



2024:DHC:9848



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 28th November, 2024**

+ **W.P.(CRL) 3725/2024 & CRL.M.A. 35744/2024 & CRL.M.A. 35745/2024**

RAJEEV SHARMA

.....Petitioner

Through: In person

versus

UNION OF INDIA AND OTHERS

.....Respondents

Through: Mr. Raghwendra Tiwari, SPC for
UIO
Mr. Yasir Rauf Ansari, ASC with Mr.
Alok Sharma and Mr. Vasu Agarwal,
Advocates with SI Yogesh Sharma
Mr Tushar Sannu, SC for MCD for
R-4 and R-5

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 has been filed by the petitioner seeking the following reliefs:

“A. issue a writ of mandamus, seeking the directions to the Respondents No. 4 And 5 And 6, in order to allow the petitioner to perform the peaceful prayer and meditation in front of the



Dias where his parents are cremated and the same are the petitioner prerogative rights under Article 25 And 26 and 27 And 28 of the Indian Constitution And;

B. issue a writ of mandamus seeking directions to the Respondents 1 And 2 and 3 to register the First Information Report against the erring staff of Police Station Netaji Subhash Place who are involved in the criminal activities and to initiate disciplinary action for not performing their responsibility as per Delhi Police Act And;

C. issue a writ of mandamus to lodge FIR against erring officials of MCD who did not took any action on petitioner complaints to preserve his right to pray And;

D. issue a writ of mandamus to lodge FIR against Aasra Society appointed by MCD for criminal activities by its ground staff who failed to preserve the right of prayer to the petitioner and assault on petitioner.

E. Pass such other or further order (s) in favour of the petitioner which this hon'ble court may deem fit and proper under the facts and circumstances of the case as well as in the interest of justice."

2. The brief facts of the case are that the mother and father of the petitioner passed away in the year 2021 and 2022 respectively and the petitioner performed their last rites at the cremation ground, situated at Beriwalla Bagh, Shakurpur, which falls under the Municipal Corporation of Delhi. The petitioner regularly used to go to the said cremation ground to offer prayer for his late parents and it is alleged that he was forcefully restrained from doing so, pursuant to which he approached the concerned



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authorities who failed to undertake the appropriate measures to grant the necessary protection to the petitioner. Aggrieved by the same, the present writ petition has been filed by the petitioner before this Court.

3. The petitioner appearing in-person submitted that the respondent nos. 2 and 3 failed in performing their duty by not acting on the complaints and grievances raised by the petitioner, and thereby, failed to preserve the petitioner's right to pray freely which is provided for by the Constitution of India.

4. It is submitted that the petitioner has the prerogative to offer prayer in front of the dias where his parents were cremated. It is further submitted that the petitioner had been offering prayer at the said site for 3 years and no nuisance was caused by him at the said site.

5. It is submitted that the petitioner has approached the Court with clean hands and has not indulged himself in any illegal or undignified acts which are against the law in force.

6. It is prayed that a writ of mandamus be issued by this Court to protect his right to pray in front of the dias where his parents were cremated, as the same falls well within his rights provided under Articles 25, 26, 27 and 28 of the Constitution of India, 1950, and grant the reliefs as prayed for in the petition.

7. *Per contra*, Learned SPC and ASC appearing on behalf of the Union of India and learned SC appearing on behalf of the respondent nos. 4 and 5 vehemently opposed the instant petition and submitted that the petitioner has no legal right to perform prayer at a public place as it will result into



unnecessary public disruption and disorder.

8. It is submitted that there were multiple complaints that were received from public regarding the disruptive practice of the petitioner of offering prayer at the said cremation ground, which caused inconvenience to public who availed the said ground for the purpose of cremation. Therefore, the instant petition should be dismissed for being devoid of any merit.

9. Heard the petitioner appearing in-person and the learned counsel appearing on behalf of the parties, and perused the material placed on record in the instant petition.

10. The central question for this Court's determination is whether the petitioner has a constitutional right to pray at the said cremation ground.

11. In view of the petitioner's prayer in the present case, it is important at this stage for this Court to discuss the right to freedom of religion under Articles 25, 26, 27 and 28 of the Constitution of India, which are quoted as under:

"25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.



Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly”

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“26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property;

and (d) to administer such property in accordance with law.

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“27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.”

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“28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.



(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.”

12. In the present case, the petitioner had been performing prayer in front of the dias where his parents were cremated at the said cremation ground for multiple years. However, it is alleged that recently, he was coercively restrained from performing prayer at the said site and no remedial action was taken despite multiple complaints and representations made by the petitioner before the concerned authorities. Aggrieved by the same, the petitioner prayed approached this Court seeking protecting of his right to offer prayer at the said cremation ground where his parents were cremated under Article 25 to 28 of the Constitution of India.

13. Although the petitioner has sought relief under all the above quoted provisions that serve to protect the religious freedom in the country, it is clear from a bare perusal of the said provisions that the relief sought by the petitioner warrants a determination under Article 25 of the Constitution of India as it provides for the right to freely practice one's religion without interference from the State.

14. The prayer of the petitioner is based on the claim that he has a constitutional right to pray at the said cremation ground, which serves as a



public utility space. In order to determine the question of grant of reliefs as prayed for by the petitioner, the central issue that is to be decided by this Court is whether offering of prayer at public places is protected as a fundamental right by the Constitution of India.

15. Article 25 of the Constitution of India guarantees the freedom of conscience and the freedom to profess, practice and propagate religion to all persons. Religious freedom is one of the most cherished rights guaranteed and enshrined under the Constitution in line with the vision of the founding fathers of the Modern Indian Republic. However, such freedom under Article 25 is not unqualified in nature. Article 25 expressly subjects the right to freedom of conscience and practice of religion to public order, health and morality.

16. The right under Article 25 of the Constitution of India was comprehensively discussed in the judgment of ***Indian Young Lawyers Association and Others v. State of Kerala***, (2019) 11 SCC 1 and the relevant extract from the judgment is reproduced as under:

“98. Now adverting to the rights guaranteed under Article 25(1) of the Constitution, be it clarified that Article 25(1), by employing the expression “all persons”, demonstrates that the freedom of conscience and the right to freely profess, practice and propagate religion is available, though subject to the restrictions delineated in Article 25(1) itself, to every person including women.

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176.1. Article 25 recognises a fundamental right in favour of “all persons” which has reference to natural persons.



176.2. This fundamental right equally entitles all such persons to the said fundamental right. Every member of a religious community has a right to practise the religion so long as he does not, in any way, interfere with the corresponding right of his co-religionists to do the same.

176.3. The content of the fundamental right is the fleshing out of what is stated in the Preamble to the Constitution as “liberty of thought, belief, faith and worship”. Thus, all persons are entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

176.4. The right to profess, practice and propagate religion will include all acts done in furtherance of thought, belief, faith and worship.

176.5. The content of the right concerns itself with the word “religion”. “Religion” in this Article would mean matters of faith with individuals or communities, based on a system of beliefs or doctrines which conduce to spiritual wellbeing. The aforesaid does not have to be theistic but can include persons who are agnostics and atheists.

176.6. It is only the essential part of religion, as distinguished from secular activities, that is the subject matter of the fundamental right. Superstitious beliefs which are extraneous, unnecessary accretions to religion cannot be considered as essential parts of religion. Matters that are essential to religious faith and/or belief are to be judged on evidence before a court of law by what the community professing the religion itself has to say as to the essentiality of such belief. One test that has been evolved would be to remove the particular belief stated to be an essential belief from the religion—would the religion remain the same or would it be altered? Equally, if different groups of a religious community speak with different voices on the essentiality aspect presented before the Court, the Court is then to decide as to whether such matter is or is not essential. Religious activities may also be mixed up with secular activities, in which case the dominant nature of the



activity test is to be applied. The Court should take a common-sense view and be actuated by considerations of practical necessity.”

17. The essential practice test is devised by the Court to distinguish the religious practices that are essential or fundamental to a particular religion from the ones which are merely superstitious. The said test was brought in place only to preserve the religious practices that are essential in nature, as opposed to them being whimsical and superstitious, without any significant backing of the religious scriptures and practices of a particular religious denomination.

18. Therefore, the essential practice test in its application should be determined based on the tenets of the religion in question. The beliefs and practices have to be established as being integral to the religion in question in order to establish their essentiality to satisfy the said test. Once it is established that the practice in question is an essential religious practice, the protection under Article 25 is afforded to the same.

19. In the case of ***M. Ismail Faruqui (Dr) v. Union of India, (1994) 6 SCC 360***, the Hon'ble Supreme Court held that the right to freedom of religion does not entitle an individual to practice his religion at any place unless the element of essentiality to that place to the religious practice of a particular community is established. The relevant extract of the judgment is reproduced as under:



“77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practice, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.

78. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.”

20. From the above judgment, it is clearly established that an individual or a group does not have the right to practice their faith at any place in the manner of their choice unless they establish that doing so is an essential part of their religion. If the practice is merely superstitious in nature and the same cannot be supported with any material evidence to show that it is essential to the practice of the religion in question, the same shall not be protected under Article 25 of the Constitution of India.



21. It is clear that the offer of prayer or worship may be a religious practice but performing the same at any location where it can be performed does not necessarily constitute an essential religious practice. In order to establish that offering the prayer at a particular location is integral to a particular religion, it must be shown that the said location has a particular significance for the said religion such that the same has a different standing and must be treated in a more deferential manner.

22. In the present case, the petitioner has failed to place any material on record to show that the right to pray in front of the dias where his parents were cremated at the said cremation ground is a right that is essential to his religious faith. The petitioner has made unsubstantiated claims that he has the right to pray at the said site, which is protected by the right to freedom of religion. There are no averments made on behalf of the petitioner to establish the religious significance of offering the prayer at the said site in order to establish that it is integral to the practice of his religious beliefs. Therefore, this Court finds no reason to believe that the right to pray at the said site is an essential religious practice that can be granted protection under Article 25 of the Constitution of India.

23. As established previously, Article 25 of the Constitution provides for the right to freedom of practicing one's religion as well as the freedom of conscience. The freedom of conscience is guaranteed to all persons to hold any beliefs as per their desire and liking. However, any act in pursuance of the beliefs so held are liable to be restricted in the interest of public at large, as per the qualifications provided for under Article 25 of the Constitution of



India. In other words, the said rights are not absolute in nature and the protection afforded to them is subject to the observance and maintenance of public order, health and morality. The qualification of “public order” under Article 25 extends to the maintenance of peace and tranquility, such that no disruption or inconvenience is caused to public at large.

24. In the present case, the said site is a cremation ground which is meant for the purpose of organizing cremation of dead bodies as per the rituals and such cremation ground can be availed by the public at large for the said purpose. Therefore, allowing prayers to be offered at such places of public utility will hamper public convenience at large. Further, if the same is allowed, it would be prejudicial to the maintenance of public order, which is a mandatory qualification to the protection granted under Article 25 of the Constitution.

25. In diverse societies, public spaces should remain a neutral ground where people of all religious denominations feel welcome and respected. When a religious practice is prominently displayed in public places, it can inadvertently lead to marginalization of others. In view of the same, this Court is of the considered view that the present petition, if allowed, would hamper and restrict the implementation of the above discussed principles that are at the roots of any diverse society.

26. The central issue before this Court for determination in the present case was whether the petitioner has the right to pray at the said site which is a public utility space. In light of the discussion above, this Court is of the considered view that the same is not protected under Article 25 as a



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fundamental right of the petitioner.

27. Therefore, this Court is of the view that the instant petition is devoid of any merit. Accordingly, the instant petition stands dismissed along with pending applications, if any.

28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 28, 2024

gs/st/av

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
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