
(2014) 09 AHC CK 0211
In the Allahabad High Court
Case No : Misc. Bench No. 8898 of 2014

Nasir Husain

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 25, 25(2), 26

Citation : (2015) 1 ALJ 95 : (2014) 107 ALR 759

Hon'ble Judges : Devi Prasad Singh, J; Arvind Kumar Tripathi (II), J

Bench : Division Bench

Advocate : Afzal Hasan, Advocate for the Appellant

Judgement

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Devi Prasad Singh and Arvind Kumar Tripathi (II), JJ.—Heard learned Counsel for the petitioner Sri Afzal Hasan, learned Counsel for the petitioner and the learned Additional Standing Counsel. The present writ petition under Article 226 has been preferred being aggrieved with the inaction on the part of the district administration in not permitting the petitioner and his Muslim community to perform their religious rites, "Qurbani" (sacrifice) which according to petitioner's Counsel is the message of Holy Quran. It is submitted that the petitioner possesses fundamental right conferred by Articles 25 and 26 of the Constitution of India to perform the religious rites of Quarbani under Personal Law and practice.

The petitioner in the present writ petition, has claimed for following reliefs :

"(i) issue a writ order or direction in the nature of mandamus commanding the Opp. Parties to permit the petitioner and other members of Muslim community to sacrifice buffalo on the occasion of Idul-Zuha in Village-Sattijor, Post-Bankasahi, Pargana-Charda, Tehsil-Nanpara, District-Bahraich.

(ii) issue any other suitable order or direction which this Hon''ble Court may

deem, fit, just and proper under the circumstances of the case in favour of the petitioner.

(iii) allow the instant writ petition of the petitioner with costs."

2. According to petitioner's Counsel, an application was moved to District Magistrate, Bahraich by Muslim community of village Sattijor, post office Bankasahi, Pargana Charda, Tehsil Nanpara, district Bahraich to permit them to perform religious rites of Quarbani of buffaloes and goats etc., at Courtyard of school namely, Aljametul Nooriya Darul Barkat (Madarsa), which is a registered society under the Societies Registration Act. It is submitted that on the festival of Idul-Zuha (Bakreed), the Muslims of the country have right to sacrifice goats buffaloes etc., to perform Quarbani. It is done at the occasion of Idul-Zuha. Submission of petitioner's Counsel is that sacrifice is performed at the high price of goats ranging from Rs. 5,000/- to Rs. 25,000/-.

3. The petitioner's Counsel relied upon earlier Division Bench judgment of this Court dated 6.3.1995 passed in Writ Petition No. 6177 of 1990, Mohd. Farooq Nori v. State of U.P. and others. Relying upon the said judgment, petitioner's Counsel submits that the petitioner has right to perform Qurbani at the Madarsa or alike schools.

4. So far as the judgment delivered by the Division Bench of this Court in the case of Mohd. Farooq Nori (supra) is concerned, the argument advanced by learned Counsel for the petitioner seems to be not sustainable for the reason that in the case of Mohd. Farooq Nori (supra), their lordships held, to quote :

"... But, however, we are of the view that the District Magistrate is appropriate cases any may regulate the place where such buffalos could be slaughtered."

The Division Bench further held as under :

"... Hence the petitioner can be granted only a limited relief that he may be permitted to sacrifice buffalos on the Idul-Zuha day or two days thereafter and the place where the sacrifice may take place would be for the administration to decide. With the aforesaid observations the Writ petition is disposed of."

Sd/- R.K. Gulati. Sd/- S.H.A. Raza. 6.3.1995"

From the aforesaid conclusion, the finding recorded by the Division Bench, there appears to be no room of doubt that Court declined to issue the mandamus with regard to place of sacrifice and leave it open for the administration to take a decision.

5. Learned Counsel for the petitioner has given much emphasis and relied on Articles 25 and 26 of the Constitution of India. For convenience, Articles 25 and 26 are reproduced as under:

"25. Freedom of conscience and free profession, practice and propagation of religion.--(1) Subject to public order, morality and health and to the other

provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

2. Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.--The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.--In sub-Clause (b) of Clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.-Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

6. A combined reading of Articles 25 and 26 reveals that the conscience and free profession, practice and propagation of religion is subject to public order, morality and health. The religious affairs have also been subjected to public order, morality and health. Thus, right to perform religious rites, has been subjected to public order, morality and health. The public order, morality and health is a question which falls within the domain of the Administration subject to statutory and constitutional limitations.

7. In a case Vasudev Gupta Vs. State of U.P. and Others, , Writ Petition No. 3362 (M/B) of 2011, Vasudev Gupta v. State of U.P., through Principal Secy., Home and others Judgment dated 9.5.2011, a Division Bench of this Court, of which one of us (Hon"ble Mr. Justice Devi Prasad Singh) was a member, has observed as under:

"33. In A.S. Narayana"s case (supra), Hon"ble Supreme Court reiterated that right to religion guaranteed under Articles 25 and 26 of the Constitution of India is not absolute and unfettered right to propagate religion which is subject to legislation by the State limiting or regulating any activity-economic, financial, political or secular which are associated with religious belief, faith, practice or custom. The religious practice is subject to reform on social welfare by

appropriate legislation by the State (para 19).

35...Enjoyment of one's rights must be consistent with the enjoyment of rights by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests. A particular fundamental right cannot exist in isolation in a water-tight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others also with reasonable and valid exercise of power by the State in the light of the directive principles."

8. Hon'ble Supreme Court in a case in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, while considering Article 25, held that restriction provided by Clause (b) of Article 25(2), may be the ground to regulate religious practice. On the other hand, Clause (a) of Article 25(2) further provides that appropriate restriction may be imposed regulating and restricting any economic, financial political or other secular activities which may be associated with religious practice..

9. In *Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another*, , Hon'ble Supreme Court upheld the restriction imposed in performing Tandava by Anand Margi at public places. In a case *Bhuri Nath and Others Vs. State of Jammu & Kashmir and Others*, , Hon'ble Supreme Court held that service of priest is a secular activity and can be regulated by the State under Article 25(2).

10. In *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, , Hon'ble Supreme Court held that State is a primary concern with secular aspect of religious practice than the essential religion as approved by judicial pronouncements.

11. By catena of judgments, Hon'ble Supreme Court upheld that "Religion" is a matter of faith but belief in God is not essential to constitute religion. Doctrine" of each religion constitute its essential part, but the Court is competent to examine them vide, *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, .

12. While dealing with the subject-matters apart from the statutory, provisions, Courts and citizens should not forget the preamble of Indian Constitution pledging for sovereign, socialist and secular, and democratic republic. Accordingly, ordinarily, it is not for the Court to interfere with such matters as to where a sacrifice should be done. Broadly it is for the administration to take a decision.

13. The fundamental right flowing from Articles 25 and 26 as held (supra), is always subject to morality, law and order and it does not confer blanket right to perform religious ceremonies at the cost of morality, health and law and order. The constitutional framers were conscious of multiplicity of Indian culture,

practice and traditions. Hence they have imposed certain conditions to perform such rites in the Articles 25 and 26. Articles 25 and 26 itself provide that integrity, unity of the country broadly, may not be sacrificed at the alter of religious rites.

14. Moreover in the present case, the petitioner claims right to perform sacrifice in the Madarsa or schools-the temple of knowledge, education and teachings. Whether the Madarsas or the schools can be used for sacrifice of the goats or buffaloes while performing religious ceremonies? Whether, will it not spoil the academic atmosphere of Madarsa or other alike schools and may be health hazard to the children on account of blood and flesh and fecal matter etc.?

15. In case the petitioner a member of Muslim community claims right to perform sacrifice of goats buffaloes in Madarsa, then others may come to claim right for performing sacrifice of goats and buffaloes in their respective schools on the occasion of Ma Kali Puja. Once such practice is started, then schools and Madarsa meant for teaching purpose, may be converted into "slaughter house" though for a limited period in due course of time at the cost of health, morality and, law and order.

16. In India, there are thousands of sects, communities, castes, creeds and religions from far East to West and from North to South and substantial number of them indulge into sacrifice of goats etc. We are of the view that the educational institutions whether it is Madarsa, school, college or university, should not be permitted to perform the ceremony of sacrifice of goat, buffaloes or any other animals. Ordinarily, there appears to be no reason to permit sacrifice in Madarsa, schools, colleges or institutions for sacrifice of goats, buffaloes etc. A little hardship in performing sacrifice at the eve of festival, does not mean that administration or Courts should compromise with the sanctity of schools, colleges or Madarsas. In the present case, the petitioner has not invited attention of any statutory-provisions which may confer him right to perform sacrifice in the Madarsa or schools. Hence," It shall not be appropriate for us to permit to perform sacrifice in the Madarsa or schools etc., which are meant to educate children.

17. While preferring the writ petition, the petitioner has not come forward with the pleading to indicate that some statutory or constitutional rights has been granted to Muslim community by the Parliament or the State Legislature to sacrifice buffaloes at any place including Madarsa or schools. In the like manner, for every community, Hindus or Christians, rights conferred by the Constitution or the statute may be protected by the Courts, being custodian of law. But in the event of right which is not guaranteed by the Constitution, or by any statute legislated by the Parliament or the State Legislature within their jurisdiction, the Courts are loath to interfere and grant indulgence.

18. Of course, it is for the authorities or the Government to look into such matters and take appropriate decision within the constitutional parameters or the

statutory mandate. In the cosmopolitan country like India, having thousands of communities, castes and creeds, in case Courts start interfering, then the Courts may lose their impartial stature, and it shall be a remorseful and bad day in the history of administration of justice.

19. Subject to what has been observed hereinabove, we are not inclined to pass any order/direction with regard to the relief Claimed by the petitioner. We leave it open to the good sense of the Government and its authorities to look into such matters in case they are represented for the purpose and it shall be incumbent upon them, to act within the four corners of the Constitution while dealing with such matters. Application moved by the petitioner be considered expeditiously. Subject to above and with liberty to respondents and adjudication of dispute by District Magistrate expeditiously, the writ petition is disposed of finally.