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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 4201 of 2021

1. Sayyed Maqbool Ali, S/o. Sayyel Maqsood Ali, Aged About 44 Years
R/o Behind Sunni Hussani Maszid, Taiba Chowk, Talapara, Police
Station Civil Lines, Bilaspur Chhattisgarh., District : Bilaspur,
Chhattisgarh
2. Mohammad Arafat Danish S/o Mohammad Mansur Ali Aged About 26
Years President Of Faizane Maqdoom Ashraf Tahrik (An
Unregistered Society), R/o Marimai Road, KGN Chowk, Talapara,
P.S. Civil Lines, District Bilaspur Chhattisgarh., District : Bilaspur,
Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Its Chief Secretary, Mantralaya,
Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur
Chhattisgarh.,
2. The Secretary Department Of Home, Mantralaya, Mahanadi Bhawan
Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.
3. Collector Bilaspur, District Bilaspur Chhattisgarh.
4. Superintendent Of Police Bilaspur, District Bilaspur Chhattisgarh.
5. Chhattisgarh State Waqf Board Through Chief Executive Officer,
Near Dr. Bhimrao Ambedkar Statue, Collectorate Chowk, Raipur,
District Raipur Chhattisgarh.

---- Respondents

Along with

W.P.(C) No. 4202 of 2021

Haji Gayyur Hussain, S/o Shri Murtija Hussain, Aged About 64 Years
President, Uski Den Committee, Satyam Chowk, Civil Line, Bilaspur, District
Bilaspur (CG) R/o Behind Masoom Hospital, Tulsi Nagar, Talapara, Bilaspur,
District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Scheduled Caste And Scheduled Tribe Development, Other Backward Class And Minority Development And Cooperative Department Mantralaya, Mahanadi, Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh,
2. C.G. State Wakf Board, Through Chief Executive Officer, In Front Of Dr. Bheemrao Ambedkar Statue, Collectorate Chowk, Raipur, District Raipur Chhattisgarh.
3. Collector, District Bilaspur Chhattisgarh.

.....Respondents.

For Petitioners	: Mr. Vivek Kumar Shrivastava & Mr. Rohit Sharma, Advocates
For State/respondent	: Mr. S.C. Verma, Advocate General with Mr. Alok Bukshy, Additional A.G.
For respondent No.5 (in W.P.(C): 4201/21 & Respondent No.2 in W.P.(C) No. 4202/21	Mr. Anup Majumdar, Advocate
For Intervener	: Mr. Atul Kesharwani, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/10/2021

1. A common order is passed on these petitions as the issue raised in both the petitions and relief claimed is same.
2. Both the petitions have been filed by the petitioner being aggrieved by the order passed by the respondent No.3 on the basis of the advice given by the C.G. State Waqf Board.
3. It is submitted by the learned counsel for the petitioner in W.P.(C) No.4201 of 2021 that an application was moved praying for

permission to take out procession on the event of birth day of Prophet Mohammad. This application was rejected by the Collector Bilaspur/respondent No.3 on the ground that the Covid-19 situation is continuing and that there is an advice from the C.G. State Waqf Board by letter dated 11.10.2021 (P-2) that the permission for such procession should not be granted. It is submitted that the Waqf Board has no such authority to issue such kind of advisory. Section 32 of the Waqf Act, 1995 is very specific with respect to powers and functions of Waqf Board, which does not include the power of issuance of such advisory to the District Collector. It is submitted that in the recent past, other communities were granted permission for celebrating their festivals. Therefore, it is clearly discriminatory with the community of the petitioners and that amounts to violation of Article 19 and 25 of the Constitution of India. It is further submitted by the counsel for the petitioner that birth of Prophet Mohd. is being celebrated since time immemorial, which has become a custom and protection has been given under Article 25 of the Constitution of India, to such custom, therefore, the impugned order is not sustainable.

4. Counsel for the petitioner in W.P.(C) NO. 4202 of 2021 makes submissions similarly and submits that clearly the order of the Collector has been passed on the basis of the advice given by the Waqf Board, which is not an authority for giving such advice. Therefore, the impugned order and the advise given by the Waqf Board be quashed and the community of the petitioners be permitted to take out procession on 19th of October, 2021 in the event of Id Milad-Un-Nabi.
5. Learned Advocate General appearing for the State and Collector,

Bilaspur vehemently opposes the submissions made by the counsel for the petitioners in both the cases. Referring to the letter dated 11.10.2021, by the Waqf Board to District Collector and Additional Commissioner of Waqf, it is submitted that the Waqf Board has very clearly advised that havoc of covid-19 is continuing, therefore, it is necessary to take protective measure to keep the health conditions of the individuals in the district better. It is on this ground, it is advised that on the event of Id Milad-Un-Nabi, District Administration should not permit taking out of procession and any other public activity. It is submitted that the Waqf Board has such authority to issue such advisory under Section 25 of the Waqf Act, 1995, which empowers it to take measures for protection of waqf property. Therefore, there is nothing wrong with the advisory issued by the Waqf Board.

6. It is further submitted that the District Administration is not permitting other communities in their respective festivals for public gathering and taking out of procession. A copy of order dated 07.09.2021 has been supplied for the perusal of this Court, which is with respect to festival of Ganesh Utsava, in which restrictions have been imposed with respect to the celebrating that festival. Reference has also been made of the order dated 17.10.2021 passed by the District Collector, Raipur in which there is specific direction that there is no permission for taking out procession convening any gathering, rallies, bike rally etc. The order has been passed by the Collector, Bilaspur similarly on 17.10.2021, which is numbered as 5843/2021. Copy of the same is supplied for perusal. It is also submitted that no such permission was granted to the other community in the matter of celebration of Durga Utsava and Navratri, therefore, by not granting permission to take out procession to the community of the petitioner, the

administration has not made any discrimination. It is only Covid protocol, which is being strictly followed for the health and safety of the residents of the concerned cities. It is also submitted that in case any permission is granted to the community of the petitioners for taking out procession etc. that will amount to discrimination against the other communities, who were not granted such permission. Relying on the judgment of Supreme Court in case of **Census Commissioner & Others. Vs. R. Krishnamurthy**, reported in **(2015) 2 SCC 796**, it is submitted that the Supreme Court has considered the question regarding issuance of mandamus by a High Court in which it was held that the Court can not and should not outstep its limit and tinker with the policy decision of the executive functionary of the State, therefore, present petitions are without any substance which may be dismissed.

7. Learned counsel for the C.G. State Waqf Board opposes the petition and the submissions made in this respect. It is submitted that the Waqf Board has authority to issue such advisory as Annexure P-2 under Section 25 of the Waqf Act, 1995. In such a case, protection of waqf property is involved. It is also submitted that taking out a procession is not a necessary ritual. Meaning of the words Milad-Un-Nabi is about reading the couplets of Quran, which means reading, hoisting a flag of Islam and giving religious speech. There is no such meaning present in this word that taking out procession is a necessary ritual, therefore, both the petitions are without any substance which may be dismissed.
8. Learned counsel for the intervener makes submission in support of the counsel for the petitioners and submits that in the neighbouring State of Madhya Pradesh, the administration has granted permission

for taking out procession on the event of Id-Milad-Un-Nabi. Referring to the Annexure A-5, it is submitted that the District Administration of Bilaspur granted permission by order dated 07.10.2021 for organizing programme of Garba, in which 200 persons were permitted to participate, therefore, the order restricting the community of the petitioners is discriminatory. Hence, relief be granted to the petitioners.

9. In reply, it is submitted by the counsel for the petitioners that in the State of C.G. itself, the administration of the North Bastar Kanker has granted permission for taking out such procession. Hence, it is difficult to understand why permission has not been granted to the petitioners' community for taking out a procession on such event. Hence, the discrimination is very clear and loud. Prayer has been made to pass appropriate order.
10. Considered on the submissions. On perusal of the orders passed by the Collector, Bilaspur and Collector, Raipur with respect to the direction for celebrating Id-Milad-Un-Nabi, it is found that there is clearly no permission for taking out procession. The order does not mention of the advisory of the Board. There is only one example cited of the District North Bastar Kanker, where permission has been granted. The impugned orders themselves are very clear that for the purpose of containing the spread of Corona virus in festivals directions have been issued in which there is no permission for taking out any procession. The situation of Corona may vary from place to place, the assessment of such situation is made by the District administration and no inference can be drawn regarding similarity of situation on such premise that one of the District of this State or the Districts of neighbouring State have granted permission

for taking out procession. There is no other example cited by the petitioners or interveners supporting the petitions regarding grant of permission of taking out of procession of any other district of State of Chhattisgarh.

11. The submissions of the counsel for the intervener that the district administration Bilaspur had granted permission for gathering in organizing Garba by the concerned parties is taken into consideration. It is to be noted that Garba is not organized on roads whereas any procession moves on roads. The community of the petitioners have been granted permission to celebrate the festival in their mosques, where the members of the community can gather as per permission granted to them. Hence, I am of this view that the order of the District Collector, Bilaspur placing restrictions in the matter of celebration of festival of Id-Milad-Un-Nabi and also by not granting permission for taking out procession on such event is not a discriminatory order. The Supreme Court has held in the case of **Census Commissioner (Supra)** in paragraph -31, which is as follows :-

“**31.** In M.P. Oil Extraction V. State of M.P., a two-Judge Bench opined that:

“41..... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State.”

12. It is for the State authorities to consider on the situation and make assessment of the conditions which may affect the health and well being of the people living in the district and the State. As the State Government has considered and decided that taking out of procession would be detrimental to the efforts of the district administration in keeping the Corona virus pandemic in control, therefore, I am of this view that there is no entitlement for grant of any relief in both the petitions either interim or final.
13. Hence, on the basis of the forgoing discussions made here-in-above, both the petitions are dismissed and disposed off.

C.C. today.

Sd/-
(Rajendra Chandra Singh Samant)
Judge