

SUPREME COURT OF INDIA

President of the Bihar State Board of Religious Trust

Vs.

Nalini Choudhari

C.A.No.2029 of 1970

(H. R. Khanna and A. Alagiriswami, JJ.)

23.08.1973

JUDGEMENT

ALAGIRISWAMI, J:-

1. These three appeals arise out of the common judgment of the High Court of Patna in Civil Writ Jurisdiction Case No. 571 of 1969 and Criminal Miscellaneous Cases Nos. 1181 and 1182 of 1969. The question that arises for decision in all the three appeals is the same: whether a decision under Section 43 of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter to be called the Act) is a condition precedent to the launching of a prosecution under Section 67 of that Act. The facts necessary may first be stated. The 1st respondent in the Civil Appeal No. 2029 of 1970 was called upon by the Bihar State Board of Religious Trusts to submit a statement relating to the Giri Gobardhan Mandir of Bana Nava Gram on pain of prosecution under Section 67. Thereupon he filed the writ, out of which this appeal arises, alleging that there was no temple of Giri Gobardhan but only the idol of Giri Gobardhan which was his family idol and the income of the land was not the income derived from the properties of the idol. He further contended that there was no trust of any kind relating to the properties and that no member of the public had any access to the idol nor was any offering made by them and prayed for the notices issued by the Board to be quashed. The respondent in Criminal Appeal No. 41 of 1970 who was prosecuted under Section 67 of the Act

claimed that he was the sole shebait of a temple in village Basgarhia in the district of Darbhanga. He also did not submit the account demanded under the Act on the ground that the property of which the return was sought was not trust property and that without a declaration under Section 43 of the Act he could not be prosecuted under Section 67. The respondent in Criminal Appeal No. 42 of 1970, who was similarly prosecuted claimed that the temple in village Basgarhia in the district of Purnea of which he was the sole shebait was within the family dwelling house with which the public have no concern and that he was, therefore, not liable to render an account of the income and expenditure. His other contention was also similar to the contention of the respondent in Civil Appeal No. 41 of 1970. The High Court allowed the three petitions and quashed the notice issued as well as the prosecutions. The Bihar Hindu Religious Trusts Board has filed these appeals.

2. Section 67 (1) of the Act reads:

"If a trustee fails without reasonable cause, the burden of proving which shall be upon him, to comply with any order or direction made or issued under clause (i), (o) or (q) of sub-section (2) of Section 28, or under Section 58, to comply with the provisions of sub-section (1) of Section 59, sub-section (1) of Section 60, Section 61 or Section 62, or to furnish any statement, annual account, estimate, explanation or other document or information relating to the religious trust of which he is the trustee, which he is required or called upon to furnish under any of the provisions of this Act, he shall be punishable with fine which may extend in the case of the first offence, to two hundred rupees, and, in the case of the second or any subsequent offence, to five hundred rupees and, in default of payment of the fine, with simple imprisonment for a term which may extend to six months or one year, as the case may be."

Under Section 59 of the Act, within six months from the date of the publication in the Official Gazette of the names of the President and members of the first Board, the trustees of every religious trust existing on the said date should furnish to the Board a statement in the prescribed form containing the prescribed particulars in respect of the trust of which he is the trustee. Under Section 60, the trustee of every religious trust has to prepare a budget of such trust and send a copy thereof to the Board. Under Sections 59 and 60 there is no obligation cast on the Board to give a notice to the trustee calling upon him to furnish the statement contemplated under Section 59 or the budget under S. 60. The duties cast upon the trustee under those sections are irrespective of the fact whether a notice has been issued or not. The fact that notices were issued does not make any difference to this position. If for a failure to comply with the provisions of Sections 59 and 60 a prosecution lies under S. 67, the prosecution cannot fail on the ground that no notice was issued. Of course, it is open to a person-who apprehends that action might be taken against him for his failure to comply with the provisions of either Section 59 or 60, or on whom a notice is served calling on him to comply with the provisions of those sections to approach the ordinary civil court for a declaration that there is no trust and that he is not a trustee and therefore he cannot be called upon to comply with the provisions of Sections 59 and 60 or prosecuted for failure to do so. If without a notice a prosecution is launched under S. 67 it is open to the persons prosecuted to contend before the court that there is no trust and that they are not trustees. In that case it would be for the prosecution to make out all the ingredients of the offence to the satisfaction of the court before which the

prosecution is launched. The two main ingredients would be that there is a trust and that the person prosecuted is a trustee. Under the Act no machinery has been set up for deciding the question whether there is a trust and whether any person is a trustee of such a trust. The whole basis of the contention of the respondents in those three appeals which has in substance been accepted by the High Court of Patna is that Section 43 provides such a machinery. It is to be noticed that there is nothing in Section 67 which bars a prosecution under that section. Therefore, the question that would arise is whether by necessary implication Section 43 would bar any prosecution under Section 67. Section 43 as it stood originally read:

"43. (1) The Board or any person interested in a religious trust may, at any time, apply in the prescribed manner to the District Judge for a declaration that any immovable property is trust property."

This section was amended in 1956 to read as follows:

"43. (1) All disputes as to whether any immovable property is or is not a trust property shall be inquired into, either on its own motion or on application, by the authority appointed in this behalf by the State Government, by notification, in the Official Gazette."

It would be noticed that under the original section as well as under the section as amended in 1956 the only question that can be decided is whether any immovable property is a trust property or not. It does not provide for a decision as to whether there is any religious trust, as defined under clause (1) of Section 2 of the Act, or whether any person is a trustee or not. It does not even provide for a decision on the question whether any property is a trust property. It provides only for decision on the question whether any immovable property is a trust property. It is quite conceivable that a trust has no immovable property at all but only movable property, or as happens more often the trust property may consist of both movable and immovable property. Therefore, a decision under Section 43 will not be a final or a complete adjudication as regards the question whether there is any trust or whether any person is a trustee. It stands to reason, therefore, that under S. 43 there cannot be a conclusive decision which will provide an answer to a prosecution under Section 67. Furthermore, in any prosecution under every one of the sections mentioned in Section 67 the question that arises is whether the person prosecuted is a trustee. And Section 43 does not provide for a decision of that question. The only question that can be decided under that section is irrelevant to the case of prosecution in respect of many of the offences mentioned in Section 67. Therefore, when a question arises in a prosecution under Section 67 whether any trust is a trust coming within the ambit of the Act and whether the person prosecuted is a trustee, it is a question which the court before which the prosecution has been instituted has to decide on the material placed before it. Of course the prosecution cannot succeed unless both these propositions are established. There is nothing preventing the criminal court from going into both these questions.

3. A decision under Section 43 is not a decision by a court. It is only a decision by a tribunal and it is subject to the results of a suit to be instituted under that section within 90 days of the decision of the tribunal. Though originally the tribunal consisted of a District Judge, it was nonetheless only a tribunal. Normally when a power is conferred on an ordinary court of the land to decide a question it attracts all the procedure that attaches to the proceedings of the court on which the power is conferred including right of appeal, revision etc. Such was not the position even before 1956. That question no longer arises because of the amendment made in 1956. The position is now beyond doubt that it is only a tribunal that determines cases under Section 43. When the question is raised before the authority under Section 43 whether a certain immovable property is trust property or not the person interested might say that there is no trust and the property is not the trust property. In such a case the authority may for the purpose of deciding whether the property is trust property have to decide whether there is a trust at all. But such decision is only for the purpose of deciding whether it has the jurisdiction to decide whether the property in question is trust property. It is true that a subordinate tribunal cannot by a wrong decision on the question of jurisdiction assume jurisdiction which it does not possess. If it wrongly decides that it has jurisdiction on the ground that there is a trust, such a decision can be questioned before the ordinary civil courts. But in many cases the person interested may be content with merely saying that the property in question is not trust property and not raise the other question whether there is a trust at all. In any case under this section it cannot be decided whether anybody is a trustee.

4. The High Court seems to have thought that the fact that under Section 43, as it originally stood, the Board or any person interested in a religious trust may at any time apply to the District Judge for a declaration and under the section as amended in 1956 all disputes shall be inquired into by the authority appointed in this behalf makes a difference to the question whether a prosecution under S. 67 was barred without a decision under Section 43. It does no such thing. In either case the only question that can be decided under that section is whether any immovable property is or is not trust property. Even under the section as amended in 1956 questions as regards any trust property, both movable and immovable, which includes the question whether there is a trust at all cannot be decided. In any case the question as to whether a person is a trustee or not cannot be decided either under the original section or under the section as amended in 1956. And that is the crux of the question in a prosecution under Section 67. We are clearly of the opinion that the High Court was in error in proceeding on the basis that without a decision under S. 43 no prosecution can be launched under Section 67. Neither expressly nor by necessary implication Section 43 or any other provision of the Act bars the prosecution under Section 67 without a decision under Section 43.

5. The Full Bench had taken a view contrary to that taken by earlier decisions of the same court. In *Mahanth Ramdhan Puri v. President, S.B.R.T., Patna* 1955 BLJR 665 it was observed:

"If in every case where a person raises a claim that the property is not trust property the Board is bound to stay its hands by reason of such denial, then the Act will be unworkable and meaningless.....Section 43 of the Act is merely an enabling section.....It should be obvious that S. 43 can have no application if the trust is not a religious trust at all. Section 43 applies only when the Act applies. If the Act does not apply, Section 43 can have no application. It is, therefore.

unreasonable to infer from S. 43 that any denial by a person that the property is not trust property will at once oust the jurisdiction of the Board."

In *Bihar State Religious Trust Board v. Mahanth Jaleshwar Gir* ILR (1967) 46 Pat 23 it was pointed out:

"Under the provisions of S. 43 (1) of the Bihar Hindu Religious Trusts Act, 1950, disputes as to whether a particular property, and that too only when it is immovable, is or is not a property appertaining to a public trust can be enquired into by the authority. That is to say, if the dispute relates to any particular immovable property or properties forming part of or appertaining to a public trust, such a dispute shall be enquired into by the authority either of its own motion or on application of any person. In terms, if a dispute is in regard to the nature of the trust itself, Section 43 is not attracted. Nobody can approach the authority, either the State Board of Religious Trusts, Bihar, or the trustee or any other person, for a declaration that a particular endowment or trust or institution is not a public trust but a private one, nor can anybody file an application before the authority for a mere declaration that it is a public trust. It may well be that when a question is raised before the authority in regard to a particular immovable property that it appertains to a public trust, by way of answer to such a claim, the person or the trustee may raise a dispute that even though the particular property appertains to the trust, the trust is not a public one, and, therefore, the property should be held as not appertaining to a public trust. Incidentally and indirectly, in such a case the question may arise for the determination of the authority and, on determination of this question, the ultimate declaration which the authority would be competent to give under sub-section (3) of Section 43 will be that the property is or is not trust property. But unless the determination of the character of the trust is involved incidentally and indirectly, the authority, either within the terms of sub-section (1) or as made expressly clear by the terms of sub-section (3), has got no jurisdiction to adjudicate purely in regard to the nature of the trust and to give a declaration as to whether it is a public trust or a private trust."

and it was held that the non-determination of the question as to the nature of the trust by the authority under Section 43 is not a bar to the launching of the prosecution under S. 67. In *B. S. Board of R.T. v. R. R. Gir*, 1969 BLJR 63 it was held that:

"the scope of Section 43 is that if a dispute was in regard to the nature of the trust itself, Section 43 was not at all attracted and that neither the Board nor the Trustees nor any other person could approach the Authority for a declaration that a particular endowment or trust or institution was a public trust and not a private one or vice versa. On the scope and ambit of Section 43 it was neither open to the special officer, Bihar Hindu Religious Trust Board, Patna, who approached the authority for any such declaration or order, nor was it competent for the authority to make the impugned order."

In *S. S. Choubey v. B. H. R. T. Board*, (1969) BLJR 74 = (AIR 1968 Pat 510) a Division Bench followed the earlier decision in Mahanth Jaleswar's case (*supra*). It is interesting to note that Justice Choudhary, who was a member of this Bench was also the Judge who decided the case in Cr. Revision No. 170 of 1961 (*Mosst. Champa Sahu v. The Bihar Religious Trust Board, Patna*) disposed of on 24th August, 1961, (Pat) the only decision of that court which appealed to the Full Bench. We must point out, however, that this decision is based on a plain mis-reading of the decision of this Court in *Mahant Ram Saroop Dasji v. S. P. Sahi*, 1959 (Supp) 2 SCR 583 = (AIR 1959 SC 951). In that decision this Court held that the Act does not apply to private trusts. There was an earlier decision obtained in First Appeal No. 10 of 1941 that the properties under consideration there did not constitute a public trust and this Court therefore pointed out that as long as the declaration made by the High Court in First Appeal No. 10 of 1941 stands and in the absence of some evidence to the contrary, the appellant was entitled to say that the properties did not constitute a public trust and the Act and its provisions did not apply to it. The further observations of this Court did not say that a decision under Section 43 was a prerequisite to a prosecution under Section 67. This Court left it open to the respondents therein, i.e. the Board, to take such steps as may be available to them in law to get it determined by a competent authority that the trust in question is a public trust. The decision in *Rameshwari Pd. Singh v. The Bihar State Board of Hindu Religious Trusts*, 1969 Pat LJR 386 also followed the earlier decisions of the Patna High Court. Thus all the earlier decisions are in consonance with the view which we have taken. We hold that the Full Bench was in error in the view it took.

6. All the appeals are allowed. The respondent in Civil Appeal No. 2029 of 1970 will pay the appellant's costs.

Appeals allowed.