

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6724 of 2020

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Satyeshwaranand Jyoti Chela of Late Hariharanand Jyoti R/o- Bhataura Math,
P.S.- Hathauri, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through Law Secretary, Govt. of Bihar, Patna.
2. Bihar State Board of Religious Trust through its Chairman, Vidyapati Marg,
P.S.- Budha Colony, Patna.
3. Chairman, Bihar State Board of Religious Trust, Bihar, Patna.
4. Managing Committee of Bhataura Math through its Secretary Lalan Kumar
Mandal Resident of Village- Bhataura, Police Station- Hathauri, District-
Samastipur.

... .. Respondents

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Appearance :

For the Petitioner	:	Ms. Mahasweta Chatterjee, Advocate
For the Respondent State:	:	Mr. S. K. Mandal, SC-3
For the Board	:	Mr. Ganpati Trivedi, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 28-01-2022

This matter has been taken up for hearing online because
of *COVID-19* pandemic restrictions.

2. This writ application, in original form, was filed
seeking the following reliefs:-

*“1. That the petitioner prays for the
following reliefs :-*

*(1) That an appropriate writ may be issued
quashing the notification no. 961 dated
25.09.2019 as contained in Annexure-11
whereby and whereunder the Respondent*



no.3, the learned Chairman has framed a scheme and appointed 11 members managing committee of Bhatuara Math, published in Gazette dated 03.02.2002 as contained in Annexure 12.

(ii) That an appropriate writ may be issued commanding upon the respondent no.3 not interfere with the management of the trust in question without removing the petitioner from the post of trustee after following due procedure.

(iii) That an appropriate writ may be issued commanding upon the respondent no.2, not to proceed with handing over the charge to the managing committee during the pendency with application.

(iv) Any other reliefs for which the petitioner is found entitled to under the facts and circumstances of the case.”

3. During the pendency of the writ petition, the President of the Bihar State Board of Religious Trust (for short 'the Board') issued an amended notification on 04.09.2021 framing Scheme under Section 32 of the Bihar Hindu Religious Trust Act, 1950 (for short 'the Act') for the said Bhatuara Math. The said notification dated 04.09.2021 is sought to be challenged in the present writ application by seeking amendment by way of Interlocutory Application No. 1 of 2021.



4. Ms. Mahasweta Chatterjee, learned counsel appearing on behalf of the petitioner has submitted that she would confine her submission to the legality of the said notification dated 04.09.2021, which, according to her, is unauthorized and illegal. Considering the submission advanced on behalf of the petitioner and the pleadings on record, I. A. No. 1 of 2021 is allowed. The petitioner has, thus, been permitted to question the legality of the impugned notification dated 04.09.2021.

5. Raising a preliminary objection, Mr. Ganpati Trivedi, learned Senior Counsel appearing on behalf of the Board has submitted that subsection (3) of Section 32 of the Act provides for a statutory remedy to a trustee or any other person interested in such trust to make an application to the District Judge for varying, modifying or setting aside the scheme framed under Section 32 of the Act. He would accordingly contend that since the petitioner has an alternative statutory remedy of appeal, which is more efficacious, this writ application filed under Article 226 of the Constitution of India should not be entertained as no exceptional circumstance exists for this Court's interference, despite there being alternative remedy available.

6. Ms. Mahasweta Chatterjee, learned counsel appearing on behalf of the petitioner, however, submits that since the



impugned notification dated 04.09.2021 issued by the President of the Board is *per se* illegal given clear language of Section 32 of the Act, this Court exercising power of judicial review should entertain this writ application, the impugned notification being *void ab initio*. She contends that under Section 32 of the Act, the power to frame scheme vests in the Board and not the President and, therefore, the impugned order is completely unauthorized and illegal.

7. In response to the said submission made on behalf of the petitioner, Mr. Ganpati Trivedi, learned Senior Counsel for the Board has drawn our attention to Clause (r) of bye-law 43 of the Religious Trust Board's Bye-Laws made under Section 83 of the Act to contend that the President of the Board has been given the power to settle schemes for the proper administration of a religious trust. He has accordingly submitted that the impugned notification dated 04.09.2021 cannot be said to be unauthorized and beyond jurisdiction. In response to the said submission of Mr. Trivedi, Ms. Mahasweta Chatterjee, learned counsel for the petitioner, has submitted that as Section 32 of the Act empowers the Board to frame scheme. The provision under the Bye-Laws cannot override the said provision under the Act and, therefore, in view of the clear language of Section 32 of the



Act only Board has the power to frame schemes under Section 32 and not the President.

8. Having considered rival submissions made on behalf of the parties on the question as to whether the President of the Board has the authority to frame scheme under Section 32 of the Act, we need to take note of the fact that the Bye-Laws have been framed in exercise of power under Section 83 of the Act. Section 83 of the Act confers upon the Board, power to make Bye-Laws consistent with the Act or the Rules made thereunder for any matter necessary to carry into effect the objects of the Act. Sub-section (2) of Section 88 delineates the items in respect of which the Board may make Bye-Laws, which includes allocation of duties to the President and the Members. We have no hesitation in recording our opinion that the said Bye-Laws have the statutory force, having been made in exercise of the statutory provision under Section 83 of the Act. Bye-Law 43 delineates powers and duties of the Board that can be exercised and performed by the President. Clause (r) of Bye-Law 43 in no uncertain terms confers such power on the President of the Board to settle scheme for the proper administration of a religious trust. Further, clause (zv) confers upon the President power to constitute a trust committee under



Section 32(1) of the Act. For ready reference Clause (r) and Clause (zv) of Bye-Law 43 are being reproduced hereinbelow: -

“43.

xxx

xxx

xxx

(r) to settle schemes for proper administration of religious trust;

xxx

xxx

xxx

(zv) may constitute a trust committee under Section 32(1) of the Act”

9. On a plain reading of Clause (r) and clause (zv) of Bye-Law 43, the impugned notification dated 04.09.2021 issued by the President of the Board cannot be said to be completely unauthorized, requiring this Court's interference on that ground.

10. Ms. Mahasweta Chatterjee has relied on a Division Bench decision of this Court in the case of ***Swamy Jai Krishnacharya vs. Bihar State Board of Religious Trust and Others***, reported in **2000(4) PLJR 645** wherein it has been held, according to her, that the power of the President of the Board under Clause (43) of the Bye-Laws pertains only to giving opinion or advice. She contends, therefore, that the impugned action of the President is wholly beyond jurisdiction. The said submission, in the Court's opinion, is wholly misplaced since this Court's observation in the case of ***Swamy Jai Krishnacharya*** (supra) is concerning the function of the



President of the Board under Clause 43(z)(ii) of the Bye-Laws, which casts a duty upon the President of the Religious Trust to give opinion, advice or direction to a trustee of religious trust on any question affecting the proper management and administration of the properties of such trust. The said decision is in the context of the President's power to remove the trustee under Section 28(h) of the Act. The Division Bench, in the case of *Swamy Jai Krishnacharya* (supra) had the occasion to test the validity of the decision of the President of the Board to remove a trustee in the exercise of power under Section 28(h) of the Act, with reference to Bye-Law 43(z)(ii) of the Bye-Laws. The said Division Bench judgment is not at all applicable in the facts and circumstances of the present case.

11. Ms. Chatterjee has relied on a Single Judge decision of this Court dated 04.03.2021 rendered in C.W.J.C. No. 1491 of 2020 (*Mahanth Ramesh Giri @ Ramesh Giri vs. The State of Bihar and Others*) to contend that the power, which is vested in the Board could not have been exercised by the President. The said submission concerning this Court's decision in case of *Mahanth Ramesh Giri @ Ramesh Giri* (supra) is wholly misconceived for the reason that in that case, this Court, noticing the fact that the Board itself was not constituted, held



that the President could not exercise the powers of a non-existent Board.

12. For the aforesaid reasons, we do not find any legal infirmity in the impugned notification requiring this Court's interference in the exercise of powers under Article 226 of the Constitution of India. We find no merit in this application.

13. In our opinion, it is vexatious litigation, which has unnecessarily consumed considerable valuable time of this Court and, therefore, it deserves to be dismissed with cost.

14. This application is accordingly dismissed with a cost of Rs.10,000.00 to be paid by the petitioner to the Bhatuara Math, for its welfare within one month from today.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N /A
Uploading Date	15.02.2022.
Transmission Date	N/A

