

Court No. - 39

Case :- WRIT - C No. - 34349 of 2024

Petitioner :- Aastan-E-Aaliyah Saqlainiya Sharafatiya And Another

Respondent :- State Of U.P. And 9 Others

Counsel for Petitioner :- Kabeer Tiwari, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Vipin Chandra Dixit, J.

1. This is an urgent petition filed today. Special bench has been constituted for its hearing.

2. We have heard Sri Anil Tiwari learned Senior Counsel assisted by Sri Kabeer Tiwari learned counsel for the petitioners and Dr. D.K. Tiwari learned Additional Chief Standing Counsel for the State.

3. Upon hearing, at present it is not disputed that Hazrat Shah Mohammad Saqlain Miyan Huzoor the grand son of Hazrat Shah Sharafat Ali died on 20.10.2023. He is described as a Sufi Scholar who had substantial following in the region around district Bareilly. His first *Urs* is to be observed on 08th and 09th October, 2024, as per the religious practice prevalent amongst the Sufis.

4. In view of the fact that large crowd had emerged to attend his burial, the petitioners who are Secretaries of the organisations managing the Dargah of the deceased Sufi Scholar applied to the district administration Bareilly, on 09.9.2024 for permission to observe the first *Urs* of Hazrat Shah Mohammad Saqlain Miyan Huzoor on 8th and 9th October 2024 at the ground of Islamia Inter College, Civil Lines, Bareilly. On oral query, learned counsel for the petitioners states that the area of the said ground is about 20 acres.

5. The above application remained pending. Consequently, on 23.9.2024 further application was made by the petitioners seeking permission to observe that *Urs* on 8th and 9th October 2024. Same has been rejected vide order dated 03.10.2024. Said order is under challenge in this petition.

6. Perusal of the impugned order reveals that the permission sought has been denied on the grounds:

(i) Large congregation is expected to arise if permission is granted to observe the *Urs*.

(ii) A new practice may arise if such permission is granted.

(iii) Many Hindu and Muslim organisations have opposed the grant of permission sought.

(iv) Navratri festivities would commence on 03.10.2024 wherein many Durga Pooja Pandals would be set up in different parts of the city and Ramleela would also be enacted at various places.

(v) If *Urs* were allowed to be observed "*Chadron ka Juloos*" would be taken out accompanied with loud music.

(vi) Confrontation had occurred last month, between the followers of Ala Hazrat Dargah and Sharafat Miyan Dargah with respect to route to be taken for processions by those parties.

(vii) Instructions have been issued by the administration not to give any permission as may lead to new religious practices to be established.

(viii) According to the report submitted by the Deputy Superintendent of Police, Bareilly, the *Urs* if allowed to be observed would cause inconvenience to the students of Islamia Inter College.

7. Learned counsel for the petitioners would submit that in the first place *Urs* is a well accepted practice observed particularly by Sufis. It is observed on the first and other important death anniversaries of Sufi Scholars. As to the date to observe the first *Urs* of Hazrat Shah Mohammad Saqlain Miyan Huzoor, the same was not optional to the extent, the dates are governed by the religious observances and practices. Insofar as the respondents do not dispute the correctness of the fixation of that date, the observance of *Urs* on 08th and 09th October, 2024 is unavoidable to the followers of the departed Sufi Scholar.

8. As to the size of the congregation that may arise, it is strenuously urged that the same would not exceed 80,000-100,000 at any given point in time. Considering the size of the ground which is about 20 acres, the congregation would not spill over beyond the said ground. In fact, precisely for the reason that the congregation/assembly may not spill over on to the public roads and pathways/*Gullies* and such crowd may not assemble in or around the Dargah of the departed scholar, the *Urs* is proposed to be observed within the confines of the ground of Islamia Inter College.

9. According to the learned counsel for the petitioner, no specific or credible objection has been received from any organisation, by the district administration. The recital in the impugned order that may objections have been received is imaginary. In any case, the petitioners were never confronted with any objection that may have been received by the district administration.

10. He further states, since *Urs* is proposed to be observed within the confines of the 20 acre ground of Islamia Inter College, it may not offer any interference with the observance of Durga Pooja or

the conduct of Ramleela or any other religious activity. As to the objection that *Juloos*/procession would be taken out with loud music, it has been specifically stressed that no *Juloos*/procession is proposed to be taken out and no loud music is to be played, this being the first death anniversary of the departed scholar. Insofar as no procession is to be taken out and no function is proposed to be held in or around the Dargah of the departed scholar and further inasmuch as the entire function is proposed to be confined within the confines of the Islamia Inter College, the objection that the *Juloos*/procession would be taken out with loud music is also imaginary. The petitioners undertake to ensure that no such *Juloos*/procession is taken out and no loud music is to be played during observance of *Urs*.

11. As to the objection that a dispute had arisen between two groups, the same was only a petty occurrence. As noted in the impugned order, that dispute had arisen with respect to the route to be taken for the purpose of *Juloos*/procession. Here, no such *Juloos*/procession is proposed to be taken out and no permission is being sought for such procession on any public road.

12. As to the objection submitted by the Deputy Superintendent of Police the same is described to be wholly imaginary and unfounded as the institution Islamia Inter College has given its No-Objection in writing. That was already on the record of the respondent authorities.

13. On the other hand, Dr. D.K. Tiwari, learned Additional Chief Standing Counsel first prayed for time to obtain further instructions. In the alternative he would submit that new practice is being attempted to be introduced by means of the permission sought. If granted it will lead to a law and order situation. He

further states that in face of complaints received from various Hindu and Muslim organisations, permission has been rightly refused. Last, he has submitted that once permission is granted, the number of persons who may assemble to attend the *Urs* would never remain in the control of the petitioners, going by the large congregation that emerged at the time of burial of the Sufi Scholar last year. Once permitted unmanageable congregation would arise.

14. Having heard learned counsel for the parties and having perused the record, in the first place, we note that the observance of *Urs* would not be a new practice amongst the Sufis. The impugned order does not reason that Hazrat Shah Mohammad Saqlain Miyan Huzoor was not a Sufi Scholar or that he did not die on 20.10.2023. Arising therefrom it is also not disputed that his first *Urs* may be observed on 8th and 9th October, 2024 according to religious practices. To that extent, the City Magistrate, Bareilly may have erred in reading the application as one seeking to set a new religious practice.

15. Second, merely because that *Urs* observance would coincide with a religious festival, may also not be a ground to deny the believers or followers of Hazrat Shah Mohammad Saqlain Miyan Huzoor their right to observe their religious practice, during that period, in accordance with the law.

16. Third, as to the objection "*Chadron ka Juloos*" would be taken out accompanied with loud music played on public road, pathways/*Gullies* etc. the petitioners undertake that no such occurrence would take place. They are ready and willing to file their written undertaking before the City Magistrate, to that effect.

17. In any case, insofar as the petitioners further undertake to confine the observance of *Urs* within the boundaries of the 20 acre

land of Islamia Inter College that too peacefully, on two dates only namely, 08th and 09th October, 2024, the reasoning given in the impugned order that such occurrence may interfere with the observance of religious festivities of Durga Pooja and enactment of Ramleela may also not be sustainable, at this stage, as that aspect of the matter has also not been considered.

18. The objection arising from the occurrence involving certain disputes between two groups of the same religious denomination with respect to route to be taken at the time of their respective procession may also be not relevant in view of the undertaking that the petitioners are willing to furnish before the respondent authorities that no religious or other procession would be taken out and no music would be played and further no ceremony or function or congregation would be organised on 08th and 09th October 2024 at or around the Dargah of Hazrat Shah Mohammad Saqlain Miyan Huzoor.

19. The objection raised by the Deputy Superintendent of Police, Bareilly with respect to inconvenience to the students of the college, may be wholly imaginary inasmuch as that college has given its No-Objection to the petitioners to observe the *Urs* on its ground. Thus, it was never open to the police authorities or the district administration to imagine that objection on behalf of the students.

20. At present it also appears, neither details of any specific complaint received by the district administration from any quarter has been disclosed in the impugned order and in any case even if any such complaint has been received, no disclosure has been made of such fact to the petitioners and no opportunity has been given to the petitioners to meet that objection.

21. In view of the above, though we are not recording our firm findings on facts with respect to the objections raised, *prima facie*, on the strength of the face of the impugned order itself it appears that the order has been passed hurriedly, without due application of mind to the relevant aspects and in any case without hearing the petitioners. In view of the objections raised in the impugned order, the City Magistrate may have called the petitioners and heard them in person during which course they may have furnished the undertakings as they have proposed in these proceedings, before us and clarified the facts.

22. Also, we find that the *Urs* is proposed to be observed on 8th and 9th October 2024, which is not far. In view of the deficiencies in the procedure followed by the City Magistrate in passing the impugned order, we find no useful purpose may be served in acceding to the prayer made by the learned Additional Chief Standing Counsel at this stage to obtain further instructions in the matter. We are not the administrative authorities that may grant or refuse to grant the permission. That function is vested in the administrative authorities. Suffice to note that the decision making of the administrative authorities is found flawed and deficient to the extent we have noted above.

23. Therefore, the impugned order is set aside. Matter is remitted to the City Magistrate Bareilly to make available to the petitioners all objections that it may have received to the proposed observance of *Urs* on 08th and 09th October 2024, not later than 11.00 a.m., tomorrow. The petitioners may thereupon appear before the City Magistrate by 01.00 p.m. alongwith all their undertakings and replies, if any. For that purpose, they are permitted to be represented through their lawyers. Learned counsel for the petitioners undertake that only authorised representatives may

appear who may not exceed 10 persons in all, before the City Magistrate. No crowd shall be garnered in that regard. The City Magistrate may thereupon pass a fresh reasoned order keeping in mind our observations made above, by 6.00 p.m..

24. The petitioners further undertake, permission if granted, would strictly be abided especially with respect to proposed timings as also other conditions that may be imposed by the City Magistrate. Let such order be communicated to the petitioners by 8.00 p.m. tomorrow.

25. A copy of this order be made available to Dr. D.K. Tiwari learned Additional Chief Standing Counsel, during the course of the day.

26. The writ petition is accordingly **disposed of**.

Order Date :- 5.10.2024

Faraz

(Vipin Chandra Dixit,J.) (S. D. Singh, J.)