

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Writ Petition No.13608 of 2020

ORDER:

The present writ petition is filed under Article 226 of the Constitution of India for issue of a Writ of Mandamus to direct the respondents, more particularly 2nd respondent to issue permission for carrying on the procession known as "Bibika Alam Juloos" starting from Alawa Bibi and passing through Dabeerpura, Etebar Chowk, Kotla Ali Jah, Charminar, Gulzar House, Panjesha, Mir Alam Mandi, Darulshefa with ending point at Almas Mosque at Chaderghat.

2. The above writ petition is taken up for hearing today i.e., 26.08.2020, through Video Conferencing and with the consent of the parties the matter is being disposed off.

3. Heard Sri P. Panduranga Rao, learned counsel for the petitioner and Sri Harender Prashad, learned Special Government Pleader attached to the office of Advocate General, along with the Assistant Government Pleader for Home.

4. The learned counsel for the petitioner submits that the holding of a procession with ten camels, one horse and one elephant with jhula of Hazrath Ali Asghar followed by Alams on the tenth day of Muharram is an age old religious tradition being performed for last 442 years, and this year it falls on 30.08.2020, when the petitioner intend to perform such religious ritual, and sought for permission from the 2nd respondent authority by making an application on 19.08.2020. It is only upon the 2nd respondent authority granting permission, the other respondent authorities would permit the petitioner society to arrange for

bringing the required animals. As no permission is granted by the 2nd respondent authority till date, the petitioner is constrained to move this court seeking a direction to the respondent authorities to accord such permission. The learned counsel would further submit that being a religious tradition in vogue for time immemorial, the respondent authorities cannot interfere and any such obstruction would amount to interfering with the freedom of right to profess religion, as enshrined in Article 25 of the Constitution of India. Learned Counsel for the petitioner has also drawn attention of this court to the order passed by the Hon'ble Supreme Court in W.P. (Civil) No. 571 of 2020, dated 22.06.2020 in connection with Sri Jagannath Rath yatra at Puri in the State of Odisha. Thus, learned counsel submits that a direction be issued to the 2nd respondent authority for allowing the petitioner to proceed with the above procession through the route as mentioned above.

5. The learned Special Government Pleader by drawing the attention of this Court to the orders passed by the Hon'ble Supreme Court of India in Writ Petition (Civil) No.859 of 2020, dated 25.08.2020 (a day before), would submit that in a writ petition filed before the Hon'ble Supreme Court with a similar relief, the Constitutional Bench of the Hon'ble Supreme Court was not inclined to grant interim relief for conduct of procession on account of Muharram in view of pandemic Covid-19 and only directed the petitioners therein to implead 28 States and posted the matter after four weeks. Learned Special GP has forwarded to this court by email, a copy of the interim order passed by the Hon'ble Supreme Court in the above Writ petition.

6. The learned Special Government Pleader would further submit that this Court while considering a similar request made in Writ Petition No.10295 of 2020, dated 16.07.2020 for conduct of procession of "Ghattams" also a religious practice, on an elephant, by taking note of the order of the Hon'ble Supreme Court in W.P. (Civil) No. 571 of 2020, rejected the said request made by a reasoned order, keeping in view the present pandemic covid-19 situation.

7. At this stage, the learned counsel for the petitioner sought time in the morning session to verify as to whether the matter before the Hon'ble Supreme Court related to "Moharrum", as submitted by the learned Special Government Pleader. When the matter is taken up in the fore noon session of the court after being passed over in the morning as the last matter of the day, the learned counsel for the petitioner, submitted that in the event this Court is not inclined to pass order either granting permission by itself or directing the 2nd respondent authority to grant such permission, as the matter is pending consideration before the Hon'ble Supreme Court and the Apex court not granting permission for conduct of procession, and also in view of the guidelines issued by the Ministry of Home Affairs (MoHA) prohibiting such processions, this Court may direct the respondent authorities not to interfere with the conduct of religious rituals within the premises of religious places.

8. The learned Special Government Pleader would submit that by virtue of the guidelines issued by MoHA, by its order dated 30.05.2020 as amended by guidelines of Unlock-3 dated 29.07.2020 for phased re-opening whereunder various activities

other than those specified in clause 1 are permitted outside the Containment zones. Learned Special Government Pleader would submit that as there is no restriction with regard to conduct of religious activities within a religious place / place of worship, the respondent police authorities would not interfere, if the petitioners' carry on such activities within the premises of religious place, subject to petitioner ensuring adherence to the MHA guidelines and giving an intimation to the jurisdictional police authorities.

9. Having regard to the submissions made as above, though right to profess religion is a fundamental right, the same is not an absolute right, as the opening words of the Article itself makes it clear that such right being "subject to public order, morality and health" apart from being subjected to restriction under Article 25(2) of Constitution of India, which includes operation of any law. As the pandemic Covid-19 concerns with health and the Government having invoked the provisions of Epidemic Diseases Act, 1897 and Disaster Management Act, 2005, and placing restriction on certain activities, which includes processions, to stop the spread of virus, the restriction would have to be considered as by operation of law. Thus, it is not open to the petitioner to contend that the respondent authorities cannot put any restriction with regard to petitioner carrying on religious activities including holding of procession. However, as the MoHA guidelines permits conduct of religious activities within the religious premises/place of worship, this court is of the view that the petitioner can be permitted to undertake / perform religious rituals associated with "Muharram" like Ziarat Ashura, Latyma, Self-flagellation and other religious ceremonies associated with "Moharrum", within the religious places, without coming on to the public places and

furnishing an undertaking to the jurisdictional police authority, where such religious places are located, to strictly abide by and adhering to the MoHA guidelines like maintenance of social distance, wearing of face cover/mask and other guidelines, as issued in order dated 30.05.2020. If the petitioner gives such undertaking to the authority concerned and carries on religious activities within the religious premises/place of worship, by adhering to the MoHA guidelines, there shall not be any interference from the respondent authorities concerned.

10. Subject to the above observation and direction, the writ petition is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed in the light of this final order.

Date: 26.08.2020
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T. VINOD KUMAR, J

Note: Issue copy by 27.08.2020.

