

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 जिलाधिकारी वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
उ०प्र०।

प्रतिलिपि समस्त जोनल अपर पुलिस महानिदेशक, उ०प्र०।
अपर पुलिस महानिदेशक(ए०टी०एस०) उ०प्र०।

समस्त मण्डलायुक्त/पुलिस महानिरीक्षक/पुलिस उप
महानिरीक्षक(परिक्षेत्र)

उ०प्र०। अपर पुलिस महानिदेशक ,

कानून एवं व्यवस्था/अभिसूचना/सुरक्षा/रेलवे, उ०प्र०।

पुलिस कमिश्नर, लखनऊ/गौतमबुद्ध नगर।

समस्त डी०आर०एम०, रेलवे, उ०प्र०।

प्रबन्ध निदेशक, उ०प्र० राज्य सड़क परिवहन निगम,
लखनऊ।

पुलिस महानिदेशक, उत्तर प्रदेश, लखनऊ।

सूचनार्थः अपर मुख्य सचिव , मा० मुख्यमंत्री जी, उ०प्र०शासन।

स्टाफ ऑफिसर, मुख्य सचिव, उ०प्र० शासन।

प्रेषकः- गृह विभाग, उत्तर प्रदेश, लखनऊ।

संख्या:- **687K/VI-सानिप्रा-20-7(3)/2005** लखनऊ: दिनांक **10**
अगस्त, 2020

माह अगस्त, 2020 में पड़ने वाले त्योहार यथा जन्माष्टमी, गणेश
चतुर्थी एवं मोहर्म जो कि विभिन्न तिथियों में आयोजित होंगे, को गृह मंत्रालय,
भारत सरकार की कोविड-19 की गाईडलाइन्स का पालन करते हुए सादगी
से मनाया जाए। इन त्योहारों पर कोई भी जुलूस, झाँकी न निकाली जाए एवं
किसी भी दशा में भीड़ एकत्रित न हो जाए।

वर्तमान परिस्थितियों में सुरक्षा स्थिति के दृष्टिगत सम्भावित खतरों से
सतर्क रहने की आवश्यकता है। सभी धार्मिक स्थलों विशेषकर मथुरा स्थित
श्रीकृष्ण जन्मभूमि, श्री रामजन्म भूमि, अयोध्या पर असामाजिक
तत्वों/आतंकवादियों एवं समाज में अस्थिरता फैलाने वाले व्यक्तियों पर सतर्क
दृष्टि रखने की आवश्यकता है।

इस अवधि में असामाजिक तत्वों द्वारा कानून-व्यवस्था को भंग करने
का प्रयास किया जा सकता है एवं आतंकवादी नागरिकों को नुकसान पहुंचा
सकते हैं। अतः उक्त मौकों पर सतर्क रहने की आवश्यकता है।

वर्णित परिस्थितियों में सावधानी हेतु निम्न निर्देश दिये जा रहे हैं:-

1. राज्य सरकार द्वारा समय-समय पर कोविड-19 महामारी के रोकथाम हेतु निर्देश निर्गत किये गए हैं, जिसका कड़ाई से अनुपालन सुनिश्चित कराया जाए।
2. कोविड-19 में जन्माष्टमी के मौके पर किसी को भी जुलूस/झाँकी की अनुमति नहीं दी जाए।
3. गणेश चतुर्थी के मौके पर कोई भी पूजा-पंडाल में कोई भी मूर्ति स्थापित न की जाए और न ही कोई शोभा-यात्रा की अनुमति दी जाए। सभी श्रद्धालुओं को प्रेरित किया जाए कि उक्त त्योहार को अपने-अपने घरों पर ही मनायें।
4. इसी प्रकार मोहर्रम के अवसर पर किसी प्रकार के जुलूस/ताजिया की अनुमति न दी जाए एवं धर्म-गुरुओं से संवाद स्थापित कर कोविड-19 के दिशा-निर्देशों का अनुपालन करें।
5. ऐसे समस्त कार्यक्रमों की पीस कमेटी की मीटिंग कराते हुए सभी सामाजिक एवं धर्म -गुरुओं से व्यवस्था बनाये रखने में सहयोग लिया जाए।
6. संवेदनशील/साम्प्रदायिक एवं कन्टेनमेन्ट जोन में पर्याप्त संख्या में पुलिस बल की तैनाती की जाए।
7. किसी भी धार्मिक स्थल पर लोगों की भीड़ एकत्र न होने पाए , यह सुनिश्चित किया जाए।
8. त्योहारों पर सार्वजनिक स्थल यथा बस स्टेशन, रेलवे स्टेशन और संवेदनशील स्थान/धार्मिक स्थल पर यथावश्यक व्यवस्थायें/चेकिंग कराई जाए।

Government Order dated 23.08.2020

प्रबन्ध निदेशक, उ०प्र० राज्य सड़क परिवहन निगम, लखनऊ।

पुलिस महानिदेशक, उत्तर प्रदेश, लखनऊ।

सूचनार्थ अपर मुख्य सचिव, मा० मुख्यमंत्री, उत्तर प्रदेश शासन, लखनऊ।

स्टाफ आफिसर, मुख्य सचिव, उत्तर प्रदेश शासन, लखनऊ।

प्रेषक: गृह विभाग उत्तर प्रदेश शासन , लखनऊ।

संख्या-777 के/छ:-सानिप्र-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 विषयक शासन के आदेश संख्या-678 के/छः-सानिप्र 20-7(j)/2005, दिनांक 10 अगस्त 2020 का संदर्भ ग्रहण करने का कष्ट करे जिसके द्वारा माह अगस्त में पड़ने वाले त्यौहारों पर कोई भी जुलूस, झाँकी न निकलने एवं किसी भी दशा में भीड़ एकत्रित न होने के संबंध में विस्तृत दिशा निर्देश निर्गत किये गये हैं।

2 उक्त के क्रम में वर्तमान परिस्थितियों के दृष्टिगत प्रदेश के सभी धार्मिक स्थलों विशेषकर श्री कृष्ण जन्म भूमि मथुरा, श्री राम जन्म भूमि तीर्थ क्षेत्र, अयोध्या, श्री काशी विश्वनाथ मन्दिर मन्दिर वाराणसी एवं ऐतिहासिक स्थल ताजमहल आगरा की सुरक्षा व्यवस्था तथा कोविड-19 महामारी के संबंध में भारत सरकार नई दिल्ली एवं उत्तर प्रदेश, शासन द्वारा समय-समय पर निर्गत निर्देशों के आलोक में असामाजिक तत्वों/आतंकवादी एवं समाज में अस्थिरता फैलाने वाले व्यक्तियों पर सतर्क दृष्टि रखने की आवश्यकता है।

3 उक्त के दृष्टिगत आगामी अवधि में असामाजिक तत्वों द्वारा कानून-व्यवस्था एवं सम्प्रदायिक सौहार्द को भंग करने का प्रयास किये जाने तथा आतंकवादियों द्वारा सामान्य नागरिकों को नुकसान पहुंचाने की संभावना तथा कोविड-19 महामारी के प्रभाव को कम करने के लिये निम्नलिखित निर्देश दिये जा रहे हैं:-

दिनांक -30 सितम्बर 2020 तक कोई भी सार्वजनिक समारोह, धार्मिक उत्सव एवं राजनैतिक आन्दोलन एवं सभाये आयोजित नहीं होंगी।

सार्वजनिक रूप से मूर्तियों, ताजिया एवं अलग स्थापित नहीं किये जायेंगे।

सभी प्रकार जुलूस एवं झाँकी प्रतिबन्धित होंगी, अर्थात् जुलूस एवं झाँकी नहीं निकाले जा सकते हैं।

मूर्तियां, ताजिया एवं अलग की स्थापना अपने-अपने घरों में किये जाने पर किसी प्रकार की रोक नहीं होगी।

कोविड-19 महामारी के दृष्टिगत उत्तर प्रदेश शासन द्वारा समय-समय पर निर्गत दिशा निर्देशों का कड़ाई से अनुपालन सुनिश्चित कराया जाये।

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