curiae	:	Mr. Tuhin Shankar, Advocate
For the State	:	Mr. Lalit Kishore, Advocate General.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-12-2019

Heard learned counsel for the petitioner and learned counsel for the respondents. We have also heard learned Amicus Curiae.

2. Petitioner has prayed for the following reliefs:-

“I. For issuance of writ in the nature of certiorari or any other appropriate writ for setting aside of Memo No. C/B.G.M.-4906/13 2871 Patna dated 13.03.2019 under signature of the Special Secretary to the Government of Bihar Home Department (Special Branch) whereby and whereunder in exercise of the power conferred under sub section (i) of Section 15 of Bodh Gaya Temple Act (Bihar Act-17.1949) Bihar Governor is hereby pleased to constitute the Bodh Gaya Temple advisory Board (Contained in Annexure-3). However the section 3 of Bodh Gaya Temple Advisory Board Rules, 1959 provided that, subject to the provisions of sub-section (2) of section



15 of the Act, not more than two-third of such members shall be Buddhists and at least half of these Buddhists shall be the residents of foreign countries. These norms/Rules are not followed by the special secretary to the Government of Bihar.

II. For issuance of a direction(s), orders(s) including writ in the nature of Mandamus commanding the concerned to revisit and reconsider to Constitution of the advisory Board of Bodh Gaya Temple on the norms and Accordance with land which provided in Bodh Gaya Temple Advisory Board rules, 1959 published vide notification no. A/Bi-103/59-P.G.- 265 dated 4th- 13th November 1959 which provided under Rule 3(1) subject to the provisions of sub section (2) of Section 15 of the Act, not more than two-third of such members shall be Buddhists and at least half of these Buddhists shall be the residents of foreign countries. However at present Bodh Gaya Temple advisory Board dated 13.03.2019 in question have 24 members and only 10 of members are Buddhists (Foreign country) which are not two third out of 24 members.”

3. Having heard learned Advocate General, learned *Amicus Curiae* as also learned counsel for the petitioner, we do not find any merit in the instant application, assailing the notification dated 13th of March, 2019 issued by the Special Secretary to the Government of Bihar, Home Department,



constituting the Advisory Board of the Bodh Gaya Temple.

4. The provisions of the Act are unambiguously clear. Constitution of the Advisory Board is mandated under Section 15 of the Bodh Gaya Temple Act, 1949 (hereinafter referred to as the “Act”), which is reproduced as under:-

“15. Constitution of an Advisory Board.-

(1) The [State] Government may constitute an Advisory Board (hereinafter referred to in this Act as the “Board”) which shall consist of such number of members as the [State] Government may determine.

(2) The majority of the members of such Board shall be Budhists who may not all be Indians.

(3) The members of the Board shall hold office for such term as may be fixed by the [State] Government.

(4) The Board shall function purely as an advisory body to the Committee and shall discharge its functions in the manner prescribed by the [State] Government by rules made in this behalf.”

5. Pursuant to Section 18 thereof, the State Government has framed the Bodh Gaya Temple Advisory Board Rules, 1959 (hereinafter referred to as the “Rules”), which also provides for constitution of the Advisory Board in the following terms:-

“3. Constitution of the Advisory Board.-



(1) The Advisory Board shall consist of not less than 20 and not more than 25 members:

Provided that, subject to the provisions of sub-section (2) of section 15 of the Act, not more than two-thirds of such members shall be Buddhists and at least half of these Buddhists shall be the residents of foreign countries.

(2) All the members of the Board shall be appointed by the State Government.

(3) The Commissioner of the [Magadh Division] and the Chairman of the Bodh Gaya Temple Management Committee shall be the *ex-officio* members of the Board.

(4) The State Government may nominate such other officials of the State Government or the Government of India, as they may consider necessary, to be the *ex-officio* members of the Board.

(5) The names of the members of the Board shall be published in the gazette.”

6. Learned *Amicus Curiae* submits that the majority of members, in the spirit of Section 15 of the Act as also Rule 3 of the Rules, are Buddhists. Nine of such members are foreign nationals. In fact, they are nominated by their designation being Ambassadors of Buddhist countries. Four others are also representative of organizations managed by Buddhists.

7. It is not disputed before us that anyone out of these 13 nominated persons are Buddhists.



8. We also notice that the remaining eleven members are Government functionaries/representatives of several public Institutions.

9. Out of 24 members, 13 are Budhists. What the petitioner desires is that amongst the Budhists, so nominated on the Board of Governors, majority should be Indian Nationals. Well, that is not the import of the legislative intent, object and purpose. In fact, the Act specifically mandates half of the nominated members, who are Budhists, must be residents of foreign countries, for the expression used in the proviso of the of the Rule 3 of the Rules is 'shall be the residents of foreign countries'.

10. In fact, if one were to peruse sub-section (2) of Section 15 of the Act, everything would be evidently clear. The majority of the members of the Board are to be Budhists, 'who may not all be Indians'.

11. It is seen that the impugned Notification dated 13th March, 2019 was issued pursuant to the request of the appropriate authority, for the term of the previous Board was expiring on 29th September, 2018. The acts of the authority in notifying the constitution of the Board of Bodh Gaya Temple is neither intra nor ultra vires the Rules, the Statutes or the



Constitution of India.

12. It is seen that the prescription for maximum number of members amongst the Budhists is two-third. But then, there is no minimum limit prescribed therein qua such person. In the present, Bodh Gaya Temple Advisory Board, there are 24 members, out of whom, 9 are from Budhists countries and 4 are Indian Nationals.

13. Hence, from any perspective, impugned action cannot be held to be illegal and arbitrary.

14. As such, we do not find any infirmity in the action of the respondents in constituting the Advisory Board. The writ petition, being devoid of merit, is dismissed.

15. Here, we place on record the appreciation for the assistance rendered by the learned *amicus curiae*.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	21.12.2019
Transmission Date	

