

(2006) 11 KAR CK 0085
In the Karnataka High Court
Case No : Writ Petition No. 13928 of 2006

K. Nissar Ahmed and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-11-2006

Acts Referred:

Citation : (2007) 1 KCCR 113

Hon'ble Judges : Cyriac Joseph, C.J;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : V. Lakshminarayana, for the Appellant;

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The petitioners in this public interest litigation claim to be the worshippers of Shree Guru Dattathreya Bababudan Swamy Dargah (7th respondent in this writ petition) situated in Inam Dattathreya Peetha Village, Attigundi, Chickmagalur. According to them, it is the shrine of the Sufi Saint Dada Hayat Mir Kalandar. Both Hindus and Muslims Worship at the Dargah of the Sufi Saint. There is a cave containing what the Mohammedans expert to be the tomb of Bababudan and the Hindus assert to be the throne of Dattathreya. The cave is a venerated place of pilgrimage for both the Mohammedans and Hindus. According to the petitioners, the rituals or functions at Shree Guru Dattathreya Bababudan Swamy Dargah are to be conducted by Hindus and Muslims only in accordance with Annexure-D, order dated 25-2-1989 passed by the Commissioner for Religious and Charitable Endowments in Karnataka. It is alleged that some of the Hindu organisations have announced to conduct rituals like Datta Homa and Gana Homa and to organise Shobha Yatra and Dattamala Abhiyana in violation of the said order dated 25-2-1989, despite clear orders of the High Court of Karnataka that any ritual or function not permitted by the said order dated 25-2-1989 shall not be conducted at the Dargah. It is also alleged that if the said Hindu organisations are allowed to conduct rituals like Datta Homa and Gana Homa and organise Shobha Yatra and Dattamala Abhiyana, it

would lead to communal clashes and bloodshed. It is further alleged that the Government and the District Administration are not taking any effective steps to prevent such a situation. According to the petitioner, the inaction of the Government and the District Administration has compelled them to file this writ petition praying for a writ of mandamus directing the State of Karnataka to monitor and ensure that the Datta Jayanthi celebrations are conducted strictly in accordance with Annexure-D, order dated 25-2-1989 passed by the Commissioner for Religious and Charitable Endowments in Karnataka and Annexure-H, order dated 13-3-2006 passed by the High Court of Karnataka in Writ Petition No. 17351 of 2005. They have also prayed for a direction to the State of Karnataka not to allow any person to conduct Shobha Yatra, Dattamala Abhiyana and other Yagna and Homa by installing idols contrary to Annexure-D, order dated 25-2-1989. There is a further prayed for directing the State of Karnataka to take steps in terms of Annexure-F, Government letter dated 22-11-2004. It is stated by the learned Counsel for the petitioners that even though the Hindu organisations had announced to conduct the above mentioned rituals and functions on 8-10-2006, they were subsequently postponed and they are going to be conducted in the next week.

2. When the Karnataka Board of Wakfs declared the property of the 7th respondent-Shree Guru Dattathreya Bababudan Swamy Dargah as Wakf property, Mr. B.C. Nagaraja Rao and Mr. C. Chandrashekar had filed a suit in a representative capacity as O.S. No. 25 of 1978 on the file of the District Judge, Chickmagalur. In the judgment dated 29-2-1980 passed in the suit, the District Judge declared that the suit property cannot be wakf property and that the Board of Wakfs has no power to manage the property. The judgment of the District Judge was confirmed by the High Court in judgment dated 7-1-1991 passed in R.F.A. No. 119 of 1980 Karnataka Board of Wakfs, Bangalore Vs. B.C. Nagaraja Rao and others, . The said judgment of the High Court was confirmed by the Supreme Court in its order dated 1-11-1991 in SLP No. 17040 of 1991. The Commissioner for Religious Institutions and Charitable Endowments had issued orders dated 24-8-1983, 10-1-1984 and 28-1-1985 regarding the Administration of the Dattathreya Peetha. The said orders were subject-matter in Writ Petition No. 2294 of 1984 which was disposed of by the High Court on 1-3-1985 directing the Commissioner for Religious Institutions and Charitable Endowments to make an enquiry through the Muzrai Officer regarding the practice that was prevailing prior to June 1975 in respect of the management of the affairs of Shree Guru Dattathreya Bababudan Swamy Dargah including conducting of Urs of festivals, its property and all other matters pertaining to the institution. The Commissioner for Religious Institutions and Charitable Endowments was also directed that on receipt of the report of the Muzrai Officer, he should take a decision after affording an opportunity of hearing to all concerned. After such enquiry, the Commissioner for Religious Institutions and Charitable Endowments passed an order dated 25-2-1989. In the said order, the Commissioner has referred to the several customs and practices which prevailed before 1975. The Commissioner

set aside the order passed by the Assistant Commissioner and directed to restore the position that existed prior to 1975. The management of the 7th respondent-institution including the Urs was being conducted in accordance with the said order dated 25-2-1989 of the Commissioner for Religious Institutions and Charitable Endowments.

3. But in 2004 some Hindu Associations tried to organise a procession called "Shobha Yatra". It was opposed by the Communist Parties, Intellectual Groups, Datta Samithis etc., on the ground that it was in violation of the orders of the Court and the order dated 25-2-1989 of the Commissioner of Religious Institutions and Charitable Endowments. The Superintendent of Police, Chickmagalur reported to the Government that there was threat to law and order on account of the Shobha Yatra. Thereupon the Government of Karnataka sent letter dated 22-1-2004 to the Director General of Police and Inspector General of Police, Bangalore, the Deputy Commissioner, Chickmagalur District and the Superintendent of Police, Chickmagalur directing to take all necessary steps for maintaining law and order and for ensuring communal harmony and peace in the district. It was also pointed out in the Government letter that in order to maintain law and order in the District it is important that neither a group is allowed to take a procession in a manner that hurts the religious feelings of the other groups nor is it allowed to conduct any religious practices, ceremonies etc., that were not being performed prior to 1975.

4. In January 2006 Sri Syed Ghouse Mohiuddin Shakhadi submitted a representation dated 31-1-2006 to the Deputy Commissioner, Chickmagalur, regarding the performance of daily rites (pooja) and the manner in which it should be performed in respect of Sri Guru Dattathreya Bababudan Swamy Dargah. The Deputy Commissioner gave Annexure-G, reply dated 25-2-2006 mentioning the various religious customs and usages which existed prior to 1975 and which alone are allowed by the Commissioner for Religious Institutions and Charitable Endowments in his order dated 25-2-1989. The Deputy Commissioner also informed that no other customs and usages are allowed.

5. In the meanwhile a notification dated 30-4-2003 was issued including Sri Guru Dattathreya Bababudan Swamy Dargah in the list of Hindu Religious and Charitable Institutions governed by the provisions of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997. One Mohammed Siddique and another Firoz M. Khan claiming to be the disciples of Sri Guru Dattathreya Bababudan Swamy Dargah challenged the above mentioned notification by filing Writ Petition No. 17351 of 2005. By an interim order dated 20-2-2006 this Court directed the respondents not to demolish any existing building or structure in Sree Guru Dattathreya Bababudan Swamy Dargah until further orders. But no order was passed by the High Court staying the notification including Sree Guru Dattathreya Bababudan Swamy Dargah in the list of Hindu Religious and Charitable Institutions or the application of the provisions of the Hindu Religious Institutions and Charitable Endowments Act,

1997 to the said Institution. However, on behalf of the Sree Guru Dattathreya Bababudan Swamy Dargah an Interlocutory Application was filed as I.A. No. I of 2006 seeking permission to do certain things in connection with the celebration of Urs. Objections were filed on behalf of respondents 1 to 3 in the writ petition, namely, the State of Karnataka, the Commissioner for Religious Institutions and Charitable Endowments and the Deputy Commissioner, Chickmagalur District. The Interlocutory Application was disposed of by this Court as per Annexure-H, order dated 13-3-2006. In Annexure-H, order this Court clarified that there is no order by this Court staying the application of the provisions of the Hindu Religious and Charitable Endowments Act, 1997 and the Notifications issued thereunder to the Dargah and that the impugned notification including the Dargah in the list of Hindu Religious and Charitable Institutions is still operative and is in force. This Court also pointed out that the order dated 25-2-1989 passed by the Commissioner for Religious Institutions and Charitable Endowments is still in force and that as per the said order the Dargah is a religious institution and a holy place of worship belonging to the Hindus and the Mohammedans. It was further pointed out that it was not a Wakf property and that it came under the Muzrai Department of the Government of Karnataka. It was also pointed out that as per the order dated 25-2-1989, prior to 1975 the Sajjada Nasheen was managing the affairs of the institution and that there was no dispute regarding the management of the institution by the Sajjada Nasheen till 1975. As per the order dated 25-2-1989 of the Commissioner for Religious Institutions and Charitable Endowments it was ordered to restore the position that existed prior to 1975 and to manage the affairs of the Institution in accordance with the customs and practices which prevailed before 1975. Though the said order dated 25-2-1989 of the Commissioner for Religious Institutions and Charitable Endowments was challenged by certain persons in Writ Petition No. 43621 of 2003, no interim order was passed by this Court staying or modifying the said order dated 25-2-1989. Hence this Court held that there was no impediment to the management of the affairs of the Institution as per the directions contained in the order dated 25-2-1989 of the Commissioner for Religious Institutions and Charitable Endowments. In its order dated 13-3-2006 this Court also noted that the Deputy Commissioner, Chickmagalur District had passed an order dated 25-2-2006 with regard to the performance of daily rites in the Institution and that the Deputy Commissioner had permitted all the rites as per the order dated 25-2-1989 of the Commissioner for Religious Institutions and Charitable Endowments and that no other customs or usages were allowed. The Court also observed that the said order dated 25-2-2006 of the Deputy Commissioner was not challenged by the Institution. In such circumstances, the Court held that the Deputy Commissioner, Chickmagalur District was right and justified in permitting the Institution to perform the rites in accordance with the order dated 25-2-1989 of the Commissioner for Religious Institutions and Charitable Endowments and disallowing any other customs and usages. Accordingly, LA. No. I of 2006 filed in Writ Petition No. 17351 of 2005 was dismissed.

6. In the meanwhile a Division Bench of the High Court of Karnataka has struck down the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 as per judgment dated 8-9-2006 in Writ Appeal No. 3440 of 2005 Sri Sahasra Lingeshwara Temple and Others Vs. State of Karnataka and Others, and connected cases. Consequently, the notification dated 30-4-2003 issued under the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 including Shree Guru Dattathreya Bababudan Swamy Dargah in the list of Hindu Religious and Charitable Endowments is not in force now.

7. In the light of the above facts and circumstances it cannot be disputed that all rituals and functions at Shree Guru Dattathreya Bababudan Swamy Dargah/Peetha have to be conducted strictly in accordance with Annexure-D, order dated 25-2-1989 passed by the Commissioner for Religious and Charitable Endowments and that any custom or usage which is not permitted in the said order cannot be allowed. This position was clarified by this Court in Annexure-H, order dated 13-3-2006 passed in I.A. No. I of 2006 in Writ Petition No. 17351 of 2005. Annexure-H, order is still in force and operative. All citizens whether they are Hindus or Muslims are bound by the said orders and all the authorities of the State are obliged to abide by and enforce the said orders, even without any further orders from this Court in this writ petition. Any person who violates the orders or any authority which refuses to implement and enforce the order is bound to face the necessary consequences.

8. Hence, the only question that arises for decision is whether the petitioners are entitled to the reliefs claimed in the writ petition and whether this Court is required to issue further directions merely because the petitioners apprehend that some persons are likely to violate Annexure-D, order dated 25-2-1989 of the Commissioner for Religious and Charitable Endowments and Annexure-H, order dated 13-3-2006 passed by this Court in Writ Petition No. 17351 of 2005. Mere apprehension of the petitioners cannot be the basis for issuing any writ by this Court. In our view, unless there are sufficient circumstances and materials to show that the Government and the District Administration will not implement and enforce the above mentioned orders and will permit break down of law and order, communal clashes and bloodshed as alleged, there will not be any justification for issuing the writs or directions sought by the petitioners. Having considered the averments in the writ petition and the materials placed on record, we are not satisfied that there are sufficient circumstances and materials to conclude that the Government of Karnataka and District Administration of Chickmagalur District can be accused of any inaction and failure or refusal to implement and enforce Annexure-D and Annexure-H orders. We have no reason to assume that the Government and the District Administration will not discharge their constitutional obligations and statutory duties to uphold rule of law and to maintain law and order. Any such assumption will amount to expression of lack of faith and confidence in the Government and the District Administration. It is unjust and unfair to do so without sufficient and valid grounds. As stated earlier, we do not find valid and sufficient grounds to assume that the Government of Karnataka

and the District Administration of Chickmagalur District will not discharge their constitutional obligations and statutory duties. On the contrary, the materials placed on record by the petitioners themselves show that the Government and the District Administration are aware of the correct legal position and of their duties and obligations to implement the orders of the Court and to enforce law and order and to prevent violence or communal clashes and that they are totally prepared to face any situation. In this connection, it is useful to quote from Annexure-F, letter dated 22-11-2004 sent by the Government of Karnataka to the Director General of Police and Inspector General Of Police, Deputy Commissioner, Chickmagalur District and the Superintendent of Police, Chickmagalur District, on the subject of "Celebration of Datta Jayanthi - Maintenance of Law and Order at Bababudangiri and in Chickmagalur Town". The letter reads as follows:-

With reference to the above, I am directed to invite reference to meetings held in September and October 2004 at various levels and to inform that law and order problem was created in the past mainly on account of the procession known as "Shoba Yatra" and its opposition by certain persons belonging to communist parties, intellectual groups, dalit samities etc. It was also found that both the communities have not strictly complied with the High Court order on observance of religious practices as existed prior to 1975.

In order to maintain law and order in the District, particularly in Chickmagalur Town, it is important that a group is neither allowed to take a procession in a manner that hurts the religious feelings of the other group nor is it allowed to conduct any religious practices, ceremonies, etc., that were not being performed prior to 1975. It is also important that certain people are not allowed to participate in the procession, and to make inflammatory speeches. It is relevant to mention that certain persons coming from outside the Chickmagalur District had in the past indulged in unlawful activities causing ill-will and disharmony among Hindus and Muslims.

It is the duty of the administration to ensure that all persons enjoy their fundamental rights to religious freedom without hurting the feeling's of the other community. Past behaviour of certain persons indicates that they have not kept their promise of carrying" out religious processions etc., peacefully in accordance with conditions imposed bylaw and order authorities, while giving permission to organisers of procession, assemblies, etc., involving large number of persons. It is important to assess their credibility and competence in ensuring adherence to conditions imposed for allowing such processions in future before any permission is granted by the concerned authorities.

In the light of the above it is therefore requested that effective preventive steps be taken to ensure that nobody is allowed to indulge in unlawful activities such as shouting of communal and abusive slogans openly and if the District authorities have reasons to believe that persons requesting for permission to take out procession are unable to abide by the conditions imposed for allowing

the procession, strong preventive measures including banning of procession should be taken by them as per law.

The Deputy Commissioner and Superintendent of Police, Chickmagalur are requested to assess the situation and take appropriate decision in the matter with a view to ensuring communal harmony and maintenance of peace in district.

The Director General and Inspector General of Police is also requested to take all necessary steps for making necessary bando bust arrangements not only in Chickmagalur District but also in the entire State depending the need for ensuring peace and communal harmony in State during the period of Datta Jayanthi celebrations. He may issue further instructions, guidelines etc., to the Superintendent of Police as he thinks appropriate in the matter.

Action may be taken in advance to ban the entry.

We have also taken note of Letter No. SBC/200/CKM/2006, dated 13-9-2006 sent by the Superintendent of Police, Chickmagalur District to the District General and Inspector General of Police explaining the historical background, referring to the Court orders and executive decisions, disclosing the current situation and the role of the District Administration and reporting the preparedness of the District Police to deal with the situation. We have also taken into account the Letter No. DVS/31/06-07, dated 13-9-2006 sent by the Deputy Commissioner, Chickmagalur District to the Principal Secretary, Home Department, Government of Karnataka.

9. Learned Counsel for the petitioners submitted that the apprehension of the petitioners is genuine and is based on the fact that respondent 8 who is the Minister for Higher Education and Minister in charge of Chickmagalur District and respondent 9, who is the local MLA have announced that irrespective of any orders of the Court they will go ahead with the announced programme. According to the learned Counsel, in view of the support of respondents 8 and 9 to the programme the District Administration will be helpless to take any action. We are not inclined to accept this contention. No person whether he is Minister or MLA is above the law and everyone is obliged to abide by the law irrespective of his status and office. The law enforcing agencies are bound to take effective steps to prevent violation of the law and to punish those who violate the law. No Government worth its name can afford to neglect its duty to uphold rule of law and to maintain law and order.

10. It is not necessary for this Court to consider or decide whether the proposed rituals and functions are permitted under Annexure-D and Annexure-H orders. It is for the Government or the District Administration to examine the matter and to take appropriate decision and to ensure that only the rituals and functions permitted under Annexures-D and H orders are allowed to be conducted by both Hindus and Muslims. We have no reason to doubt the bona fides or earnestness of the Government and the District Administration in this regard. Hence we do not consider it just or proper or necessary to issue the directions sought by the

petitioners in the writ petition.

11. In taking the above view, we are supported by the following observations of the Hon'ble Supreme Court in *State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia*, :

6. Courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities, within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order. No person, however big he may assume or claim to be, should be allowed irrespective of the position he may assume or claim to hold in public life to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India. Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that the State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic State. Persons belonging to different religions live throughout the length and breadth of the country. Each person, whatever be his religion, must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perceptions of one's own presumptuous of good social order. Therefore, whenever the concerned authorities in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foothold, undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.

7. Communal harmony should not be made to suffer and be made dependent upon the will of an individual or a group of individuals, whatever be their religion be it of minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions. While permitting holding of a meeting organised by groups or an individual, which is likely to disturb public peace, tranquility and orderliness, irrespective of the name, cover and methodology it may assume and adopt, the administration has a duty to find out who the speakers and participants and also take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting or congregation would be objectionable, for some patent or latent reasons as well as past track record of such happening's in other places involving such participants necessary prohibitory orders can be passed. Quick

decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly having regard to the sensitivity and perniciously perilous consequences it may result in, if not prevented forthwith, cannot be lost sight of. The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very chore of democratic life - preservation of public order and rule of law. At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of Courts - unless a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent.

12. Hence, subject to the observations made in the earlier paragraphs of this judgment, the writ petition is dismissed.

13. The Registry is directed to furnish a copy of this order to the learned Advocate General today itself for his information and necessary action.