Mohammad Siddiqui vs State Of U.P. And Anr. on 21 July, 1954

Equivalent citations: 1954CRILJ1607

JUDGMENT

Malik, C.J.

1. Qazi Mohammad Siddiq has filed an application, Civil Misc. Writ No. 3 of 1953, against the State Of Uttar Pradesh and the District Magistrate of Lucknow, under Article 226 of the Constitution, that the applicant applied for the taking out of a religious procession, Madhe Saheba, and this was unjustly refused by the Magistrate on 26-11-1952, The prayer in the application is that a writ of mandamus or prohibition or directions or such other writ, directions or orders, be issued, as it may be expedient, to the U. P. Government and the District Magistrate of Lucknow prohibiting them from interfering in taking out of the Madhe Saheba procession and holding public Madhe Saheba meetings by the applicant in the city of Lucknow and directing them to allow the applicant to take out such processions and to hold such meetings under such reasonable conditions as may be necessary in this connection, for which the applicant shall ever remain grateful.

2. There are three other applications. Civil Misc. Appln. No. 12 of 1954 is by Syed Ahmad Ali that he made an application on 25-7-1953, for taking out a Madhe Saheba procession but it was refused. We may mention here that while the previous application by Qazi Mohammad Siddiq was by a Sunni Mohammedan this application is by a Shia Muslim. This application was dismissed by the District Magistrate on 24-8-1953, and the prayer in the application is that a writ of mandamus or prohibition or directions or such other writ, directions or orders, as it may be expedient, be issued to the U. P. Govt. and the District authorities prohibiting them from interfering in their taking out Madhe Saheba procession and holding public meeting for the recitation of Madhe Saheba by the applicant and directing them to allow the applicant to take out such procession and hold such meetings under such reasonable condition as may be necessary in this connection.

3. Civil Misc. Appln. No. 13 is by Syed Manzoor Husain Nasir, another Shia Muslim. He also made an application on 25-7-1953, to take out what he calls a 'counter procession and hold a public meeting to recite the narrative therewith'. This application was dismissed on 25-8-1953.

4. The fourth and the last application No, 11 of 1954 is by Husain Ameer who is also a Shia Muslim.

He claims that Shias have an absolute right to recite Tabarra in public places as enjoined by their religion and when Madhe Saheba is recited at public places they are specially duty bound to recite Tabarra. He made an application to the District Magistrate on 25-7-1953, that he wanted to take out a Tabarra procession and hold a public meeting to recite Tabarra therein and this too was refused by the District Magistrate on 24-8-1953, on the ground that there was an apprehension of a breach of peace.

The prayer in this application is more or less to the same effect as in the other applications that the U. P. Government and the District authorities should be prohibited from interfering in taking out Tabarra procession and holding, public meeting for the recitation of Tabarra by the applicant and directing them to allow the applicant to take out such procession as may be necessary in this connection.

5. It is not necessary for us to go into any detail as regards the dispute between Shias and Sunnis. We are really not concerned with the nature of the dispute or with the rights of the parties to take out processions in praise of their Caliphs. The Shias consider that the first three Caliphs were not true to their prophet or to the true religious belief while the Sunnis consider it otherwise.

It appears from the affidavit filed on behalf of the State in Civil Misc. Writ No. 3 of 1953 that upto 1905 the two Muslim sects, Shias and Sunnis, observed Moharram together. Since then disputes have arisen and there were two committees known as the Piggott Committee and the Allsop Committee which reported about the matter. In - Manzur Hasan v. Muhammad Zaman AIR 1925 PC 36 (A), their Lordships of the Judicial Committee have held that there is a right to conduct a religious procession with its appropriate observance along a highway, and persons of whatever sect are entitled to conduct religious procession through public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrates may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace.

On behalf of the State the right to take out procession has not been denied. In Article 25 of the Constitution it is provided 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, practise and propagate religion. The difficulty however arises at times when by reason of members of one particular sect or religion doing something in public the religious susceptibilities of others are hurt and there is a danger of the breach of peace.

In the case of - Manzur Hassan (A)', cited above, the Privy Council recognised that such rights were subject to the directions that a Magistrate may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace. The same view was taken in a Division Bench ruling of this Court in - Haidar Husain v. Ali Mohammad AIR 1945 All 54 (B), which also related to the dispute between Shias and Sunnis about Madhe Saheba and Tabarra processions.

This right of a person of a particular religious sect to freely profess, practise and propagate his religion is now a Dart of the fundamental rights guaranteed by Article 25 of the Constitution but it has been made subject to public order and there can be no doubt that in exercise of the police powers of the State it is open to a Magistrate, in a case where he apprehends breach of the peace, to pass such orders as he may consider necessary to prevent breach of the peace,

6. Counsel in the various applications have tried to interpret that the orders of the Magistrate are most general and for all times. As we read these orders they do not seem to mean that the Magistrate intended to pass a general order for all times.

Applications were made for taking out processions and the applications were refused. In some of the applications the Magistrate was asked to fix a date, time and route that he considered most suitable. Firstly it was no part of the Magistrate's duty to fix the date, time and the route and in any case, if he thought that he could not fix a date, time and route which would not lead to a breach of the peace and rejected the application, the order cannot be read as meaning that he purported to hold that the parties have no right to take out a procession.

Learned Advocate General has stated in clear terms that these orders were not intended to take away for all times any rights that the parties may have end they merely related to the grant of the particular application for taking out a procession at the time or near about the time when the application was made.

We found in the writ application of - Qazi Mohammad Siddiq, No. 3 Of 1953, that the District Magistrate called for a report from the City Magistrate and, on receipt of the report from the City Magistrate that there was a likelihood of a breach of peace if a procession was allowed, he rejected the application of the applicant. In the other applications he called for a report from the police and, again, on receipt of adverse reports from the police he rejected the applications for permission to take out a procession.

7. It is not for us to consider whether the Magistrate was right in his apprehension that there was a likelihood of breach of peace. In none of the affidavits has his bona fides been questioned. It is a matter entirely for the District authorities to consider whether in the particular circumstances if a procession was taken out it would lead to public disturbance.

One party blames the other and each alleges that it was he who was exercising peacefully his public right and it is the other party against whom prohibition order should have been made and his procession should have been allowed. Again whether it would be more suitable on a I particular occasion to bind down a particular party and to allow the procession to be taken out by the others is a matter in the discretion of the Magistrate, No doubt the Magistrates, as has been laid down in - Jafar Husain v. Pearey Lal AIR 1935 All 575 (C) and - Sundram Chetti v. The Queen 6 Mad 203 (D), would try to help a party who is in the right and not a party who is in the wrong, but this does not mean that it is open to Courts to take the administration in their own hands and to issue orders as to whether a Magistrate should or should not allow a procession to be taken out by a party when the Magistrate is satisfied that it is likely to end in a serious disturbance and to direct what restrictions he should impose on such an occasion.

8. The orders in these cases were passed by the District authorities in the year 1952 or 1953. The circumstances in 1954 may have entirely changed. Even if the Magistrate had made an error of judgment in those years and had not allowed the processions to be taken out under a misapprehension that cannot be rectified today by any order that we might pass. In effect we are being asked to grant a declaration as regards the rights of the parties. We are not satisfied that the applicants are entitled to any relief under Article 226 of the Constitution.

9. These applications are, therefore, dismissed with costs.

10. Learned Counsel for the parties have asked for leave to appeal to the Supreme Court under Article 132 of the Constitution. We do not think any question of importance as regards the interpretation of the Constitution arises in these writ petitions. The prayer is, therefore, refused.