

(2019) 11 GUJ CK 0001

In the Gujarat High Court

Case No : R/Special Civil Application No. 19679 Of 2019, Civil Application No. 1
Of 2019 In R/Special Civil Application No. 19679 Of 2019

Eid-Miladunnabi (Central)

APPELLANT

Vs

State Of Gujarat And Ors.

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 28, 226

Citation : (2019) 11 GUJ CK 0001

Hon'ble Judges : D. Karia, J

Bench : Single Bench

Advocate : K.R. Koshti, Chintan Dave

Final Decision : Disposed Of

Judgement

Bhargav D. Karia, J

1. By this petition under Articles 14, 19, 28 and 226 of the Constitution of India, the petitioner originally made following prayers:

"A) Your Lordships be pleased to allow the present Special Civil Application.

B) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ/order/direction to hold that the action or inaction on the part of the respondents authorities in not deciding the application for permission about the religious processions of Eid-e-Milad which may be organized either 10/11/2019 or 11/11/2019 and the same is violative of 14, 19 and 28 of the Constitution of India.

C) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ/order/direction to quash and set aside action or inaction on the part of the respondents authorities in not deciding the application for permission about the religious processions of Eid-e-Milad which may be organized either 10/11/2019 or 11/11/2019 and further be pleased to direct the respondents

authorities to grant the permission for procession of Eid-e-Milad to the petitioner in the interest of justice.

D) During pendency and till final disposal of the petition, Your Lordships may be pleased to direct the respondents authorities to submit the status report in pursuance to the application dtd. 12/10/2019 filed by the petitioner (Annexure A) in the interest of justice."

2. Thereafter, notice was issued by this Court on 5.11.2019 to the respondents.

2.1. After the notice was issued by this Court, it is the say of the petitioner that respondent no. 2 rejected the application dated 12.10.2019 of the petitioner on the ground that the Traffic Branch of the Gaikwad Haveli Police Station, Karanj Police Station and Shahpur Police Station has given a negative opinion and therefore, the permission cannot be granted to the petitioner.

2.2. The petitioner moved the draft amendment on 7.11.2019 to amend the petition so as to place the order passed by the respondent no. 2 dated 6.11.2019 on record rejecting the application of the petitioner to take out the procession on 10/11.11.2019 on the occasion of Eid-e-Milad.

2.3. The petitioner has therefore, prayed for following prayer to quash and set aside the order/decision dated 06.11.2019 passed by the respondent no. 2, which reads as under:

(G-1) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the order/decision dtd. 6/11/2019 passed and communicated by Res. No. 2 is illegal, contrary to law, unilateral, bias, without authority or jurisdiction and competence and res authorities are directed to reconsider the application and grant the permission for procession in the interest of justice.

3. Learned Assistant Government Pleader Mr. Chintan Dave has filed affidavit in reply on behalf of respondent no. 1, which is ordered to be taken on record.

3.1. Affidavit in reply on behalf of respondent no. 1 is filed by one Mr. I.J. Patel, Assistant Commissioner of Police, Special Branch, Ahmedabad and has stated on oath that respondent no. 2 has passed an order dated 6.11.2019 upon instruction received from the office of the respondent no. 1 whereby the application of the petitioner was rejected.

3.2. It is further stated in the affidavit in reply that the petitioner Mr. Parvez s/o Johanali Momin, who is stated to be the Chairman of the petitioner Eid-Miladunnabi (Central) Committee, Ahmedabad was called upon to give his statement on 2.11.2019 pursuant to the application filed by him on 12.10.2019 before the Police Inspector, Gaikwad Haveli Police Station and his statement was recorded. It is further averred in the affidavit in reply that Gaikwad Haveli Police Station after considering essential issues involved sent a negative opinion on 3.11.2019, which is produced at Annexure R. 4 to the reply and after considering

the negative opinion of the Karanj Police Station and office of the Joint Commissioner of Police, Ahmedabad, office of the respondent no. 1 gave a telephonic communication to the Gaikwad Haveli Police Station, which was officially recorded in writing, rejecting the application of the petitioner.

3.3. It is averred in the affidavit in reply filed on behalf of the respondent no. 1 that respondent no. 1 has granted permission vide order dated 6.11.2019 in favour of Eid-E-Miladunnabi (Central) Committee having registration no. B/84/Ahmedabad to carry out procession on the ground that such permission was granted to the registered trust of Eid-Miladunnabi (Central) Committee in the year 2018.

3.4. It is averred in the reply that there are two committees functioning with the similar name being Eid-Miladunnabi (Central) Committee. Whereas the petitioner Committee is not registered and Committee chaired by one Shri Rafiq is a registered trust and therefore, the permission to carry out procession is given to the registered trust. An apprehension was also canvassed in the affidavit in reply that it appears that there is a dispute between both these committees.

4. Civil Application No. 1 of 2019 is filed on behalf of Eid-E-Miladunnabi (Central) Committee through its Chairman Rafikbhai Noorbhai Nargriwala which is a registered trust under the provisions of the Bombay Public Trusts Act, 1950 with a prayer to join the said trust as party respondent in the captioned petition.

4.1. It is stated in the application that applicant of the Civil Application is registered Public Trust under the provisions of the Bombay Public Trusts Act, 1950, the applicant trust was not formally registered however upon registration, the petitioner in the captioned petition raised an objections during the inquiry of the registration of the applicant trust but the said objections were discarded and the registration was granted to the applicant trust. Copy of the registration is produced by the applicant in Civil Application at Annexure A which states that applicant was registered by issuance of certificate of registration on 20.10.2018.

4.2. It is stated in the application for joining party that respondent no. 1 Police Commissioner has already granted permission dated 6.11.2019 to the applicant registered trust in Civil Application.

4.3. It is further stated in the application that petitioner of the captioned petition has filed an appeal before the Charity Commissioner being Appeal No. 127 of 2018, which is also dismissed by the Charity Commissioner by order dated 27.3.2019.

5. Heard learned advocate Mr. K R Koshti for the petitioner, learned Assistant Government Pleader Mr. Chintan Dave for the respondent nos. 1 to 4 as well as learned advocate Mr. P. S. Champaneri for the applicant of Civil Application No. 1 of 2019.

6. At the outset, Civil Application No. 1 of 2019 is required to be granted as the applicant of the Civil Application is registered trust registered under the

provisions of Bombay Public Trusts Act, 1950 and respondent no. 1 has also granted permission to take out procession in favour of applicant of Civil Application. Therefore, Civil Application is allowed and Eid-Miladunnabi (Central) Committee which is registered trust having registration no. B/84/Ahmedabad is ordered to be joined as respondent no. 5 in the captioned petition.

7. Learned advocate Mr. K R Koshti for the petitioner submitted that the petitioner is taking out the procession on the occasion of Eid-e-Milad since last 40 years and since last year application of the petitioner is not granted by the respondent authority for taking out the procession. He further submitted that though the petitioner is unregistered association of the community as it is taking out procession on the occasion of Eid-e-Milad for last 40 years petitioner should be permitted to participate in the Eid-e-Milad procession by the respondent no. 5.

7.1. It was further submitted that respondent no. 2 has rejected the permission to the petitioner without any authority and petitioner should be permitted to take out procession as the petitioner was carrying out procession since last many years. It was therefore, submitted petitioner should be allowed to participate in the procession on the occasion of Eid-e-Milad.

8. On the other hand, learned Assistant Government Pleader Mr. Chintan Dave for the respondent nos. 1 to 4 submitted that as the apprehension is canvassed in the affidavit in reply that in view of the application made by the two different associations one of which is registered under the provisions of Bombay Public Trusts Act, 1950 whereas the petitioner is claiming to be unregistered association and as the respondent no. 1 has already granted the permission in favour of registered association being respondent no. 5 herein in the captioned petition, permission in favour of the petitioner unregistered association is not required to be granted as permission can be granted only for one procession on the occasion of Eid-e-Milad. It is further submitted that if the members of the petitioner unregistered association wish to take part in procession, they may take part without creating any problem of law and order.

9. Learned advocate Mr. P.S. Champaneri for the respondent no. 5 submitted that the respondent no. 5 is registered association and therefore, the permission is rightly granted to the respondent no. 5 association to take out procession on the occasion of Eid-e-Milad. However, he further made it clear that if the members of the petitioner unregistered association wish to take part in the procession, respondent no. 5 cannot and will not prevent any person to take part in the Eid-e-Milad procession.

10. In view of the aforesaid submission, as such the petition has become infructuous as permission to take out procession on the occasion of Eid-e-Milad is already granted by the respondent n. 1 by order dated 6.11.2019, which is produced on record along with affidavit in reply filed on behalf of respondent no. 1 at Annexure R. 6 at page 64 to 67.

11. In view of the fact that permission to take out Eid-e-Milad procession is

granted, the main grievance raised in the petition is redressed. However, it is made clear that such procession will be taken out keeping harmony amongst the members of all associations whether it is registered or unregistered and such procession shall be strictly carried out in accordance with terms and conditions of the permission granted by the respondent no. 1 as referred herein above.

12. In view of the above directions, petition as well as Civil application are disposed of. Notice is discharged. No order as to cost. Direct service is permitted today.