

Supreme Court of India

State Of J & K vs J & K High Court Bar Association, ... on 2 November, 1993

Equivalent citations: 1995 (2) SCALE 239, 1994 Supp (3) SCC 708

Bench: A Ahmadi, N Singh

ORDER

1. Special leave granted.

2. On a petition filed under Article 226 of the Constitution by the Bar Association of Jammu and Kashmir at Srinagar, a Division Bench of the High Court comprising Nathur, CJ, and Kochhai, J, directed the respondents by the order dated 22nd October 1993 to permit Shri Z.A. Shah, Advocate, and counsel for the petitioner to enter the Hazratbal Shrine and report all the matters enumerated in the said order. As the State had an objection to the access of Shri Shah into the Shrine it approached this Court by way of a Special Leave Petition (No. 17239/93). This Court passed an order on 24.10.93 permitting the State to seek a modification of that order, in that, in place of Shri Shah a team of willing Red-cross personnel (not exceeding five in number) may be permitted to enter the Shrine and report all matters enumerated in the High Court, if it so pleased. It appears that thereafter on the State's motion, the High Court modified the order whereby four Medical Officers were appointed in place of Shri Shah to visit the Hazratbal Shrine in compliance with its order of 22.10.93. The said team of Medical Officers submitted a Report to the High Court on 29.10.93 inter alia stating that the total number of persons inside the Shrine were 80 in addition to some other persons whom they were not allowed to see. Amongst the persons present in the Shrine seen by this team of Medical Officers were one woman, 21 sick persons, out of whom two were serious but no child below the age of 12. We feed stuff was found inside the Shrine. There was no availability of water except approximately five liters in a tin container, no electricity and the sanitary arrangements were absent, in that, the bathrooms of the nearby Hamming used by the inmates as latrine were full of human refuse (excreta) which could not be cleaned for want of water and there was an awful smell. This team of medical man examined the sick and gave emergency medical aid to them.

3. On the basis of the aforesaid report the Division Bench of the High Court passed another order dated 29.10.93, which is impugned by way of Special Leave Petition (NO. 17509/93) before us. By the impugned order the High Court came to the conclusion that the report of the Commissioner made out a prima facie case for the grant of an interim order and directed that 'the authorities shall not put any impediment in the supply of food to the inmates of Shrine by petitioner No.2, namely, "Jammu and Kashmir Muslim Buqaf Trust", to the 80 persons found in the Shrine. The food to be supplied would be checked by the authorities to ensure that no excess retrieval was smuggled into the Shrine. It was further directed that the State should ensure supply of water, electricity and treatment to the sick. For treatment Dr. S.M. Rafiq, CMO Srinagar, and use of the Commissioner was directed to visit the Shrine everyday in the evening between 10.00 and 12.00 and examine the sick and provide them the necessary treatment. The High Court further stated that if any sick person requires specialised treatment he may make a report to the Director of Health Services who shall thereupon ensure the required treatment. It is this order passed by the High Court which is questioned in this appeal.

4. We have heard learned Senior counsel, Mr. Kapil Sigal, for the state of Jammu and Kashmir, and the learned Senior council Dr. V.P. Trxude for the respondents. We have perused the averments in the petition as well as in the affidavit of Shri Umesh Narula, Addl. Secretary, Govt, of Jammu and Kashmir, I,Or, treatment, filed to day, we discussed the matter with both the learned Counsel and we are happy to say that their approach was that innocent hostages of the militants inside the Shrine who are themselves victims and are being held at ransom should not suffer on account of their forcible detention by the militants. But at the same time learned Counsel for the State submitted that the State is need with a serious and delicate problem that it has to take adequate measure to flush out the militants and to rescuer the hostages who are inside the Shrine. He pointed out that while the requirement of Article 21 of the Constitution as well as the requirements of satisfying the basic human rights is upper host in the minds of the state authorition, it cannot pursuit the supply of food of that quantity which would give the impression that the inmates in the shrine, both militants and others, are provided with a hearty feast. The learned Counsel submitted that if all the amenities required for a comfortable life are provided to the inmates of the Shrine it would be well nigh impossible for the authorities to flush out the militants. He, therefore, submitted that the State would have no objection to the supply of food which is essential for bars substance and that too to the innocent persons who are themselves hostages of the militants but not to the militants. Taking these facts into account and having regard to the suggestions made at the Bar on behalf of the State, we deem it appropriate to modify the order of the High Court as under :

1. The authorities will permit food packages prepared under their supervision comprising rice, dal, chapati/paratha or nan and one vegetarian or non-vegetarian item fit for consumption with chapati, etc., in the Shrine at the place suggested herein, the food will be served under the supervision of Mr. Wajahj Habibullah, Divisional Commissioner, whose name was approved by both sides, to small group of inmates whose number may be of 5 to 10 (or more if the authorities so approve) at the Iron Bar Fencing of the Shrine and at such other place as Shri habibullah may consider convenient. If there is nay difficulty in this behalf the parties may seek further directions from the High Court. The inmates may consume the food at the said site but will not be permitted to carry the same inside the Shrine, the quantity whereof to be determined by the authorities but which shall not be less than 1200 calories.

2. Drinking water will be supplied along with food in small plastic bottles.

3. In regard to the supply of electricity the authorities are anxious to avoid any misuse and therefore it is provided that either they may fit flood lights outside which would illuminate the area occupied by those within because there was as many as 21 sick persons in the Shrine and they may require attendance at night. The Arrangement made by the High Court in regard to visit of Dr. Rafiq, CMO Srinagar, will continue and that direction will remain in tact.

4. It is found form the report of the Commissioners that the toilets are filled with human excreta and give out an awful stink. In order to ensure that no epidemic spread it is directed that the authorities will have the toilets cleaned and provide that quantity of water which is sufficient to keep the toilets and lavatories clean. In this connection the authorities may take assistance of Dr. S.M. Rafiq who would be visiting the Shrine daily to ensure that sufficient cleanliness is maintained to avoid spread

of any epidemic.

5. In view of the above modification in the order of the High Court the contempt proceedings will not survive and the notices in that behalf will stand discharged. Any direction/clarification required in regard to this order will be obtained from the High Court.

6. Both the appeal will stand deposed of accordingly with no order as to costs.