
(1999) 12 AHC CK 0070
In the Allahabad High Court
Case No : Writ Petition Mo 2839 (MB) of 1998

Naushad Ahmad Khan and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Constitution of India, 1950 — Article 25(1)

Citation : (1999) 12 AHC CK 0070

Hon'ble Judges : S.H.A.Raza, J and M.Katju, J

Final Decision : Dismissed

Judgement

M. Katju, J.—By means of this petition the petitioners have prayed for a direction to the District Magistrate and Superintendent of Police, Gonda to restrain the respondents 4 to 8 from taking out the Dussehra procession on 21/10/1999 through village Mohammadpur for immersion of idols in river Saryu and to restrain them from raising provocative slogans.

2. We have heard Sri Abdul Mannan, learned counsel for the petitioners and the learned Standing Counsel.

3. Although the prayer was for restraining the respondents from taking out the Dussehra procession on 21/10/1998 which date has long expired, Sri Mannan submitted that the Dussehra festival is an annual feature and hence the petition should not be dismissed as infructuous and the matter should be decided on merits. We have agreed to this submission and hence are deciding the matter on merits.

4. The petitioners are Muslims who are residents of village Kauraha Jagdishpur (Mohammadpur) police station Katra Bazar, district Gonda. Their prayer is that the Dussehra procession be not allowed to pass through their village since it is out of the way on the route from Bikanya Sugar Factory to the river Saryu. Their submission is that if the procession is taken through their village, it will not be conducive to harmonious relations between Hindus and Muslims. The submission

is that earlier the procession was never carried out through village Mohammadpur where about 80% population is of Muslims, and only from 1997 the Dussehra procession is being carried out through village Mohammadpur. Their grievance is that provocative statements are made when the procession goes through village Mohammadpur and this disturbs communal harmony. Their prayer is that the procession should be taken out from another route not passing through their village.

Article 25 (1) of the Constitution states:

"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."

5. A perusal of Article 25 (1) shows that 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 and practice religion.

6. The above provision shows that freedom of religion in our country is not restricted to profession of a religion but it also includes practice of religion. Different religions have different practices and rituals, and the people of all religions have a fundamental right to practice the same provided it does not disturb public order, morality and health, vide *Ratjal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 38. Thus for instance Muslims (particularly the Shia sect of the Muslims) take out Taziya procession on Moharram day and in our opinion this is part of their religious practice. In *Imambara of Mulnapur v. State of UP*, 1999 (1) ALR 717, a Division Bench of this Court held that Muslims are fully entitled to take out Taziya procession as this is part of their religious practice. In that decision this Court held:

"This is a free, democratic and secular country. Article 25 (1) of the Constitution states "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."

Article 15 (1) of the Constitution states "The State shall not discriminate against any citizen on ground only of religion, race, caste sex. place of birth of any of them."

"India is a land of tremendous diversity, having a large number of religions, castes, languages, ethnic groups, etc. The only way which will keep the country on the road to progress and maintain the integrity of the nation is the path of secularism and equal respect for all religions. It is the path shown by the great Emperors Ashok and Akbar who gave equal respect to all religions

The greatness of our Founding fathers can be realised from the fact that at a time when our subcontinent was engulfed in the flames of communal madness at the time of partition in 1947, the Founding fathers insisted that India will remain a secular country. This was not an easy thing to do, for it is very difficult to retain

cool mind when passions are inflamed. There must have been tremendous pressure on the Founding Fathers to declare India as a Hindu State, especially since Pakistan had declared itself an Islamic State. The Founding fathers were truly great people, for they resisted these pressures, and provided for a secular State in India under the Constitution.

Taziya is a part of Muslim religion and Muslims are fully entitled to take out taziya processions. Hence we direct that there should be no obstruction and the authorities will ensure law and order in peacefully taking out of taziya.

However, we have repeatedly held that religion is a private affair and must be earned out peacefully without causing harm or harassment to anybody, and hence Taziya cannot be taken out through the private land of anybody. It can only be taken out peacefully on a public path and in a manner which does not cause inconvenience to anybody. The path of the taziya has been recommended by the S.D.M Handia and the map is Annexure 2 to the writ petition. The petitioner is agreeable to this path suggested by the S.D.M. Hence, we are of the opinion that this Taziya procession can be taken over on the aforesaid path as suggested by the S.D.M. Handia, Allahabad but we direct that no private property or trees should be damaged during the course of taziya procession. The petitioner and the authorities will also maintain law and order."

7. In our opinion when this Court has held that Muslims have the right to take out a religious procession it would be strange to say that the Hindus do not have the right to do the same. Our country is a secular country where all religions are treated equally, and hence all of them can take out their religious processions but subject to public order, morality and health.

8. The argument that since 80% people of village Mohammadpur are Muslims, Dussehra procession should not be permitted to go through their village cannot be accepted. If it is accepted then it can also be argued that since 80% or more people of India are Hindus then non-Hindus should not be allowed to take out any procession anywhere in India. No such plea can be accepted by this Court. The question of majority or minority cannot apply to religious practice in a secular state.

9. We asked the learned counsel for the petitioner whether the Dussehra procession is passing through anybody's private land, and he answered in the negative. Hence, we obviously cannot restrain passing of the Dussehra procession on a public path.

10. The Hon'ble Supreme Court in *Guthi Abbas v. State of U.P.*, AIR 1981 SC 2193, dealing with the provisions of Section 144, Cr. P.C. observed:

"The entire basis of action under Section 144, is provided by the urgency of the situation and then power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public wealth by maintaining public peace and tranquillity Preservation of the public peace and

tranquillity is the primary function of the Government and the power under Section 144, is conferred on the executive magistracy enabling it to perform that function effectively during emergent situations and as such, it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation the power must extend to restrain individuals from doing acts perfectly lawful in themselves, for as is obvious that when there is a conflict between the public interest and private rights the former must prevail. It is further well settled that the section does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature or questions of title to properties or entitlements to rights but at the same time in cases where such disputes or titles or entitlements to rights, have already been adjudicated and have become the subjectmatter of judicial pronouncements and decrees of Civil Courts of competent jurisdiction then in the exercise of his power under Section 144, he must have due regard to such established rights and subject of course to the paramount consideration of maintenance of public peace and tranquillities. The exercise of power must be in aid of those rights and against those who interfere with the lawful exercise thereof and even in cases where there are no declared or established rights the power should not be exercised in p. manner that would give material advantage to one party to the dispute over the other but in a fair manner ordinarily in defence of equal rights, if there be such, and the lawful exercise thereof rather than in suppressing them, in other words, the Magistrate's action should be directed against the wrong doer rather than the wronged. Furthermore, it would not be a proper exercise of discretion on the part of the Executive Magistrate to interfere with the lawful exercise of the right by a party on a consideration that those who threaten to interfere constitute a large majority and it would be more convenient for the administration to impose restrictions which would affect only a minor section of the community rather than prevent a larger section more vociferous and militant. Legal rights should be regulated and not prohibited altogether for avoiding breach of peace or disturbance to public tranquillity.

It is only in an extremely extraordinary situation, when other measures are bound to fail, that a total prohibition or suspension of their rights may be resorted to as last measure."

11. In view of the aforesaid pronouncement of the Hon'ble Supreme Court, the authorities may regulate the religious rights including the path from which the Dussehra procession may pass. But they will see to it that the public right is not jeopardised and it should be maintained in such a way that public order is not disturbed.

12. The petitioners have contended that provocative statements hurting their religious feelings are made when Dussehra procession passes through village Mohammadpur. If this is true it is the duty of the authorities to initiate criminal proceedings under Section 293A, I.P.C. against those persons making such offensive statements which hurt the religious feelings of Muslims or any other

religious community.

Section 295A, I.P.C. states:

"Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words, either spoken or written or by signs or by visible representations or otherwise, insults or attempts to insult the religion or religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both."

13. In *Ramji Lal Mod v. State, of UP*, AIR 1957 SC 620, it was held that insult to anyone's religious beliefs or religion when this is perpetrated with deliberate and malicious intention of outraging any religious feeling is clearly an offence under Section 295A, I.P.C. In that decision the constitutional validity of Section 295A, I.P.C. was upheld.

14. In *Public Prosecutor v. Ramaswami*, AIR 1964 Mad 253, the Madras High Court convicted the accused under Section 295A, I.P.C. for publishing articles with deliberate and malicious intention of outraging the religious feeling of the Muslims.

15. In *Chandanmal Chopra v. State of West Bengal*, AIR 1986 Cal 104, it was held that to ban or forfeit copies of Quran would violate Article 25 of the Constitution.

16. Thus it is seen that this Court has consistently upheld the religious rights of people of all religions in our country to freely profess and practice their religion. However, no one has any right to hurt the feelings of people of another religion as that would be injurious to the interest of the nation and is also an offence under Section 295A, I.P.C. The district authorities will see to it that anyone who commits an offence under Section 295A is criminally prosecuted and strong action is taken against him.

17. Before parting with this case we would like to mention that as stated by this Court in *Imambara of Mulnapur's*, case (supra), India is a nation of great diversity with large number of religions, castes, languages, ethnic groups etc. and hence it is absolutely essential for the nation to survive and progress to maintain communal harmony and respect for all religions. It may be mentioned that India has a composite culture and all religions, castes, languages, ethnic groups have equally contributed to its cultural greatness. For example, in Hindi poetry Raskhan, who was a Muslim, has written beautiful poems on the life of Lord Krishna, Rahirn, who was Akbar's military commander, has written a large number of couplets which show his deep study of Ramayan and Mahabharat. In Urdu poetry Meer and Naxir etc. have written beautiful poems on Holi, Deewali, Rakhi and of her Hindu customs.

18. In this connection it may be mentioned that once in the reign of Nawab Wajid Ali Shah it so happened that Holi and Moharram coincidentally fell on the same

day. The Nawab, after taking out the Taziya procession and after burying the Ta/dya at Karbala, enquired why the Hindus were not playing Holi. He WPS told that the Hindus have decided that out of respect for the feelings of their Muslim brethren they have decided not to play Holi that year since Moharram is an occasion of sorrow. The Nawab declared that since Hindus have respected the feelings of their Muslim brethren, it was also the duty of Muslims to respect the sentiments of their Hindu brethren. Hence he directed that Holi must be played the same day, and in fact it was played on that day, though it was Moharram.

19. A large number of such incidents can be given on harmonious communal relations in our country. Certain vested interests have tried to divide us on the basis of religion, casts, etc. in pursuance of their nefarious policy of divide and rule, and we must oppose this unitedly. It is absolutely essential that the unity of the country is maintained if the nation is to progress.

With these observations this petition is dismissed. Petition dismissed.