Syedna Mohamed Burhanuddin v. Charity Commissio
Gujarat High Court
Apr 23, 1970

Smart Summary

Factual and Procedural Background

The petition was filed by the Dai-ul-Mutlaq, the religious head and sole trustee of the Dawoodi Bohra community's Dawat property trusts, challenging directions issued by the Charity

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SYEDNA MOHAMED BURHANUDDIN V. CHARITY COMMISSIONER

B.J.Divan, S.H.Sheth:-

(1) The dai - ul - mutlaq of the dawoodi bohra community has filed this petition challenging certain directions issued to him by the charity commissioner gujarat state 1 respondent to the petition under section 41a of the bombay public trust act 1950 in the matter of dawat property trusts of which he is the sole trustee. He also challenges the vires of the said section 41a on the ground that it violates articles 25 and 26 of the constitution.

(4) Dai - ul - mutlaq is the head of the sect and trustee of its property. As the religious leader of the dawoodi bohra community he enjoys ecclesiastical powers. As the sole trustee of the property of the sect he has exclusive right to manage and administer it. Its entire management and administration is under his sole direction and control. The status and powers of dai ul - mutlaq have been consid-

sardar syedna taher saifuddin saheb v. The state of bombay - (1962) suppl. 2 s. C. R. 496 - the supreme court has considered them. It is not necessary for us to reproduce here what has been recorded in those two decisions. We however shall be bearing them in mind while examining the contentions which have been raised before us.

(6) In these circumstances the gallas are placed at tombs mosques or musafarkhanas only under the specific directions and authority of the dai - ul - mutlaq. He alone prescribes the mode and manner of administering the gallas the offerings and all matters connected with them. Sole management of these offerings by the dai - ul - mutlaq in his absolute discretion is a religious tenet of this community and is therefore an essential and integral part of the religion of this community.

(8) These gallas are in reality iron safes. The dai - ul - mutlaq issues directions roughly at the end of every six months to the amils or managers at different places to open the gallas and it has been a long standing practice that the gallas are opened in the presence of amil or manager and some leading and respectable persons of the community. The collections which these gallas yield are then checked and entered in the book specially maintained for the purpose and the persons who are present there sign the entries and endorse the correctness of the statements made therein. Proper accounts of these offerings have always been maintained. It is the petitioners case that all these details relating to the administration of gallas and the offerings are matters of religion of the dawoodi bohra community. The charity commissioner therefore cannot interfere with the sole and absolute discretion of the dai - ul - mutlaq in the matters of placing sealing and opening of the gallas and accounting and application of the collections yielded by them. All these things constitute an essential and integral part of the religion of the dawoodi bohra community.

(9) The charity commissioner respondent no. 1 herein in exercise of the powers conferred upon him by section 4ia of the said act issued to the original petitioner in march 1965 the following directions after having stated in the opening paragraph thereof that he had received several complaints in connection with the income of the gallas and about the opening and sealing of such gallas and that therefore it was expedient in the interests of the public trust to regulate the opening and sealing of the gallas and to regulate the crediting of the offerings received in cash or in kind in the regular account books of a public trust to ensure that the income realized from the gallas or iron safe etc. Is properly accounted for and is duly appropriated and applied to the objects and for the purposes of the public trust. The actual directions issued by him to the trustee - dai - ul - mutlaq are as follows.

(i). They shall seal the gallas or the iron safes etc. Within 15 days of the receipt of this direction in the presence of the officer of - this charity organization and they and the officer of the charity organization will put their signatures and date on the seal. The trustees shall inform of the said date to the charity commissioner quite in advance to enable the charity commissioner to depute officer of this organization to remain present at the time and place mentioned in the said intimation of the trustees.

(iii). The said galla or the iron safe etc. Will then be reopened after 6 months which date will be fixed by the trustees in consultation with the officer of the charity organization when the galla was last sealed. The same procedure will be followed for opening and sealing of the galla and for crediting the offerings received in cash or kind from the galla as stated above in these directions. The persons interested in this trust will be allowed to remain present at the time of opening and sealing of galla. For further opening and sealing of gallas or iron safes etc. As stated above the same procedure as laid down above is required to

Though the dai - ul - mutlaq is the sole trustee the charity commissioner it may be noted has issued a plural expression to describe him. Therefore wherever he was required to write the trustee he has used the expression the trustees. Similarly he has used they in place of he.

(10) The petitioner was required to intimate to the charity commissioner compliance with these directions by 2 9/03/1965 under the pain of prosecution under section 67 of the said act. The aforesaid directions were issued to the petitioner in respect of dawat properties trust relating to saiyadna kutbuddin sahib saheb saraspur ahmedabad and saiydi maulai adam saheb suleman kankaria road ahmedabad. Identical directions were issued by the charity commissioner to the petitioner in respect of dawat properties trust relating to (1) saiyadi mulla wahedalibhai mulla ibrahim saheb (2) (a) saiyadi lukamanji habibullaha sabeb and (b) saiyadna abedali saifuddin saheb and (3) (a) saiyedna yusuf nazmuddin saheb and (b) saiyedna mohamed buhanudin saheb at surat and also in respect of dawat properties trust relating to sayani va maulai musanji bin taj saheb durgah and musafarkhana trust at baroda.

(11) Correspondence between the petitioners attorneys and the charity commissioner followed these directions. The material facts emerging out of the correspondence are that the petitioner challenged the impugned directions as ultra vires articles 25 and 26 of the constitution that he requested the charity commissioner to furnish him certified copies of the complaints received by him and referred to in the impugned directions and that the charity commissioner refused to furnish him those certified copies on the ground that they were not a part of regular judicial proceedings and that the impugned directions were issued under office noting certified copies of which could not be granted.

(1) section 41a of the bombay public trusts act 1950 in so far as it applies to trusts of religious denominations is ultra vires articles 25 and 26 of the constitution.

(3) such directions cannot be issued without hearing the party affected thereby either on the ground of principles of natural justice if they are quasi - judicial or on the ground of principles of fair play if they are purely executive or administrative in character.

(13) We now proceed to examine the first contention raised by mr. Sen. Article 25 guarantees to all persons freedom of conscience and the right freely to profess practice and propagate religion while article 26 guarantees to religious denominations freedom to manage their religious affairs. Therefore whereas article 25 defines the bounds of freedom of religion for individuals article 26 defines them for religious denominations. Article 26 therefore can he brought into play only in case of a religious denomination. The dawoodi bohra community is indisputably such a religious denomination and it can invoke article 26 as was done in sardar syedna taher saifuddin saheb v. The state of bombay reported in a. I. R. (1962) supreme court 853.

(14) **clause (1) of article 25** guarantees to all persons freedom of conscience and the right to freely profess practice and propagate religion. It has been subjected to two fetters. Firstly it is subject to public order morality and health. Secondly it is subject to the other provisions of part iii of the constitution. Clause (2) thereof carves out an exception to article 25 and saves the operation of any existing law and the power of the state to make any law (a) regulating or restricting any economic financial political or other secular activity which may be associated with religious practice. And (b) providing for social welfare and reform or the throwing open of hindu religious institutions of a public character to all classes and sections of hindus. For the purpose of this case it is not necessary to refer to the explanation to article 25.

(16) Having noted the provisions of articles 25 and 26 let us now turn to section 41a and analyse it before we proceed to examine the arguments advanced by

mr. Sen. Section 41a has been enacted by the gujarat legislature. It was inserted in the said act in 1962. It provides as follows.

(1) subject to the provisions of this act the charity commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust. (2) it shall be the duty of every such trustee and person to comply with a direction issued to him under sub - section (1).

Sub - section (1) which is material for the purpose of this case empowers the charity commissioner to issue directions only for the following purposes and no others.

(a) proper administration of a public trust

(b) proper accounting of its income

PKMKB