

Supreme Court of India

Syed Gulzar Hussain & Ors vs Dewan Syed Ale Rasul Ali Khan & Ors on 20 February, 1947

Author: K S Radhakrishnan

Bench: K.S. Radhakrishnan, Vikramajit Sen

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. 36921 OF 2013

Syed Gulzar Hussain & Others .. Petitioners
Versus
Dewan Syed Ale Rasul Ali Khan & Others .. Respondents
WITH
SPECIAL LEAVE PETITION (CIVIL) NO. 36923 OF 2013
AND
SPECIAL LEAVE PETITION (CIVIL) NO.36953 OF 2013

O R D E R

K. S. RADHAKRISHNAN, J.

1. We are, in these cases, primarily concerned with the resolution of a dispute between the Dewan Sajjadanashin and Khadims of the Holy Shrine of Hazrat Khawaja Moinuddin Chishti at Ajmer with regard to the sharing of Nazrana offered by the pilgrims visiting the Holy Shrine. Petitioners submit that the High Court, while deciding the above issue, practically framed a Scheme for the implementation of the final decree dated 3.5.1933 (as amended on 29.1.1940) in Civil Suit No. 9 of 1929 passed by the Additional District Judge, Ajmer-Merwana, Ajmer which, according to the petitioners, was not warranted and beyond the scope of the decree.

2. Petitioners, who claim to represent the entire group of Khadims, it is seen from the order impugned, themselves wanted the Court to make some suitable and permanent arrangement for the purpose of implementing the decree. Due to the long standing disputes between these two factions with regard to sharing of Nazrana, in fact, a proposal was mooted to appoint a Receiver, which the Executing Court as well as the High Court felt, it would not be in the best interest of all concerned and thought of making some interim arrangement with the junction of Durgah Committee, a body constituted under Section 4 of the Dargah Khwaja Saheb Act, 1955. The powers and duties of the Durgah Committee have been enunciated in Section 11 of the Act. The functions and duties of Khadims also find a place in the bye-law no. 13 framed vide notification dated 16.10.1958 by the Committee in exercise of its powers conferred under Section 20 of the Act.

3. The Durgah of Hazrat Khawaja Moinuddin Chisti, as already indicated, is a holy Shrine where, every day, a large number of pilgrims/visitors from the country and outside, visit and offer their prayers and pay donations in the form of cash, kabarposh, implements, animals etc. at different places of Durgah for various religious purposes. Every day, certain rituals are also performed by Khadims within the Dome of the Shrine at the beginning, to the end and during the course of the day. The decree passed in Civil Suit No. 9 of 1929 also recognizes the rights of Dewan in respect of offerings made at the Durgah, the details of which have elaborately been dealt with in the impugned

order itself and hence not repeated. The history of the Holy Shrine as well as the rights of the Durgah Committee, Khadims and Dewan have also been dealt with by this Court in Durgah Committee, Ajmer and Another v. Syed Hussain Ali and Others AIR 1961 SC 1402. Noticing the various directions contained in the decree, as well as the judgment of this Court and also taking note of the request of the Khadims themselves, the High Court thought of making some suitable arrangements for the purpose of implementing the decree. The following are the directions given by the High Court:

- i) As regards the adjudication of the rights contained in para A(ii), it is directed that the Nazim on behalf of Durgah Committee shall take the custody of the offerings or presents of gold or silver vessels or implements or kabarposhes that may be offered by the visitors/pilgrims for the use of Durgah. The Nazim or his representative shall remain present inside the dome of the shrine to collect such offerings and presents. In case, the Khadims/judgment debtors receive such offerings or presents from the visitors/pilgrims, they shall deposit the same in the office of the Nazim at the end of the day. It is needless to say that the office of the Nazim shall maintain regular accounts/records of such offerings/presents, and keep in safe custody till any decision is taken by the Durgah Committee for their disposal/use;
- ii) As regards the declaration of rights contained in para A(iii) and (iv), it is directed that there shall be kept iron boxes for donations, big and sufficient in number, at different places inside and outside the dome of the shrine, more particularly at the pit near the grave inside the dome, to enable the visitors/pilgrims to put their cash/valuable offerings in such boxes. Such boxes shall have the locks and the keys thereof would be kept in the custody of the Nazim;
- iii) The Nazim shall hand over all the offerings deposited in such boxes kept outside the dome of the shrine to the Khadims as their perquisites. However, the offerings of animals or such bulky articles made at the steps of the shrine shall be divided by the Nazim between the Dewan and the Khadim respectively in equal shares, at the end of the day. The Nazim in consultation with the Durgah Committee shall make necessary arrangement for collection of such bulky articles at the gates/entrances of the shrine and Durgah;
- iv) So far as the offerings deposited in the donation boxes kept inside the dome of the shrine are concerned, the Nazim, at the end of the day, shall maintain accounts and divide such offerings between the Dewan and the Khadims respectively in equal shares, irrespective of the spot at which they were deposited within the dome. Nazim may distribute such offerings on daily/weekly/ monthly basis after keeping proper accounts, in presence of the representatives of the Khadims and the Dewan. However, the Nazim shall hand over to the Khadims, the offerings of all coins not exceeding two annas in value irrespective of whether they are made of copper or any other metal and cowries and gold or silver articles (other than coins), of a value less than 8 annas and cotton cloth of inferior quality, and all offerings made between the

hours of 4 A.M. to 4 P.M. on the last day of the Urs, as directed in the para A(iv) of the said decree;

v) It is directed that the Nazim shall treat the cash or other offerings sent by post as the offerings made at the shrine i.e. within the dome, unless addressed specially to the Durgah Committee, the Dewan or the Khadims for their exclusive use, as directed in Para A(v) of the said decree;

vi) It is further directed that the Khadims, their agents or servants shall not cause any obstruction either to the Nazim or his representative, or the judgment creditor, the Dewan or his representative, or any Member of the Durgah Committee to enter and sit inside/outside the dome of the shrine or the precincts of the Durgah, and shall cooperate the Nazim in implementing the directions given by this Court;

vii) The Nazim shall display notice boards in Hindi, English and Urdu languages, at all gates of Durgah and at all visible and conspicuous places inside and outside the dome of the shrine, giving instructions to the visitors/pilgrims to put cash/valuable offerings in the donation boxes only and deposit their other offerings like kabarposhes, gold/silver articles, implements, animals at the office of Nazim only.

viii) It is clarified that the Khadims – judgment debtors and the Dewan – the judgment creditor shall be at liberty to keep their duly authorized representatives, present on their behalf at the time when the donation boxes are opened, and their shares are divided by the Nazim. The Nazim also shall be at liberty to nominate any other person as his representative, with the consultation of the Members of the Durgah Committee for the purpose of carrying out these directions, in case of his inability to remain present on any particular day.

ix) The Nazim shall be at liberty to approach this Court in case of any difficulty found in implementing the above stated directions;

x) The Nazim shall be also at liberty to take help of the staff members and in case of need, help of police.”

4. Shri C.A. Sundaram, learned senior counsel appearing for the petitioners, submitted that the petitioners have no serious objection with regard to direction nos. (i), (v) and (vi), but raised some objections with regard to direction nos. (ii), (iii), (iv) (vii) and (viii).

5. Shri F. S. Nariman, learned senior counsel appearing for the Dewan, submitted that the direction given by the High Court is an equitable one taking care of the interest of Khadims as well as Dewan and calls for no interference at this stage.

6. Shri Guru Krishnakumar, learned senior counsel appearing for the Durgah Committee, also took the same stand and submitted that the directions have been issued taking note of the interest of

Khadims, Dewan as well as the overall interest of the pilgrims who visit the Holy Shrine.

7. We are of the view that, in a situation like this, the Court will have to take note of the overall interests of the Khadims, Dewan and Durgah Committee, with the pilgrims at its central stage. All the Khadims, Dewan and Durgah Committee, have got moral and legal obligation to account for the offerings made at the Holy Shrine, whether it is inside or outside the dome. The Holy Durgah at Ajmer is one of the most important places of pilgrimage for the Muslims of India and persons following other religions also hold the saint in great veneration and a large number of non-Muslims visit the Durgah every year from the country as well as outside. The main objection raised by the petitioners is that some of the directions given by the High Court are not workable in the sense, if the donations due to the Khadims are put in boxes, then it would not be possible for the Khadims to find out, to which Khadim the pilgrims have given a particular amount by way of donation for doing special offerings on their behalf. Further, it was pointed out that it is a customary practice that the pilgrims directly handover the amount in the hands of the Khadims, which the Khadims would share with Dewan, for which, it was stated by the learned senior counsel appearing for the petitioners, that they will keep separate accounts and, if necessary, in the presence of the Durgah Committee.

8. We may indicate that a pilgrim who goes to the Durgah and make donation, may be totally unaware as to how the donation is being divided between Khadims and Dewan. Normally, a pilgrim who makes an offering or makes any donation, expects the same to go to the Holy Shrine and its development and maintenance, not for the individual benefit of either the Khadim or Dewan. A pilgrim may give some amount directly either to Dewan or Khadim for his satisfaction if they are offering a special prayer on his behalf, which is altogether a different aspect. Necessity of proper accounting and transparency in the entire functioning of Durgah is highly necessary in the larger public interest with regard to entire amount received at the Shrine, whether it is inside or outside the dome or even the amount directly paid to the Khadims at the Shrine. Khadims, it is stated, have to share also with the Dewan the amounts they get, hence there is a necessity of the intervention of the Durgah Committee for the smooth and effective functioning of the Shrine, or else, constant disputes may crop up between both the groups, which is not in the best interest of the Holy Shrine.

9. In such circumstances, at this stage, we do not propose to make any modification in the directions already given by the High Court. Let the directions given by the High Court be given effect to, pending final adjudication of these cases and the modifications, if any, required can be examined later when the matter is finally adjudicated. The status-quo order passed by this Court is accordingly vacated.

Read Hear.....J.

(K. S. Radhakrishnan)J.

(Vikramajit Sen) New Delhi, February 20, 2014.