

Court No. - 32

AFR

Order reserved on 28.08.2020

Order delivered on 29.08.2020

Case :- PUBLIC INTEREST LITIGATION (PIL) No. -
840 of 2020

Petitioner :- Roshan Khan And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- M J Akhtar, Imran Khan, Viqar
Mehdi Zaidi (Senior Advocate)

Counsel for Respondent :- C.S.C.

With

Case:- PUBLIC INTEREST LITIGATION (PIL) No. -
841 of 2020

Petitioner:- Japhar Abbas

Respondent:- Union Of India And 2 Others

Counsel for Petitioner:- Sayyed Kashif Abbas Rizvi,
Joun Abbas

Counsel for Respondent:- A.S.G.I., A.N.Rai, C.S.C.

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. -
842 of 2020

Petitioner:- Syed Zeeshan Mehdi

Respondent:- Principal Secretary And 2 Others

Counsel for Petitioner:- Mashhood Abbas, Sayyed
Kashif Abbas Rizvi

Counsel for Respondent :- C.S.C.

With

Case:- PUBLIC INTEREST LITIGATION (PIL) No. - 848 of 2020

Petitioner:- Syed Shabbir Shaukat Abdi Alias Shaukat Bharti And 3 Others

Respondent:- State Of U.P. And 3 Others

Counsel for Petitioner:- Charlie Prakash, Kamal Krishna Roy

Counsel for Respondent:- C.S.C.

Hon'ble Shashi Kant Gupta,J.

Hon'ble Shamim Ahmed,J.

(Delivered by Hon'ble Shashi Kant Gupta, J.)

1. Since the controversy raised in all the aforesaid Writ Petitions is identical, they are being decided by a common order, treating Public Interest Litigation (PIL) No. 840 of 2020 (Roshan Khan and Others Versus State of U.P. and others) as the leading case.

2. In sum and substance, the Petitioners seek to challenge the Government Orders dated 10.08.2020 and 23.08.2020 passed by the State Government, in so far as they prohibit

the petitioners and members of their community, from taking out the Moharram Processions, and further seek the issuance of a direction to the Respondent Authorities to permit them to perform religious mourning rituals/practice connected with Moharram, during the period of ten days i.e. up to 30.08.2020, amid the pandemic restrictions in the State of Uttar Pradesh.

3. The main thrust of the argument of the learned counsel for the petitioners is that Government Orders issued by State of Uttar Pradesh dated 10.08.2020 and 23.08.2020 are discriminatory in nature, insofar as they provide for a complete ban in taking out the Moharram processions. It has been further submitted that such guidelines are discriminatory, targeting only one community in particular. In support of his contention, he has referred to the Guidelines dated 29.07.2020, issued by the Government of India, Ministry of Home Affairs as well as Government Orders issued by the State Government dated 10.08.2020 as well as 23.08.2020. Relevant

portions of Government Orders dated 10.08.2020 and 23.08.2020 are quoted herein below:

Guidelines For Phased Re-opening (Unlock 3)

[As per Ministry of Home Affairs (MHA) Order No. 40-3/2020-DM-1(A) dated 29th July 2020]

1. Activities Permitted during Unlock 3 period outside the Containment Zones.

In Areas outside the Containment Zones, All activities will be permitted, except the following:

i

v. Social/political/sports/entertainment/ academic cultural/religious functions and other large congregations.

... ..

5. States/UTs based on their assessment of the situations may prohibit certain activities outside the containment zones or impose such restrictions as deemed necessary.

...

Government Order dated 10.08.2020

सेवा मे,

समस्त "लाभ" कारी वरिष्ठ पत्रिका अीक्षक /पत्रिका
अीक्षक, उ०प्र०।

परिचालक समस्त "नैतिक अपर पत्रिका
महानिदेशक, उ०प्र०। अपर पत्रिका
महानिदेशक(ए०टी०एस०) उ०प्र०।

समस्त मण्डलगत /पत्रिका महानिरीक्षक/पत्रिका
महानिरीक्षक(परिक्षेत्र
) उप

उ०प्र०। अपर पत्रिका महानिदेशक वे, उ०प्र०।
, कानून एवं
व्यवस्था
/अभि- सूचना/सुरक्षा/रले
पत्रिका कमिश्नर,
लखनऊ/गौतमबुद्ध नगर।

समस्त डी०आर०एम०, रलवे, उ०प्र०।

एबन निदेशक, उ०प्र० राज्‍य सड़क
परिवहन निगम, लखनऊ।

पत्रिका महानिदेशक, उत्तर प्रदेश, लखनऊ।
सूचनाथ<: अपर मुख्य सचिव, मा० मुख्यमंत्री
"ी, उ०प्र०शासन। स्टाफ ऑफिसर, मुख्य सचिव,
उ०प्र० शासन।

प्रेषक:- गृह वि- ाग, उत्तर प्रदेश, लखनऊ।

संख्या:- 68/K/VI-सांनिप्रा-20-(3)/2005
लखनऊ: दिनांक 10 अगस्त, 2020

माह अगस्त, 2020 में पडने वाले त्योहार यथा
"नमस्ती, गणेश

चतुर्थ। एवं मोहम< "ी किक वि- न तिथियों में आयोजित होंगे, को

गृह मंत्रालय,
- भारत सरकार की कोविड-19 की गाईडलाइन्स का
पालन करते हुए सादगी से मनाया "ाए। इन
त्योहारों पर कोई -ी "ुलूस, झाँकी न
निर्काली "ाए एवं किसी -ी दशा में -ीड़ एकत्रित
न हो पाए।

वतमान परिस्थितियों में सुरक्षा स्थिति के
दृष्टिगत सम्-ावित खतरों से सतक< रहने की
आवश्यकता है। स.ी ामिक स्थलों विशेषकर मथुरा
स्थित श्रीकृष्ण "न्म-मि, श्री राम"न्म -मि,
अयोध्या पर असामा"िक तत्वों/आतंकवादियों एवं
समा" में अस्थिरता फैलाने वाले व्यक्तियों पर
सतक< दृष्टि रखने की आवश्यकता है।

इस अर्वा में असामा"िक तत्वों द्वारा कानून -व्यवस्था को
-ंग करने का प्रयास किया "ा सकता है एवं आतंकवादी
नागरिकों को नुकसान पहुंचा सकते हैं। अतः उक्त मौकों पर
सतक< रहने की आवश्यकता है।

वाणिज्य परिस्थितियों में सावधानी हेतु निम्न निदेश जारी
किये जा रहे हैं:-

1. राज्य सरकार द्वारा समय-समय पर कोविड-19 महामारी के रोकथाम हेतु निदेश जारी किए गए हैं, जिसका कड़ाई से अनुपालन सुनिश्चित कराया जाए।
2. कोविड-19 में नमस्कार के मौके पर किसी को भी पुलिस/झांकी की अनुमति नहीं दी जाए।
3. गणेश चतुर्थी के मौके पर कोई भी पंडाल-पंडाल में कोई भी मत्त स्थापित न की जाए और न ही कोई शोभा-यात्रा की अनुमति दी जाए। स.ी शूदालुओं को प्रेरित किया जाए कि उक्त त्योहार को अपने-अपने घरों पर ही मनायें।
4. इसी प्रकार मोहरम के अवसर पर किसी प्रकार के पुलिस/ताय्या की अनुमति न दी जाए एवं म-गुरुओं से संवाद स्थापित कर कोविड-19 के दिशा-निदेशों का अनुपालन कराएँ।
5. ऐसे समस्त काय-कर्मों की पीस कमेटी की मीटिंग कराते हुए स.ी सामाजिक एवं म-गुरुओं से व्यवस्था बनाये रखने में सहयोग लिया जाए।
6. संवेदनशील/साम्प्रदायिक एवं कन्टेनमेंट जोन में पर्याप्त संख्या में पुलिस बल की तैनाती की जाए।
7. किसी भी आत्मक स्थल पर लोगों की भीड़ एकत्र न होने पाए, यह सुनिश्चित किया जाए।
8. त्योहारों पर सावधानिक स्थल यथा बस स्टेशन, रेलवे स्टेशन और संवेदनशील स्थान/आत्मक स्थल पर यथावश्यक व्यवस्थाये/चेकिंग कराई जाए।

Government Order dated 23.08.2020

प्रबन्ध निदेशक, उ०पर० राज्य सड़क परिवहन निगम, लखनऊ। पुलिस महानिदेशक, उत्तर प्रदेश, लखनऊ।

सूचनाथ- अपर मुख्य सचिव, मा० मुख्यमंत्री, उत्तर प्रदेश शासन, लखनऊ। स्टाफ ऑफिसर, मुख्य सचिव, उत्तर प्रदेश शासन, लखनऊ।

प्रेषकः गृह विभाग उत्तर प्रदेश शासन, लखनऊ।

संख्या-700/700/2020 के/छः-साजिपर-2020

लखनऊ: दिनांक-23

अगस्त, 2020

कृपया माह अगस्त, 2020 में पड़ने वाले त्यौहारों को गृह मंत्रालय, भारत सरकार की कोविड-19 की गाइड लाइन्स का पालन करते हुये सादगी से मनाये जाने वाले त्यौहारों पर कोई भी जुल्म, झांकी निकलाने एवं किसी भी दशा में जुड़ एकत्र न होने के संबंध में वस्तुतः दशा में नद Z शी नगलत किये गये है।

2. उक्त क्रम में वतमान परिस्थितियों के दृष्टिगत प्रदेश के सामाजिक स्थलों विशेषकर शी कृष्ण नम मथुरा, शी राम नम म तीर्थ, अयोध्या, शी काशी वैश्वनाथ मन्दिर मन्दिर वाराणसी एवं धतहा संक स्थल ता महल आगरा की सुरक्षा व्यवस्था तथा कोविड-19 महामारी के संबंध में भारत सरकार नई दिल्ली एवं उत्तर प्रदेश शासन द्वारा समय-समय पर नगलत दशा में नद Z शी के आलोक में असामान्य क तत्वो/आतंकवादो एवं समा में स्थितरता फे लाने वाले व्यक्तियों पर सतक दृष्टि रखने की आवश्यकता है।

3. उक्त के दृष्टिगत आगामी अव में असामान्य क तत्वो द्वारा कानून व्यवस्था एवं समरदायिक साहाद के को नग कराने की पर्याप्त किये जाने तथा आतंकवादो द्वारा सामान्य नागरिकों को नुकसान पहुंचाने की संभावना तथा कोविड -19 महामारी के प्रभाव को कम करने के लिये नम निलखत नद Z शी दये ा रहे है:-
दनांक -30 सतम्बर 2020 तक कोई भी सावक नक

समारोह, मक उत्सव एवं रा नैतिक आन्दोलन एवं सायये आयो त नही होगी।

सावक नक रूप से मतियों , ताया एवं अलग स्थापित नही किये ायेगे।

सुी प्रकार जुल्म एवं झांकी पर तबन त होगी, अथात जुल्म एवं झांकी नही निकाला सकत है।
मत्या, ताया एवं अलग की स्थापना अपने-अपने घरों में किये ाने पर किसी प्रकार की रोक नही होगी।
कोविड-19 महामारी के दृष्टिगत उत्तर प्रदेश शासन द्वारा समय-समय पर नगलत दशा में नद Z शी की कडाई से अनुपालन सुनिधित करायो ाये।

4. Learned counsels for the petitioners have further submitted that Hon'ble Apex Court had allowed the devotees access to the places of worship and permitted the Annual Chariot Procession at the Jagganath Temple, Puri besides recently permitting the offer of Paryushan prayers in three Jain Temples in Mumbai. It is further submitted that the prohibition is arbitrary especially when the proposed rituals can be regulated by prescribing

reasonable restrictions, like limiting the number of people to carry out the Taziyas till Karbala for burial. It was submitted that in this way neither there would be transmission of Covid-19 infections nor would any chaos be created.

5. Per contra, learned Additional Chief Standing Counsel appearing on behalf of the State has strongly opposed the contention so made by the learned counsel for the petitioners. It was vehemently argued by him that the aforesaid Government Orders are in no way discriminatory in nature. While referring to the Government Orders dated 10.08.2020 and 23.08.2020, it was argued that restrictions have also been imposed upon the Hindu community and they have been prohibited from raising any Pooja Pandals or installing any statues/idols or even taking out processions during the festival of Ganesh Chaturthi and the devotees were encouraged to celebrate the festival in their respective homes. Likewise, the Muslim community has also been restricted from taking out any Taziyas or processions, in

order to prevent the spread of Covid-19. He further submitted that restrictions have been imposed on all the communities.

6. Learned Standing Counsel also referred Clause 5 of the Notification dated 29.07.2020 of the Central Government, wherein the States/Union Territories (UTs) have been duly empowered to prohibit certain activities outside the Containment Zones or impose such restrictions as deemed necessary, based on their assessment of the situation.

He further submitted that the State Government considering the rapid surge of Covid-19 cases in the State of Uttar Pradesh, issued Guidelines on 10.08.2020, directing all the concerned Officers of the State to prohibit any kind of procession, falling in the month of August, 2020 for example Janmashtami, Ganesh Chaturthi and Morahham, as such, the State Government has imposed restrictions/ban on any kind of procession, across all communities, without any discrimination. He

further submitted that the drastic step of prohibition has been taken for all communities, on account of the extraordinary situation created due to the pandemic and, therefore, in the given circumstances the total prohibition is reasonable and not violative of the fundamental rights of the petitioners or members of the any community, as sought to be alleged.

It was further argued that in case the petitioners are permitted to take out processions or Taziyas for burial at the Karbala, it may lead to chaos and an uncontrollable surge of the pandemic.

7. Learned Standing Counsel further stated that the Division Bench of this Court in Public Interest Litigation No. 749 of 2020 (Dr. Mohammad Ayub Versus State of U.P. and others) vide its judgment dated 29.07.2020 had dismissed the writ petition, wherein a relief was sought for relaxing the guidelines for the festival of Eid-ul-Adha. He further referred to the decision of the Hon'ble Apex

Court in the case of **Odisha Vikash Parishad Vs. Union**

of India and others, wherein in paragraph no. 9 of the judgment the Hon'ble Apex Court has observed as follows:

“(9) The bare minimum number of people shall be allowed by the Committee to participate in the rituals and in the Rath Yatra. We take note of the fact that the State of Orissa has a good record of having controlled the pandemic with a very little loss of life. We see no reason why the same attitude of care and caution should not be applied to the Rath Yatra.”

8. Heard Mr. V.M. Zaidi, Senior Advocate, Mr. S.F.A. Naqvi, Senior Advocate, Mr. S.K.A. Rizvi, Mr. K.K. Roy, learned counsels for the petitioners, Mr. S.P. Singh, learned Addl. Solicitor General of India assisted by Mr. A.N. Rai, Counsel for the Union of India, Mr. Ramanand Pandey, and learned Additional Chief Standing Counsel, appearing on behalf of the State and perused the material available on record, particularly Notification dated 29.07.2020 issued by Central Government and Notification dated 10.08.2020 and 23.08.2020 issued by the State Government.

9. It is notable that earlier a writ petition, filed by **Syed Kalbe Jawad i.e. Writ Petition (Civil) No. 924 of 2020**,

before the Apex Court which was dismissed as withdrawn with liberty to approach the Allahabad High Court on 27.08.2020 and no relief was granted by the Apex Court in the aforesaid matter.

10. That in view of the aforesaid contentions, the issues that arise for determination before this Court are:

(1) Whether the impugned Government Orders are arbitrary and discriminatory inasmuch as they seek to target a particular community?

(2) Whether the complete prohibition on carrying out processions or Taziyas on 30.08.2020, violates the Fundamental Right to practice and profess religion guaranteed under Part III of the Constitution of India and whether the rituals ought to be permitted by imposition of reasonable restrictions instead?

(3) Whether in view of the prevalent situation of the pandemic, the imposition of complete prohibition from carrying out processions or Taziyas on 30.08.2020, is reasonable and justified?

11. With regard to the **first issue** it may be noted that the main thrust of the argument of the learned counsel for the petitioners has been that restrictions imposed by the State Government are discriminatory in nature and only one community has been targeted in the aforesaid Government Order. This argument advanced by the learned counsel for the petitioner has no legs to stand on and appears to be patently misconceived.

12. A bare perusal of the Notifications dated 10.08.2020 and 23.08.2020, issued by the State Government, clearly indicates that the same yardstick has been adopted for all religious communities and they have been restricted from carrying on any processions or Jhankis or activities that have a danger of large congregations that may lead to a spread of the pandemic- Covid-19. Regard may be had to Clause (2) of the Notification dated 10.08.2020, that clearly indicates that no processions or Jhankis have been permitted during the Janmastami festival. Similarly, Clause (3) of the said Notification also indicates that

during the Festival for Ganesh Chaturthi too, the Hindu community has been prohibited from erecting any Pooja Pandals and from installing any statues/idols. Likewise, the Muslim community has been prohibited from taking out processions/Tazias during Moharram.

13. Thus, it is clear that in view of controlling the spread of Covid-19, the State Government has imposed a complete prohibition on all religion activities that may involve a large conglomeration of people, across communities, and as such the government orders are not discriminatory nor do they target any Community, in particular.

14. Since the Second and the Third issues are interrelated, they are being dealt with together. The contention of the learned counsel for the petitioners is that the total prohibition imposed on the processions and carrying out Tazias is completely arbitrary especially when reasonable restrictions could easily be imposed, keeping in mind the Guidelines, issued by the Government for prevention of

spread of Covid-19. It is therefore accepted that with the prevalent rate of transmission in Uttar Pradesh, large processions cannot be permitted and certain restrictions are necessary for controlling the spread of the pandemic.

15. It has further been sought to be urged that even the Hon'ble Apex Court had allowed the devotees to access the place of worship and permitted the Annual Chariot procession (Rath Yatra) of Jagganath Temple, Puri and further permitted to offer Paryushan prayer in three Jain Temples in Mumbai, then the petitioners, too must be permitted to carry out procession during Moharram.

16. In this regard it may be noted that the Apex Court had not passed any general directions, but the permission to carry out the Annual Chariot Procession (Rath Yatra), pertained to a specific place, Puri, and only from one point to another. Further, the intensity of Covid-19 spread in Orissa, was also duly noted by the Hon'ble Apex Court, while granting the permission.

17. However, the present case, is clearly distinguishable from the aforesaid cases since it pertains to the entire State of Uttar Pradesh and is not confined to one or a few districts. In this regard it may be noted that it would be discriminatory to grant permission to certain districts while prohibiting the others. Further the intensity of the spread of the contagion in the State is rising at an alarming rate.

18. That we have also given serious thought to working out some mechanism in order to permit the processions for Taziyas burials, while imposing certain restrictions. However, no such workable mechanism could be suggested even by the Counsels for the Petitioners.

19. It may be noted that Taziyas are a replica of the tomb of Husain, the martyred grandson of Prophet Muhammad, and the same is taken to be buried to a burial ground (Karbala) by innumerable groups as well as by individuals on the 10th day of the Muharram or the day

of Ashura. It is also a custom that any person who
makes a

Taziya must take it himself and bury it at the designated burial ground. Many individuals even seek to bury the Taziyas as a fulfilment of their Vows.

20. Therefore there is no doubt that the burial of the Taziyas at the burial ground is a solemn and important part of custom of Muharram. However, it is necessary to note that every locality/colony has Taziyas, besides various individual families, all of whom have to get to the burial ground, since the burial of Taziyas cannot be deputed but has to be done personally. There is no mechanism fathomable, by the means of which it can be ensured that all such persons be permitted to take the Taziyas to the burial ground in a single day, while avoiding the risk of transmission of the contagion or following basic rules of social distancing, which are an absolute necessity in these unprecedented times. Another important aspect of the matter is that no restriction can be placed only on certain groups or individuals while permitting the others, since that would clearly amount to

forming a class within a class, which would be arbitrary and discriminatory.

21. Further, at this juncture regard may be had to the intensity of Covid-19 transmission in the State of Uttar Pradesh, which is alarmingly high. It may be noted that the Uttar Pradesh is the most populated State in the Country and is at the Stage of Community Transmission on account of which it has quickly reached the 4th spot amongst the States in the number of active cases, with each passing day, the highest number of cases being reported. Further, this Court in P.I.L. No. 574 of 2020, while taking cognizance of the rise in intensity of the rise of Covid-19 cases across the state, directed the State Government vide order dated 25.08.2020, to present an action-plan to contain the contagion. The Court also observed that any step lesser than a lock down would be of no help.

22. Therefore, although the complete prohibition of practices which are essential to our religions is an

extraordinary measure, it is very much in proportion to the unprecedented situation we are faced with, owing to the pandemic. The right to practise and propagate religion has been made subject to public order, morality **and** **health**, even under the Constitution of India.

23. The Pandemic is spreading like wild fire, despite harsh lockdowns. We are standing naked at the shore and don't know when the huge wave of Corona may sweep us into the deep sea. We really don't know what tomorrow holds. Adoption of safe practices are needed to win over the health crisis. We need to understand the Art of living with the Corona Virus.

24. Therefore it is with a heavy heart that we hold that in these testing times, it is not possible to lift the prohibition by providing any guidelines for regulating the mourning rituals/practice connected with the 10th day of Moharram. We must hope and trust that God would perceive our restraint in our customary practices, not as a slight, but as an act of compassion for our brothers and sisters and give

us the opportunity to celebrate all festivals with greater faith and fervour in future. It is only together with co-operation, understanding and support, we as 'One Nation', can emerge stronger from these treacherous times and overcome this season of darkness.

25. In view of the above, we do not see justification to issue any directions in the matter. The present Public Interest Litigation as well as Public Interest Litigation Nos. 841 of 2020, 842 of 2020 and 848 of 2020 are accordingly, dismissed.

Order Date:- 29.8.2020
Arun