

ORISSA ORDINANCE No. 2 OF 1978

• **THE ORISSA HINDU RELIGIOUS ENDOWMENTS (AMENDMENT) ORDINANCE, 1978**

[Promulgated by the Governor on the 6th June 1978, published in an extraordinary issue of the Orissa Gazette, dated the 7th June 1978]

AN

ORDINANCE

TO AMEND THE ORISSA HINDU RELIGIOUS ENDOWMENTS ACT, 1951

WHEREAS the Legislature of the State of Orissa is not in session ;

AND WHEREAS the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to amend the Orissa Hindu Religious Endowments Act, 1951 in the manner hereinafter appearing ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Orissa is pleased to make and promulgate the following Ordinance in the Twenty-ninth Year of the Republic of India :—

Short title
and
commence-
ment.

1. (1) This Ordinance may be called the Orissa Hindu Religious Endowments (Amendment) Ordinance, 1978.

(2) It shall come into force at once.

Amendment
of section 3.

2. In section 3 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the principal Act),—

Orissa Act 2
of 1952.

(a) in clause (ii), for the word and figure “section 5”, the word and figure “section 4” shall be substituted;

(b) after clause (iii), the following clause shall be inserted, namely:—

“(iv) ‘Deputy Commissioner’ means the Deputy Commissioner appointed under section 5;”;

(c) in clause (x), for sub-clause (a), the following sub-clause shall be substituted, namely:—

“(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;”.

Amendment
of section 4.

3. In section 4 of the principal Act, after the words “the Hindu religion”, the words and comma “and who is a member of the Orissa Superior Judicial Service, Senior Branch,” shall be inserted.

Substitution
of section 5.

4. For section 5 of the principal Act including its marginal heading, the following section and marginal heading shall be substituted, namely:—

Appointment
of Deputy
and Assistant
Commissioners.

"5. (1) The State Government may appoint a Deputy Commissioner and such number of Assistant Commissioners as they deem necessary.

(2) Appointment of the said officers shall be from among persons who profess the Hindu religion and who are members of the State Judicial Service—

(a) in the case of the Deputy Commissioner, not below the rank of a Subordinate Judge; and

(b) in the case of an Assistant Commissioner, of the rank of a Munsif or above and they shall cease to hold office as such when they cease to profess that religion."

Amendment
of section
5-A.

5. In section 5-A of the principal Act, for the words "by the Commissioner or the Assistant Commissioners as the case may be"; the words "by the Commissioner, the Deputy Commissioner or any Assistant Commissioner" shall be substituted.

Amendment
of section 6.

6. In section 6 of the principal Act,—

(a) for the marginal heading the following marginal heading shall be substituted namely:—

"Conditions of service of Commissioner, Deputy Commissioner, etc.";

(b) after the words "the Commissioner" wherever they occur, the words and the comma "the Deputy Commissioner," shall be inserted.

Amendment
of section 8.

7. Section 8 of the principal Act shall be re-numbered as sub-section (1) thereof and in that section as so re-numbered,—

(a) for the marginal heading, the following marginal heading shall be substituted namely:—

"Powers and duties of the Deputy and Assistant Commissioners";

(b) in sub-section (1), for the words "The Assistant Commissioners", the words "The Deputy Commissioner and the Assistant Commissioners" shall be substituted;

(c) after sub-section (1), the following new sub-section shall be inserted namely:—

"(2) The Deputy Commissioner and the Assistant Commissioners shall, for the proper management of the institution, have power to pass such interim orders as they deem necessary in the course of proceedings pending before them."

Insertion of
new sections
8-A and 8-B.

8. After section 8 of the principal Act, the following new sections shall be inserted namely:—

Delegation
of power
by the
Commissioner.

"8-A. The Commissioner may transfer any appeal filed before him to the Deputy Commissioner for hearing and disposal and any appeal so transferred and disposed of by the Deputy Commissioner shall, for the purposes of this Act, be deemed to have been disposed of by the Commissioner.

Power of
authorities
to act with-
out initiating
proceedings
under section
41.

8-B. (1) Notwithstanding anything contained in any other provision of this Act, the Commissioner, the Deputy Commissioner and the Assistant Commissioners shall have power to take action under any of the provisions of this Act in respect of any institution, if on information received or otherwise, they are satisfied that such institution is a religious institution within the meaning of this Act.

(2) For the removal of doubts, it is hereby declared that where any person disputes such action on the ground that the institution is not a religious institution within the meaning of this Act he may raise a dispute as provided in section 41."

Amendment
of section 9.

9. In section 9 of the principal Act, in sub-section (1),—

(a) for the words "the record of any Assistant Commissioner in respect of any proceeding under this Act", the words "the record of any proceeding under this Act before the Deputy Commissioner or an Assistant Commissioner" shall be substituted;

(b) after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that nothing in this sub-section shall apply to the proceedings in an appeal transferred by the Commissioner to the Deputy Commissioner for hearing and disposal.”.

Amendment of section 12. 10. In section 12 of the principal Act, after the words “The Commissioner”, the words “the Deputy Commissioner” shall be inserted.

Amendment of section 13. 11. In section 13 of the principal Act, after the words “the Commissioner”, the comma and the words “the Deputy Commissioner” shall be inserted.

Amendment of section 17. 12. In section 17 of the principal Act, after the words “the Commissioner” wherever they occur, the comma and the words “the Deputy Commissioner” shall be inserted.

Amendment of section 18. 13. In section 18 of the principal Act, after the words “the Commissioner” wherever they occur, the comma and the words “the Deputy Commissioner” shall be inserted.

Amendment of section 27. 14. In section 27 of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

“(2) A non-hereditary trustee shall, unless he is sooner removed or dismissed or otherwise ceases to be a trustee, hold office for a period of two years from the date of his appointment:

Provided that the Assistant Commissioner may, for sufficient reasons to be recorded by him, from time to time, extend the aforesaid term of office of a trustee, so, however, that the total extension so granted shall in no case exceed six months in the aggregate.

(3) Every non-hereditary trustee holding office immediately prior to the date of commencement of the Orissa Hindu Religious Endowments (Amendment) Ordinance, 1978 shall cease to hold office as such on the completion of a period of two years from the date of his appointment or on the expiration of three months from the date of commencement of the said Ordinance, whichever is later.”.

Amendment of section 28. 15. In section 28 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “The Commissioner or the Assistant Commissioner, as the case may be, may suspend, remove or dismiss the trustee, whether hereditary or non-hereditary, of such a religious institution”, the words “The Commissioner, in the case of a hereditary trustee, and the Assistant Commissioner, in the case of a non-hereditary trustee, may suspend, remove or dismiss the trustee of a religious institution referred to in section 27” shall be substituted;

(ii) in clause (b), for the words “or the Commissioner or Assistant Commissioner”, the commas and the words “the Commissioner, the Deputy Commissioner or the Assistant Commissioner” shall be substituted;

(b) in sub-section (5), the words, figure and brackets “or under sub-section (4)” shall be omitted.

Insertion of new section 28-A. 16. After section 28 of the principal Act, the following new section shall be inserted, namely:—

Power of Government to remove trustees. “28-A (1) If the State Government are of the opinion that a trustee or a Board of Trustees, as the case may be, is unable to perform or has persistently made default in the performance of, the duties imposed upon him or it by or under this Act, or has exceeded or abused his or its powers, they may, by notification,—

(a) remove the trustee; or

(b) dissolve the Board of trustees:

Provided that, before issuing a notification under this sub-section, the State Government shall give a reasonable opportunity to the trustee or the Board, as the case may be, to show-cause why he or it should not be removed or dissolved.

(2) Upon the publication of a notification under sub-section (1),—

(a) the trustee or all the members of the Board of trustees, as the case may be, shall cease to hold office as such;

(b) all the powers, duties and functions of the trustee or the Board, as the case may be shall be exercised or performed by such person or persons and for such period as the State Government may direct:

Provided that the State Government may either reduce or extend the aforesaid period.

(3) A hereditary trustee removed under this section may be allowed such maintenance as the State Government may, having regard to the financial condition of the institution, fix.

(4) In the case of removal of a non-hereditary trustee or dissolution of a Board of trustees under this section, the appropriate authority shall take steps in accordance with the provisions of this Chapter for the appointment of a trustee or Board of trustees, as the case may be, so that the trustee or the Board so appointed can assume office on the expiration of the period referred to in sub-section (2).

(5) Where a hereditary trustee is removed under this section, the vacancy so caused shall be deemed to be a permanent vacancy in the office of the hereditary trustee, and the provisions contained in section 30 shall apply accordingly on the expiration of the period referred to in sub-section (2)."

Substitution
of section 29.

17. For section 29 of the principal Act, the following section shall be substituted, namely :—

"29. (1) A person shall be disqualified for appointment as a trustee, if he—

(a) is a minor;

(b) has been convicted by a criminal court of any offence involving moral turpitude;

(c) is of unsound mind and is so declared by a competent court;

(d) is an undischarged insolvent;

(e) has directly or indirectly an interest in a lease or any other transaction relating to the property of the institution;

(f) is a paid employee of the institution or has any share or interest in a contract for the supply of goods to, or the execution of any works or the performance of any service undertaken by the institution;

(g) has been found to be guilty of misconduct; or

(h) does not profess the religion or does not belong to the religious persuasion or denomination to which the institution belongs.

(2) A trustee shall be disqualified to continue and shall cease to hold office as such if he incurs any of the disqualifications specified in clauses (b) to (h) of sub-section (1)."

Amendment
of section 42.

18. In section 42 of the principal Act,—

(a) for the marginal heading the following marginal heading shall be substituted, namely :—

"Power to frame schemes.";

(b) for the words "the Commissioner" wherever they occur, the words "the Deputy Commissioner" shall be substituted;

(c) in sub-section (3), the second proviso to clause (a) shall be deleted;

(d) in sub-section (5), after the words "or a specific endowment", the words "suspend the trustee" shall be inserted;

(e) after sub-section (7), the following new sub-section shall be inserted namely :—

"(8) An Executive Officer appointed in pursuance of a scheme framed under this section may be removed by the appointing authority for all or any of the reasons specified in section 28 and an appeal against the order of removal, if passed by the Assistant Commissioner or the Deputy Commissioner, shall lie to the Commissioner if preferred within thirty days from the date of the order."

Substitution
of section
44.

19. For section 44 of the principal Act, the following section shall be substituted, namely:—

"44. (1) Any person aggrieved by an order passed under section 41, or sub-section (1) or (6) of section 42, or section 43 may, within thirty days from the date of receipt of the order under section 41 or section 43 or from the date of publication of the order under section 42, as the case may be, prefer an appeal to the Commissioner.

(2) Any party aggrieved by the order of the Commissioner passed under sub-section (1), may, within thirty days from the date of the order, prefer an appeal to the High Court."

Substitution
of section 64.

20. For section 64 of the principal Act, the following section shall be substituted, namely:—

"64. All costs, charges and expenses incurred by the State Government, the Commissioner, the Deputy Commissioner or an Assistant Commissioner in connection with legal proceedings in respect of any religious institution to which any of them is a party, shall be payable out of the funds of such religious institution."

Amendment
of section 65.

21. In section 65 of the principal Act, in sub-section (8), the words, figure and brackets "contain 1 in sub-section (3)" shall be omitted.

Amendment
of section 67.

22. In section 67 of the principal Act, after the words "the Commissioner", the comma and the words ",the Deputy Commissioner" shall be inserted.

Amendment
of section 69.

23. In section 69 of the principal Act, in sub-section (2), for the words "the Commissioner or", the words "the Commissioner, the Deputy Commissioner or an" shall be substituted.

Amendment
of section 70.

24. In section 70 of the principal Act, in sub-section (1),—

(a) in clause (b), after the words "the Commissioner", the comma and the words ",the Deputy Commissioner" shall be inserted;

(b) in clause (c) after the words "the Commissioner" as they occur for the first time, the comma and the words ",the Deputy Commissioner" shall be inserted.

Amendment
of section 74.

25. In section 74 of the principal Act,—

(a) in sub-sections (1) and (2), after the words "the Commissioner" wherever they occur, the comma and the words ",the Deputy Commissioner" shall be inserted;

(b) in sub-section (4), after the words "Assistant Commissioner" wherever they occur, the comma and the words ",Deputy Commissioner" shall be inserted.

Amendment
of section 75.

26. In section 75 of the principal Act,—

(a) for the words "the Act", the words "this Act" shall be substituted;

(b) after the words "the Commissioner", the words "or the Deputy Commissioner" shall be inserted.

Amendment of section 76. 27. In section 76 of the principal Act, in sub-section (2), in clauses (c) and (d), after the words "the Commissioner" wherever they occur, the comma and the words "the Deputy Commissioner" shall be inserted.

Transitory provision. 28. Notwithstanding the amendment of section 5 of the principal Act by this Ordinance, any person, not being an officer of the State Judicial Service, holding office immediately prior to the coming into force of this Ordinance as an Assistant Commissioner appointed under the principal Act, shall continue to hold such office till he is replaced by an Assistant Commissioner duly appointed under the said Act as amended by this Ordinance.

B. D. SHARMA

GOVERNOR OF ORISSA

Dated the 6th June, 1978