

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5815 OF 2021

Haidry Jama Masjid Trust ...Petitioner

Versus

State of Maharashtra and Ors. ...Respondents

ALONGWITH

WRIT PETITION (L) NO. 21518 OF 2021
(ORDINARY ORIGINAL CIVIL JURISDICTION)

All India Idara-E-Tahafuz-E-Husainiyat ...Petitioner
Through its General Secretary Habib
Nasser

Versus

State of Maharashtra Through office of ...Respondents
Govt. Pleader Original Side and 4 Ors.

Mr. Shehzad Naqvi - Advocate for the Petitioner in WP 5815 of 2021.

Mr. P. P. Kakade – GP with A. A. Purav – AGP for State in WP 5815 of 2021.

Mr. Rajam Shirodhkar – Senior Advocate a/w Asif Abbas Naqvi Sayed Jaffer Nadeem, S. K. Ali, Ardit Shirndhalkar i/by Asif Abbas Naqvi - Advocate for the Petitioner in WP (L) 21518 of 2021.

Mr. A. A. Kumbhakoni – AG with Mrs. P. H. Kantharia, GP with Ms. G. R. Shastri, Addl. GP – For State in WP (L) 21518 of 2021.

CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.

DATE : SEPTEMBER 27, 2021.

P.C. :

This order will dispose of both Writ Petition No. 5815 of 2021 and Writ Petition (L) No. 21518 of 2021.

2. In Writ Petition No. 5815 of 2021, Haidry Jama Masjid Trust is the Petitioner whereas in the other writ petition All India Idara-E-Tahafuz-E-Husainiyat is the Petitioner.

3. Haidry Jama Masjid Trust in its Writ Petition has sought for a direction to the respondents to take out 'Chehlum' procession marking the 40th day of the martyrdom of Imam Hussain by carrying out 'Tazias' and 'Taboot' bare-feet, on the shoulders of mourners, from 'Haideri Chowk' to the 'Shia Graveyard' at Mira Road covering a distance of two kilometers from 4:30 p.m. to 7:30 p.m. on 28th September 2021 by members of the Petitioner and representatives of the Shia community in the district of Thane.

4. Likewise All India Idara-E-Tahafuz-E-Husainiyat in its writ petition has sought for a direction to the respondents to allow the 'Chehlum' procession on the 40th day of martyrdom of Imam Hussain between 4:30 p.m. to 8:00 p.m. on 28th September, 2021 starting from Masjid-E-Iranian (Imambada Road) to Rehmatabad Qabristan, Mazgaon, Mumbai.

5. Mrs. P. H. Kantharia, learned Government Pleader submits that State has no objection to allow one procession in a representative capacity at Mumbai for the entire State of Maharashtra. However, she has serious objection regarding

taking out such procession at Mira Road in the district of Thane contending that it may lead to similar requests from other parts of the state. Even if petitions are not filed for paucity of time, it may lead to resentment amongst members of Shia community residing in other parts of the state.

6. We have given our thoughtful and anxious consideration to the entire issue before us. While the rights and religious sentiments of the people are to be respected; but at the same time because of the unprecedented Covid-19 pandemic restrictions imposed by the State cutting across all segments of the society are required to be adhered to, failing which it may lead to disastrous consequences which we should try to avoid.

7. Having said that we find that a Division Bench of this Court had permitted All India Idara-E-Tahafuz-E-Husainiyat to carry out 5 'Tazias' during Muharrum vide order dated 18th August, 2021. Since passing of the said order on 18th August, 2021, hardly a month has elapsed and we see no reason to depart from the same. Consequently, all the directions issued by this Court in the order dated 18th August, 2021 would also be applicable to and govern the present case save and except those alterations which we shall indicate thereafter. Relevant portion of the order dated 18th August, 2021 reads as under:-

“(i) In a representative capacity for and on behalf of the entire Shia community residing in the State, there will be **Five** Taziya, which will be carried from Zainabia (Bhendi Bazar) Mumbai to Byculla Mazgaon, Shia Cemetery, situate at Mumbai, in the entire State. No

other Taziya other than the Five mentioned hereinabove, will be carried anywhere in the State.

(ii) The aforesaid **Five** Taziya will be carried / transported from Zainabia (Bhendi Bazar) Mumbai to Byculla Mazgaon, Shia Cemetery, situate at Mumbai, via J.J. Hospital, Prince Ali Khan Hospital, Sales Tax Office circle in 7 trucks i.e. transport vehicle large enough to accommodate 15 persons in each truck. There shall not be more than 15 persons in each truck. The total number of persons in 7 trucks should not exceed 100 persons.

(iii) The petitioner shall also furnish details of all the 100 persons who would be participating in the procession in the 7 trucks. The petitioner shall ensure that each of the 100 persons have been duly vaccinated with two doses of Covid-19. The petitioner shall furnish Certificate issued by the competent authority in respect of all the 100 persons, who are vaccinated with two doses of Covid-19 and have completed 14 days after the 2nd dose.

(iv) The registration number of each of the truck and the name as well as identification details of each of the person in the truck along with their mobile numbers should be furnished to :- (1) DCP (Operations), Mr. Chaitanya S., Office of the Commissioner of Police, Dr. D.N. Road, Mumbai 400001, Tel. No. 022 – 22665818 and (2) D.C.P. Zone-I, Mr. Shashikumar Meena, Opp. C.S.T. Station, Ballard Estate, Fort, Mumbai, Tel. No. 022 22620453, before 1.00 p.m. on 19th August, 2021.

(v) There shall be one responsible person in each truck in order to control and restrict the number of persons as well as smooth movement of the trucks in co-ordination with rest of the trucks.

(vi) Out of the 100 persons, only 25 persons shall be permitted to enter the graveyard. The names and identification details, including mobile numbers of such 25 persons shall also be furnished to the concerned DCPs before 1.00 p.m. on 19th August, 2021.

(vii) The height of Alams in each truck shall not exceed 10 feet.

(viii) The height of Taziya shall not exceed 6 feet.

(ix) There shall not be any music or band accompanying the procession.

(x) The aforesaid **Five** Taziya will be carried strictly along with the route as indicated above on the said date between 4.00 p.m. to 7.00 p.m.

(xi) After taking the Taziya near the graveyard, it will be carried on foot by the said 25 persons whose names and other details have already been furnished to the concerned DCPs. All the norms of Covid-19 and social distancing shall be maintained. The distance for carrying the Taziya by foot upto the graveyard shall not be more than 200 meters.

(xii) The petitioner and all its members will strictly abide by the rest of the guidelines issued by the Home Department, State of Maharashtra regarding Muharrum-2021.

7. The State Government is permitted to impose restrictions over the gathering of the people at the appropriate places, if they so desire, by issuing appropriate orders, including the point where aforesaid **Five** Taziya is to start its journey, up to and including the graveyard, where its aforesaid journey will end, by passing appropriate orders under Section 144 of the Code of Criminal Procedure, 1973. The State shall also provide an escort as also a pilot car for the aforesaid truck, carrying aforesaid **Five** Taziya and will take appropriate measures to keep the traffic away and the road clear along the aforesaid route, which is hereinabove prescribed as a route for carrying aforesaid **Five** Taziya. The petitioner as well as the State is permitted to appoint their Videographer to do the shooting of the said process, if they so desire.”

8. While the substance of the order dated 18th August 2021 remains the same, in so far 'Chehlum' procession on 28th September, 2021 is concerned, we make the following alterations:-

- a. The route will be from Masjid-E-Iranian (Imambada Road) to Rehmatabad Qabristan, Mazgaon, Mumbai between 4:30 p.m. to 8:00 p.m. on 28th September, 2021;
- b. The number of trucks to be allowed will be 10 instead of 7, each to accommodate a maximum of 15 persons per truck. Thus the total number of persons in 10 trucks should not exceed 150 persons;
- c. Particulars of the participants along with vaccination details shall be furnished to the officers mentioned at clause (iv) of the order dated 18th August, 2021 before commencement of the 'Chehlum' procession; and
- d. Out of the 150 persons, 35 persons shall be permitted to enter the graveyard.

9. Haidry Jama Masjid Trust through their members may also join the 'Chehlum' procession to be taken out by All India Idara-E-Tahafuz-E-Husainiyat from Masjid-E-Iranian (Imambada Road) to Rehmatabad Qabristan, Mazgaon, Mumbai.

10. No further order is called for at this stage.
11. Writ petitions are disposed of.

(MADHAV J. JAMDAR, J.)

(UJJAL BHUYAN, J.)