

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. WRIT PETITION (PIL) NO.OF 2020
(Under Article 226 of the Constitution of India)

DISTRICT : MEERUT

Japhar Abbas

.....Petitioner

VERSUS

1. Union of India through its Home Secretary , Ministry of Home Affairs, New Delhi
2. State of UP through its Principal Secretary , Home Ministry of Home Affairs, Lucknow .
3. State of U P , through its Additional chief secretary Home, Ministry of Home Affairs Lucknow.

.....Respondents

To,

The Hon'ble Chief Justice and his other Companion Judges of the aforesaid Court.

The Humble Petition of the Petitioner, above named most respectfully showeth as under:

1. That this is the first writ petition and no any other writ, or any application etc. has been filed or pending before this Hon'ble Court at Allahabad or at Lucknow Bench for the present impugned cause of action previously.

2. That petitioner has not received any copy of Caveat, if any, filed by the respondents in the aforesaid matter, till date.
3. The present Petition is filed bona-fide and in the interests of justice.
4. That the urgency of extreme imminent nature is that the 10th of Moharram is going to be observed on 30-08-2020. Thus, the present petition may kindly be heard and decided before the due date the same may become in fructuous by efflux of time. As a result the entire Shia Community shall suffer an irreparable loss and injury which will not be compensated in any manner whatsoever.
5. That the Petitioner is a practicing Shia Muslim. The period of Moharrum is very important for Shia community. It is a solemn occasion when the Shias mourn the death and martyrdom of the Imam Hussain, the grandson of the prophet and other members of the prophet's family.
6. That various religious ceremonies which are integral and fundamental to Moharrum are performed during these days, since centuries . Moharrum is a solemn mourning period observed by the Shias across the globe to mourn the martyrdom of Imam Hussain. It has been observed religiously since time immemorial. The event marks the anniversary of the Battle of Karbala when Imam Hussein Ibne Ali, the grandson of Prophet Muhammad, who was martyred.
7. That the Indian Government has also acknowledged the significance of Moharrum for the Shia Community and the same is evident from the fact that the 10th day of Moharrum is declared as a National Holiday in India.

8. That in the matter of Ghulam Abbas and Ors. Vs. State of Uttar Pradesh and Ors. AIR 1981 SC 2198, Hon'ble Supreme Court took note of the significance of Moharrum as well as the rites and rituals observed by the Shia community during Moharrum. Relevant extract of the said judgment is set out below:

“The case of the petitioners and through them of the Shias of Mohalla Doshipura is that the members of their sect numbering about 4000 constitute a religious denomination having a common faith and they observe MOHARRAM for two months and eight days in a year in memory of Hazrat Imam Hussain who along with his 72 followers attained martyrdom at Karbala in Iraq. The said religious belief is practiced by the men-folk and the women-folk of the Shia community by holding Majlises (religious discourses), Recitations, Nowhas, Marsia, doing Matam (wailing) and taking out processions with Tabut Tazia, Alama, Zuljinha, etc.”

9. That some of the important rituals that are sacrosanct during the period of Moharrumas also recorded by the Hon'ble Supreme Court are as follows:
- (a) Symbolic carrying of Alam.
 - (b) Symbolic carrying of mehendi

- (c) Symbolic Zuljinha
- (d) Burial of Tazias
- (e) Feeding the poor.

10. That the Petitioner craves leave to give the following details regarding the above mentioned rituals:

SYMBOLIC CARRYING OF ALAM

The Alam was the Banner/Standard of Imam Husain which was carried by his Standard Bearer Hazrat Abbas Alamdaar during the Karbala war. Hazrat Abbas Alamdaar was also martyred at Karbala. The Shia Muslims carry the Standard while offering prayers during Moharrum as a symbol that the Banner/Standard of Imam Husain is still flying high and his teachings are still being followed.

SYMBOLIC CARRYING OF MEHENDI

History records that during the Karbala war, one of the great grandsons of the Prophet got married and was tragically martyred on the day of his wedding. The Mehendi signifies the marriage that took place in the tragic shadow of martyrdom.

ZULJINHA

Zuljinha was the name of the Horse of Imam Husain. The Zuljinha symbolizes the Horse that carried Imam Husain into battle.

BURIAL OF TAZIAS

Tazias symbolize the coffins carrying the bodies of the martyrs at Karbala. These Tazias are brought for burial to the designated burial ground where they are met for one year and then buried the following year with recital of prayers. Thus the Tazias that were brought during Moharrum of 2019, will be buried during the Moharrum of 2020.

FEEDING THE POOR

Feeding the poor during Moharrum is one the most important rituals as the food and water supply to Imam Husain's family and supporters had been cut off during the Karbala war and all the family members and supporters were fighting the war without food or water from the 7th day of Moharrum.

11. That the Petitioner understands that due to the Covid-19 Pandemic, the solemn occasion of Moharrum and the religious ceremonies that are integral and fundamental to the mourning period will have to be observed keeping in mind Health Safety Norms and physical distancing. The Petitioner therefore

submits that the interests of the Shia Community will be served if this Hon'ble Court would be pleased to direct that the religious ceremonies of Moharrum will be carried out by ensuring that all Health safety measures are strictly observed.

12. That the Petitioner is concerned as the State is going out of its way to put a complete stop to all the religious ceremonies with ulterior motives. It is submitted that religious places have been opened as per the Guidelines published by the MHA under Unlock 1 on 30th May 2020. However, the State is not permitting religious ceremonies/prayers on the solemn occasion of Moharrum with the intent of hurting religious sentiments of the Shia Muslims. Hereto annexed and marked as **ANNEXURE No-1** is a copy of order bearing number 40-3/2020- DM-I (A) dated 30.05.2020.
13. That in view of the said directions/guidelines, religious places across India opened up for the general public. These inter alia included the Sai Baba Temple at Shirdi, Venkateshwara Temple at Tirupati, Meenakshi Sunder Eshwarar Temple at Madurai, Golden Temple at Amritsar, Bangla Sahib at Delhi, Kalkaji Temple at Delhi, Jama Masjid at Delhi etc.
14. That on 04.06.2020, while recognizing that Religious places get frequented by a large number of people for spiritual solace, Ministry of Health and Family Welfare released 'SOP on

preventive measures to contain spread of COVID-19 in religious places/ places of worship'. Hereto annexed and marked as **ANNEXURE No-2** is a copy of 'SOP on preventive measures to contain spread of COVID-19 in religious places/ places of worship' dated 04.06.2020.

15. That meanwhile, the issue whether the customary Rath Yatra procession at Jagannath Temple, Puri could be carried out came up for adjudication before this Hon'ble Supreme Court. After having first refused to allow the Rath Yatra, vide order dated 22.06.2020, passed in W.P. (C) 571/2020, Odisha Vikash Parshadvs Union of India and Ors., this Hon'ble Court allowed the said religious practice to be observed with certain conditions. Hereto annexed and marked as **ANNEXURE No-3** is a copy of order dated 22.06.2020, passed in W.P. (C) 571/2020 by the Hon'ble Supreme Court.
16. That on 10.08.2020 Respondent no. 3 issued Guide lines announcing total prohibition on Taziya Procession in Moharram in State of Uttar Pradesh. True copy of the Guidelines issued by the State of UP dated 10.-08-2020 is filed herewith and marked as **Annexure No. 4** to this writ petition.
17. That the petitioner humbly claims parity with the Guide lines of August 2020 issued by the Election Commissioner of India permitting five persons to do door to door campaign during COVID 19 Pandemic. True copy of the Election Commission of

India Guidelines dated August 2020 is filed herewith and marked as **Annexure No. 5** to this writ petition.

18. That religious place like Vaishno Devi has also allowed pilgrim Yatra to start from 16th August 2020.
19. That the stand taken by Respondent Nos. 2 and 3, other than causing great consternation and hurt within the Shia Community, is also illegal. The Petitioner is therefore constrained to approach this Hon'ble Court for appropriate orders and protection by way of the present Writ Petition, on the following grounds amongst others, which are without prejudice to one another.
20. That, there is no other equality effective, efficacious and alternative remedy available to the petitioner except to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India amongst all on the following grounds:

GROUND

- A. Because, Article 25(1) of the Constitution of India guarantees to every person, the freedom of conscience and the right to freely profess, practice and propagate religion.
- B. Because, Mohorrum and the rites and rituals associated with it are an integral part of the Shia faith and have been

duly acknowledged by the Government of India by declaring the 10th of Moharrum as a National Holiday.

C. This Hon'ble Court in Commissioner HRE Madras vs. Sri Lakshmindra AIR 1954 SC 282 has held as follows:

“Religion is certainly a matter of faith with individuals and communities and it is not necessarily theistic.”

D. Because, the right to practice his/her religion has been upheld by this Hon'ble Court in P.M.A. Metropolitan vs. Moran Mar Marthoma, AIR 1995 SC 2001, as follows:

“Religion is the belief which binds spiritual nature of men to super natural being. It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is a right of a person believing in a particular faith to practice it, preach it and profess it.”

E. Because, this Hon'ble Court has held that freedom of religious opinion and the right to practice one's chosen religion, is protected by the Constitution in Commissioner HRE Madras vs. Sri Lakshmindra AIR 1954 SC 282 as follows:

“The guarantee under the Constitution of India not only protects the freedom of religious

opinion but it protects also acts done in pursuance of religion.”

- F. Because the Constitutional guarantee regarding freedom of religion enunciated in Article 25 of the Constitution of India extends to the practice of that particular religion and encompasses all rites and ceremonies associated with the same.
- G. Because, this Hon’ble Court has acknowledged the significance of Moharrum for the Shia community and noted in detail, the various rites and rituals that are observed as a part of the same, in Ghulam Abbas and Ors. Vs. State of Uttar Pradesh and Ors. AIR 1981 SC 2198.
- H. Because, Central and State Governments and as well as this Hon’ble Court have recognized the importance of faith and have allowed citizens to observe religious practices/rituals that have been carried out since time immemorial, despite the prevailing COVID-19 pandemic.
- I. Because, the Ministry of Home Affairs had allowed religious places/places of worship to open for the general public vide order bearing number 40-3/2020- DM-I(A) dated 30.05.2020, and hence the stand taken by Respondent nos. and threatening the Petitioners that they will not permit the Shia Community to observe the practice and rituals of Moharrum is palpably illegal.

J. Because, religious places across India including Sai Baba Temple at Shirdi, Venkateshwara Temple at Tirupati, Meenakshi Sunder Eshwarar Temple at Madurai, Golden Temple at Amritsar, Bangla Sahib at Delhi, Kalkaji Temple at Delhi, Jama Masjid at Delhi etc. have been opened for the devotees with Venkateshwara Temple, Tirumala, Tirupati allowing devotees to offer prayers with a footfall of about 12000 persons per day. Therefore, the stand taken by Respondent Nos. 2 and 3 threatening the Petitioners that they will not permit the Shia Community to observe the practice and rituals of Moharrum is palpably illegal.

K. This Hon'ble Court in Odisha Vikash Parshadv's Union of India and Ors. W.P. (C) 571/2020 allowed Jagannath Puri Yatra to take place after complying with social distancing norms.

L. Because, the principles of equality enshrined in Article 14 of the Constitution of India, give equal importance to all religious practices. Therefore, just as the Jagannath Puri Yatra has been allowed keeping in view its religious and historical significance, Respondent Nos. 2 and 3 ought not to be permitted to create impediments in the Shia community observing prayers and rituals associated with Moharrum.

M. Because, the principles of equality enshrined in Article 14 of the Constitution of India, give equal importance to all religious places of worship. Therefore, just as religious places across India including Sai Baba Temple at Shirdi, Venkateshwara Temple at Tirupati, Meenakshi Sundereshwar Temple at Madurai, Golden Temple at Amritsar, Bangla Sahib at Delhi, Kalkaji Temple at Delhi, Jama Masjid at Delhi etc. have been opened for the devotees, Respondent Nos. 2 and 3 ought not to be permitted to create impediments in the Shia community observing prayers and rituals associated with Moharrum in Mosques situated near their places of residence.

N. Because, Article 15(1) of the Constitution states "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth of any of them".

O. Because, as envisaged in Article 25(1) of the Constitution of India, the only condition to which the rights under Article 25 are subject to are public order, morality, health and Part III of the Indian Constitution. Hence offering of prayers and carrying out rituals of Moharrum by adhering to the applicable SOPs issued by Respondent No. 1 and the respective State Government would satisfy the condition of public health.

P. The Petitioner has not moved/approached any government authority for the relief sought in the petition. The Petitioner has no other alternative and efficacious remedy but to approach this Hon'ble Court.

Q. Because, the Hon'ble Supreme Court while considering Special Leave Petition no. 8716/2020 has disposed off the same vide judgement dated 30.07.2020, after holding as follows:

“It appears prima facie that total restriction on darshan by public is prima face unreasonable.”

“....the State Government ought to have permitted systematically at least few hundred numbers of general public on the basis of booking, giving them different timings of darshan, so that large congregation does not take place and maintaining social distancing for darshans at important festivals of the year but State has not done it so far and only two days are left from the final day of the Shravan month. At the same time, we find that restrictions imposed by the High Court for entire months of Shravan and Bhadon was also not proper.”

“We direct consideration not only for the temple but in all such religious places whether it be Churches or Mosques,

entry of limited number of persons/devotees should have been allowed as is being done throughout India.”

PRAYER

It is therefore most humbly prayed that this Hon’ble Court may be pleased to:

- A. Issue a writ of mandamus or any other appropriate writ, order, or direction to the Respondents to ensure that moharrum rites, ceremonies and rituals associated with Moharrum as set out in the present Petition are not obstructed if they are conducted by 5 persons or less for each ritual/rite/ceremony.
- B. Pass any other or further orders as this Hon’ble Court deems fit in the facts of the present case.

Date: 23 Aug 2020

(Sayyed Kashif Abbas Rizvi)-(Joun Abbas)
-Advocates