

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.236 of 2024**  
**In**  
**Civil Writ Jurisdiction Case No.12252 of 2022**

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Mahanth Ramesh Giri @ Ramesh Giri S/o and Chella of Sadanand Giri, R/o Bodh Gaya Math, Bodh Gaya, District-Gaya (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. The Bihar State Religious Trust Board through its President, Vidyapati Marg, Patna-800001.
3. The Superintendent of Bihar State Religious Trust Board, Vidyapati Marg, Patna-800001.
4. The District Magistrate, District-Gaya (Bihar).
5. The Senior Superintendent of Police, Gaya (Bihar).
6. The Sub-Divisional Magistrate, Sadar Gaya (Bihar).
7. The Deputy Collectgor, Land Reforms, Sadar Gaya (Bihar).
8. The Executive Officer, Bodh Gaya, District-Gaya (Bihar).
9. Mahanth Triveni Giri Chela Mahanth Dhanshuk Giri, resident of Bodh Gaya Math, P.S. Gaya Town, District-Gaya.

... .. Respondent/s

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with  
**CIVIL REVIEW No. 46 of 2022**  
**In**  
**Civil Writ Jurisdiction Case No.16795 of 2021**

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Mahanth Remash Giri @ Ramesh Giri Son/Chela of Sadanand Giri Resident of Bodh Gaya Math, Bodh Gaya, District Gaya, Presently Mahanth of Bodh Gaya Math, Bodh Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Bihar State Religious Trust Board, Patna through its President, Vidyapati Marg, Patna-1.



- 3. The President, Bihar State Religious Trust Board, Patna, Vidyapati Marg, Patna-1.
- 4. The Superintendent, Bihar State Religious Trust Board, Patna, Vidyapati Marg, Patna-1.
- 5. The District Magistrate, Gaya, District Gaya.
- 6. The Additional Collector, Gaya, District Gaya.
- 7. The Sub-Divisional Officer, Sadar, Gaya, District Gaya.
- 8. Baliram Mishra Son of Late Sukhdeo Mishra Resident of Nevtapur, Bodhgaya, District Gaya, Previously secretary of the Bodh Gaya Math, Bodh Gaya, District Gaya.
- 9. Triveni Giri Son/Chela of Mahanth Dhansukh Giri Resident of Bodh Gaya Math, Gaya, District Gaya.
- 10. Dindayalu Giri Son/Chela of Mahanth Harihar Giri Resident of Bodh Gaya Math, Bodh Gaya, District Gaya.
- 11. Ramesh Prasad Singh @ Lulan Singh Son of not known to the petitioner Resident of Village Kendui, District Gaya, Previously Vice Chairman of Bodh Gaya Nagar Panchayat, Bodh Gaya, District Gaya.
- 12. Ram Chandra Prasad Yadav Son of Not known to the petitioner Resident of A.H. Colony, PS Bodh Gaya, District Gaya, Previously Mukhiya of Bodhgaya Grampanchayat, District Gaya.

... .. Opposite Party/s

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**Appearance :**

|                         |   |                                                                                                                               |
|-------------------------|---|-------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s     | : | Mr. Y.V. Giri, Sr. Advocate<br>Mr. Pranav Kumar, Advocate<br>Mr. Alok Kumar Agrawal, Advocate<br>Ms. Shrishti Singh, Advocate |
| For the State           | : | Mr. Arun Kumar Bhagat AC to AAG-12                                                                                            |
| For Respondent Nos. 2&3 | : | Mr. Ganpati Trivedi, Sr. Advocate                                                                                             |
| For Respondent No. 9    | : | Mr. Rajiv Singh, Advocate<br>Mr. Mohit Ray, Advocate<br>Mr. Shantanu Kumar, Advocate                                          |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE HARISH KUMAR**  
**CAV JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 15-05-2024**

Undaunted by the cost imposed for suppression of facts  
in the writ petition; which the writ-petitioner willingly



undertook to pay on the warning issued by the learned Single Judge to proceed under Section 340 of the Criminal Procedure Code, the writ-petitioner is in appeal from the judgment in the writ petition.

2. We have our own doubts whether Section 340 Cr.P.C., could be invoked as against suppression of facts alleged, but the writ-petitioner feared so and accepted the factum of suppression and offered to pay cost for absolution from such criminal procedure.

3. In the writ petition from which the LPA arises the petitioner, a *Sadhu* attached to the Bodh Gaya *Math* challenged the order dated 06.06.2022, by which the Bihar State Board of Religious Trust (for brevity 'the Board'), anointed the petitioner as a Patron and further, in exercise of the power under Section 33 of the Bihar Hindu Religious Trusts Act, 1950 (for brevity 'the Act'); considering the existence of disputes in relation to the management of the properties of the *Math* and inter-party disputes regarding the *Mahanthship*, decided to form a Committee for better administration and financial management as well as for protection of the properties of the *Math*. For the purpose of constituting a Committee, proposal of names were called for and till the new Committee was constituted the



existing Committee was allowed to continue. The existing Committee was appointed by an earlier order of the Board dated 27.07.2021 and notified on 29.07.2021.

4. Against the earlier appointment of the Committee the petitioner himself had challenged the orders, albeit unsuccessfully in ***CWJC No. 16795 of 2021 (Mahanth Ramesh Giri @ Ramesh Giri v. The State of Bihar & Ors.)***. One of the suppressions alleged was insofar as the said judgment dated 17.01.2022 of the Division Bench having not been referred to in the present writ petition. The review filed is against the earlier judgment of the Division Bench.

5. Mr. Y.V. Giri, learned Senior Counsel appeared for the appellant/writ petitioner. It was argued that the allegation of suppression was untenable since though the earlier proceedings before a Division Bench was not stated specifically in the memorandum of writ petition; the impugned order, produced in the writ petition, clearly recited the earlier proceedings. The other allegation of suppression of an affidavit filed and cancellation of Power of Attorney are all subsequent to the filing of the writ petition from which the LPA arises, the writ petition having been registered on 24.08.2022.

6. According to the learned Senior Counsel the



appellant was appointed by the Board itself which appointment was on the request of the 9<sup>th</sup> respondent and others by Annexure-1 dated 14.11.2013. By Annexure-2 dated 20.02.2014 the Board had recognized and appointed the appellant as *Mahanth* for a period of one year. It is also specified in Annexure-2 that if there was no objection to the appointment of *Mahanth* within the period of one year then the appellant would effectively remain as a permanent *Mahanth*. The President of the Board reconstituted the Trust by himself, which was challenged successfully in ***CWJC No. 1491 of 2020 (Mahanth Ramesh Giri @ Ramesh Giri v. The State of Bihar and Others)*** and the appellant continued as a *Mahanth*. Later to that on 09.04.2021 by Annexure-4 the Board sought explanation from the appellant about the allegation of illegal activities of persons who were authorized by the appellant. On 27.07.2021 an order was passed appointing a Committee which was notified on 29.07.2021. The said order and notification were confirmed by this Court in CWJC No. 16795 of 2021 against which the review is filed.

7. As far as the review is concerned, it was argued that though the impugned order was held to be under Section 33 of the Act; in the order there was a reference to Section 32 of the



Act and there was no ingredient available under Section 33 of the Act. There was absolutely no cause for invoking Section 33 of the Act. The writ petitioner therein, who is the present appellant was competent to be appointed as a trustee; who was appointed as early as in the year 2014, continued without interruption and there was no dispute raised or existing as to the appointment of a trustee within one year of his appointment. In that circumstance there was no vacancy as contemplated in Section 33 of the Act nor is there any ingredient available to remove the duly appointed *Mahanth* under Section 28(2)(h) of the Act. The absence of a reference to and non-application of Section 33 of the Act is urged to be an error apparent on the face of record.

8. We will first deal with the review petition against the judgment of the Division Bench dated 17.01.2022; placed before us since both the Judges, are now not sitting in this Court. Therein also, the appellant/writ petitioner had raised the specific contention that he was elected to *Mahanthship* and continued uninterruptedly thereafter. The Division Bench noticed that on 13.10.2020 the President of the Board had reconstituted the Trust of the *Math* which was challenged in **CWJC No. 1491 of 2020 (Mahanth Ramesh Giri @ Ramesh**



**Giri v. The State of Bihar and Others).** The said writ petition was allowed on 04.03.2021 since the Board itself was not in existence and in its absence, the President could not have assumed jurisdiction to pass the order. While holding the order passed by the President to be illegal, the court all the same permitted the President of the Board to proceed to exercise its power and act as per the statutory provisions; since after the impugned order, while the writ petition was pending, a Board had been duly constituted. It was by virtue of the liberty reserved that a notice was issued raising specific allegations against the writ petitioner leading to the order dated 27.07.2021 and the notification dated 29.07.2021 which were impugned in CWJC No. 16795 of 2021.

9. Learned Division Bench specifically noticed three contingencies under which Section 33 could be invoked; (i) when a vacancy arises and there is none competent to be appointed, (ii) there exists a bonafide dispute as to the right of any person to act as a trustee and the Board is of the opinion that there could be likelihood of breach of peace or serious interference with the management of the property of the Trust and (iii) when there is a vacancy created under Section 28(2)(h) of the Act.



10. *M/s Agrawal Dharamshala & Ors. v. Bihar State Board of Religious Trust & Ors.; 1988 (1) PLJR 212 (D.B.)* also held that such power can be exercised in three situations. One, where there is a vacancy in the office of the trustee and there is no one competent to be appointed; second, when a *bona fide* dispute as to the right of any person to act as a trustee arise and in the opinion of the Board there is likelihood of breach of peace or serious interference with the management of property, and lastly when there is a vacancy caused by the order of the Board passed under Clause (2) (h) of Section 28 of the Act. Therein, without removing the trustee, the Special officer appointed the Anchal Adhikari as trustee of the Dharmasala. Here there is no question arising of removal, since the appellant, but for being appointed temporarily as a *Mahanth* in the year 2014, was never appointed as a *Mahanth* permanently. The action of the President of the Board in appointing the Committee was found to be perfectly within jurisdiction and in the factual situation, eminently proper. The decision cited was found to be inapplicable since the dictum of the cited decision was insofar as the power to invoke Section 33 of the Act, being unavailable in the said cases since there was no vacancy in the office of the trustee and also for reason of absence of an order



passed under Section 28(2)(h) of the Act. That power under the specific provision, it was held, could be exercised only after the removal of the trustee under the Section 28(2)(h). It was held that the Board in that case had not exercised power under Section 33; with reference to Section 28(2)(h) of the Act.

11. The decision relied on in *Ishwari Prasad Jhunjhunwala Vs. Bihar Religious Trust Board; AIR 1989 Pat 349* was also held to be inapplicable since it followed *Agrawal Dharamshala*, the facts being identical of the incumbent trustee not having been removed before appointing the SDO as the temporary trustee. *Mahanth Motilal Goswami Vs. State ;AIR 1993 Pat 171(D.B)* was a decision in which the writ petitioners appointment as temporary trustee by the Special Officer was interfered with since on the date of his appointment there was a duly elected *Mahanth*; by virtue of which there was no vacancy in the said office and the appointment of the petitioner was said to be on the recommendation of the Chief Minister; a procedure alien to the statute. The decision of the Board in the present case; CWJC No. 16795 of 2021, of appointment of a Committee under Section 33 was found to be perfectly in order.

12. The order impugned in CWJC No. 16795 of 2021 indicates that even at that point there were rival claims to the



*Mahanthship*, three in number; the writ petitioner, the 9<sup>th</sup> respondent and one another lady. It was noticed that appointment of the writ petitioner was only temporary and though it was recited in the order that if no objections are received, the *Mahanth* would be appointed permanently; there is no such appointment on record. Various types of allegations were raised, starting from the year 2016, against the writ petitioner which was put to the writ petitioner and hearing conducted. It was noticed that the property of the *Math* had been misused and the President had passed an order removing the *Mahanth* which was challenged successfully before the Court but with liberty reserved to the Board to proceed further which resulted in the impugned proceeding. It was noticed that there was serious dispute regarding the appointment of *Mahanth* and due to the same the property of the *Math* is not being properly administered. It was also stated that untoward incidents cannot be ruled out occasioning disturbance of peace within the *Math* and between the parties. The details of the immovable assets of the *Math* not being clear, on the request of the parties the matter was adjourned; but for better management of the *Math* a Committee of administrative officials was constituted.

13. We are of the opinion that the order clearly



indicates that there was a bonafide dispute regarding the person capable of being anointed as *Mahanth*. The 9<sup>th</sup> respondent; while the order of the President was pending consideration before the learned Single Judge was appointed as the *Mahanth*. This, according to the 9<sup>th</sup> respondent was by the congregation of the Sadhus; which also in the impugned order, was found to be not recognized by the Board. The order also speaks of likelihood of breach of peace and serious interference with the management of the property. There is clear indication from the impugned order in CWJC No. 16795 of 2021 that there were sufficient grounds to invoke Section 33 of the Act.

14. We do not find ourselves persuaded to entertain the review petition on the further ground that there is no reference to Section 33 in the impugned order. The absence of a reference to the statutory provision invoked or even misquoting of such a provision would not vitiate the order. The reliance placed on *Usha Bharti vs. State of U.P (2014) 7 SCC 663* is absolutely not relevant in the facts of this case since there is no accidental mistake or misconception of fact or law discernible in the judgment sought to be reviewed. We find the review to be not maintainable and reject the same.

15. Now, we come to the LPA wherein, the order



challenged is of 06.06.2021.

16. Mr. Y.V. Giri learned Senior Counsel appearing for the appellant reiterated that the appellant was continuing as *Mahanth* from 2014 and there is no question of invocation of Section 33 of the Act on the ground stated. There is no question of appointment as a Patron and formation of a new Committee.

17. Learned Senior Counsel Mr. Ganpati Trivedi, appearing for the Board asserts that there was suppression of the factum of the earlier writ petition having been dismissed. It is also argued that the Board had validly passed the impugned order and as of now a Committee also has been formed. There were wide spread allegations of the appellant having acted against the interest of the *Math* and when they were put to the appellant, he accepted the primacy of the 9<sup>th</sup> respondent to assume the *Mahanthship* of the *Math*. The appellant cannot be allowed to approbate and reprobate.

18. Learned Counsel Mr. Rajiv Singh, appeared online for the 9<sup>th</sup> respondent and referred to the counter affidavit filed by the 9<sup>th</sup> respondent and various documents produced therein, where the appellant had unequivocally accepted the appointment of the 9<sup>th</sup> respondent as the trustee. There are serious allegations against the appellant and he has clearly acted



against the interest of the *Math* and abdicated his duties and powers by executing power-of-attorney in favour of third parties, putting the very interests of the *Math* to jeopardy and its properties to waste.

19. From the records and from the arguments itself, we are inclined to hold that the appellant cannot claim that he has been continued without any interruption from 2014; only on the ground that there was no objection filed within the one-year temporary period for which he was appointed. It is an admitted fact that there was no order passed by the Board anointing the appellant as the *Mahanth* after the temporary appointment for one year ceased. It is also too late in the day to assert continuance as a *Mahanth* from the year 2014, especially since at least by the earlier proceedings on 27.07.2021, a Committee was appointed, and the appellant's challenge to that order stood rejected. As per the impugned order in the present writ petition, from which this appeal arise, the Board has attempted to form a new Committee, appointed the 9<sup>th</sup> respondent as the *Mahanth* and also the appellant as the Patron.

20. We have also looked at the specific contention taken by the Board and the 9<sup>th</sup> respondent with respect to the acquiescence of the appellant to the *Mahantship* of the 9<sup>th</sup>



respondent. The appellant had further suppressed the fact that an F.I.R. was registered against the appellant for having executed a Power of Attorney in the name of a third party. An Anticipatory Bail Application was filed by the appellant in the said case wherein he had accepted the fact that the 9<sup>th</sup> respondent has been appointed as Mahanth by the President of the Board. The appellant's contention before the Writ Court was also that he had rescinded the Power of Attorney; which in fact is an admission of his having executed a Power of Attorney in favour of the third party. Alongwith the counter affidavit is produced an affidavit accompanying a bail application filed by the appellant herein. In paragraph no. 15, it has been specifically stated that the applicant has reached a settlement with the 9<sup>th</sup> respondent and recognized him as *Nyasi Dhari* of the Temple; which settlement is also produced as Annexure-7 alongwith that affidavit.

21. Paragraph no. 5 of the affidavit dated 08.02.2023 specifically indicates the appellant having accepted the *Mahanthship* of the 9<sup>th</sup> respondent. The next document produced as Annexure-R/10 at page 53 of the counter affidavit of the 9<sup>th</sup> respondent; which is a cancellation of a Power of Attorney executed in favour of one Om Bharati @ Omkaranand Giri. The



said deed of cancellation accepts categorically that the appointment made on 20.02.2014 of the appellant as *Mahanth* was temporary and was never made permanent. At page 79 of the counter affidavit Annexure-R/11 accepts that the dispute with respect to the appointment of the Trustee of the Bodh Gaya Monastery, has been resolved by the Board on 06.06.2022 recognizing the incumbent Sri Triveni Giri as the *Mahanth* and existing Chairman of the Bodh Gaya Monastery. The appellant again by the document acknowledged and accepted the order of the Board dated 06.06.2022 and the certificate dated 26.07.2022 issued in this regard. The appellant in the said document also submits that he has become old and completely unable to walk and there are third parties taking illegitimate advantage of his ill health and old age.

22. We are also shown a document produced by the Board at Page-78 of its counter affidavit, again a communication of the appellant herein. This again speaks of the image of the Monastery having been tarnished in the recent years due to mutual differences and in the presence of the *Saints* of the *Akhada Council* and the *Mahatmas* of the Saint Society the disputes having been resolved amicably. The appellant states that he is living in Kashi Monastery and Sri Triveni Giri, the 9<sup>th</sup>



respondent and one Vivekanand Giri is looking after his comforts also. The above said communication was addressed by the appellant himself to the Chairman of the Board.

23. We have also gone through the impugned order which speaks of the rival claims raised by the 9<sup>th</sup> respondent, the appellant and the lady who was referred to in the earlier instance also. Serious allegations have been raised against the appellant herein regarding mismanagement of the properties. The appellant himself had conceded that he had issued a Power of Attorney in the name of another, thus abdicating his powers and duties as a *Mahanth*; if at all he had been continuing so at that point of time, which continuance we have already held cannot be accepted.

24. Having gone through the order and also the intention being the protection of the properties of the Bodh Gaya Math, in the wake of serious differences and rival claims as to who would occupy the seat of the *Mahanth*, which order also highlight the fact that the appellant is incapable of holding the position of *Mahanth* in properly administering the Trust, we are of the opinion that no interference is called for.

25. There is a further argument raised on the order having been passed without quorum; since it is passed by the



President and one other member while the minimum quorum as evident from the Act is four members.

26. The learned Senior Counsel has also relied on a number of decisions to canvass the case of the appellant. ***Mahanth Vijay Das. vs. The State of Bihar 2003 (4) PLJR 710*** was a case of removal of the trustee by the Chairman/President of the Board. The contention of the Board was that the President has exercised the power under Section 38 & 39 of the Act, the former in circumstances of immediate action required and the latter in special circumstances where the Board has delegated its power. The emergent need, it was held vanished when the earlier order of removal, without waiting for the show-cause of the petitioner having been challenged in a writ petition, which was pending before this court and later the order interfered with and remitted back for fresh consideration. As far as special circumstances under section 39, it was found that the President could act only in those special circumstances for which the delegation was made by the Board as has been done under Bye-law 43 of the Religious Trust Board's Bye-laws framed under Section 83 of the Act. The appointment of a temporary trustee, though was delegated to the President, in the cited case there was no vacancy and the incumbent trustee was



removed; which power was not expressly delegated by the Board was the finding.

**27. *Swami Jai Krishnacharya vs. Bihar State Board of Religious Trust 2000(4) PLJR 645(DB)*** was again a case of removal and appointment by the President; which was found to be incompetent under Bye Law 43 (zii). We have to emphasize that in the present case there is no removal since, after the temporary period of one year expired for which period the appellant was appointed, there was no further appointment. There cannot be any deemed appointment on the basis of the recitals in the order of temporary appointment. Here the President has exercised his powers under clauses (r) & (zv) of Bye-law 43.

28. The contention taken by the appellant against the removal and the power of the President to frame a scheme was answered by the learned Single Judge with reference to the decision of a Division Bench of this Court in **Satyeshwaranand Jyoti Chela of Late Hariharanand Jyoti v. The State of Bihar & Ors. (CWJC No. 6724 of 2020)**. The reliance placed on **CWJC No. 1491 of 2020 (Mahanth Ramesh Giri @ Ramesh Giri v. The State of Bihar and Others)**, another writ petition filed by the appellant himself, wherein the removal by



the President was interfered with only on the ground that there was no proper constitution of the Board, was not applicable in the present factual scenario. As of now, the constitution of a Committee was after the Board was constituted.

29. We extract here under paragraph nos. 8 & 9 of **Satyeshwaranand Jyoti** (*supra*) :-

*“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.”*

30. The President by the above extracted rules has the power to settle schemes for proper administration and also to constitute a trust committee. The power invoked under Section 33 is also in the wake of the rival claims to the post of *Mahanth* and there being real and present apprehension of breach of peace and as also interference with the management of the properties of the *Math*. Neither can the appellant said to have been continued permanently from 2014 nor was the 9<sup>th</sup> respondent's anointment by the *Sadhus*, as claimed by him, accepted by the Board. Hence there is no application of Section 28(2)(h), since there exists a vacancy in the post of *Mahanth*.

31. It is the submission of the learned Senior Counsel for the Board that now a full-fledged Committee has been



constituted.

32. We find no merit in the LPA and the cost would also remain untouched, since the appellant/writ petitioner agreed to pay it. In any event despite his acquiescence and his own declaration of incapacitation to carry on the duties of the *Mahanth*; the appeal is relentlessly pursued. The LPA stands dismissed.

33. Ordered accordingly.

**(K. Vinod Chandran, CJ)**

I agree.  
**(Harish Kumar, J)**

**(Harish Kumar, J)**

ranjan/-

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