

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1215/2020

THE NANDED SIKH GURUDWARA SACHKHAND
SHRI HAZUR ABCHALNAGAR SAHIB BOARD PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. RESPONDENT(S)

O R D E R

The petitioner who represents the Gurudwara Sachkhand Sri Hazur Abchalnagar Sahib, which is considered as one of the holiest religious sites in the Sikh faith and is regarded with deep reverence for being the site at which the tenth and last Guru of the Sikhs, Shri Guru Gobind Singh ji Maharaj, granted the holy seat of Guru to the Gurugranth Sahib before leaving this World, has filed this writ petition under Article 32 of the Constitution of India seeking a direction to the respondents to grant permission for conducting Dussehra, Takhat Isnan, Deepmala Mahalla, Gurta Gaddi Kirtan and Gurta-Gaddi Samapthi Kirtan Darbar & Nagar Kirtan events. The petitioner contends that these events have been taking place for the last three centuries. The petitioner also contends that Respondent Nos.3 and 4 were approached for permission to conduct these religious events, for which there was no response.

Taking into account the present COVID-19 Pandemic, the petitioner suggested that the proposed religious events would be conducted in a restricted manner. In so far as Dussehra is concerned, it is proposed by the petitioner that on 25.10.2020, the event will take place from 4 p.m. to 10 p.m. Likewise, the proposed timings of the other religious events have been mentioned in the writ petition. The petitioner also agrees that other conditions can be imposed for granting permission to conduct the religious events. It is submitted by Mr. Praveen Chaturvedi, learned counsel for the petitioner that only a maximum of 50 persons shall participate in the event after being medically tested a day prior to the event. He also agrees that the route for procession which is originally 2.5 kms. will be reduced to 1.5 kms. and that no other person shall be allowed to participate in the procession. He further submitted that steps will be taken to ensure safe physical distancing, use of face masks and frequent hand sanitisation. The petitioner undertakes to arrange a live telecast of the event to discourage public gatherings at the event. The petitioner also states that an observer can be appointed either by the State Government or by this Court for the purpose of monitoring the adherence to the guidelines.

Learned Solicitor General appearing for the Union of India referred to the affidavit filed in this

Court in which there is a reference to the Unlock Guidelines dated 30.9.2020 whereby congregations and gatherings are permitted from 15.10.2020 subject to the condition that there should be not more than 100 persons in the event. The conditions that are imposed by the Unlock Guidelines dated 30.9.2020 issued by the Ministry of Home Affairs, Government of India are that in closed spaces, a maximum of 50% of the hall capacity will be allowed, with a ceiling of 200 persons. Wearing of face masks, maintaining social distancing, provision for thermal scanning and use of hand wash or sanitizer will be mandatory. Similarly, there should be strict observance of social distancing, wearing of face masks, provision for thermal scanning and use of sanitizer for any event in open spaces. Learned Solicitor General emphasizes the importance of the festivities taken by the Sikh community and in view of the Unlock Guidelines dated 30.9.2020 issued by the Ministry of Home Affairs, he commended that the petitioner may be permitted to carry out its religious activities subject to strict observance of the health guidelines issued by the Government of India. The Learned Solicitor General relied upon an order by this Court in *Nishikant Dubey vs. UOI* on 31.07.2020 by which the State Government was directed to make arrangements for regulated entry of people in the temple premises.

Mr. Devadatta Kamat, learned senior counsel

appearing for the State of Maharashtra submitted that this writ petition filed under Article 32 of the Constitution of India is not maintainable as there is no violation of any fundamental right of the petitioner. He submitted that Article 25 of the Constitution guarantees a fundamental right to freely profess, practice, and propagate religion subject to public order, morality and health. The State Government being responsible for the health of the people of the State, has taken a conscious decision on 30.9.2020 to not allow religious functions and congregations in order to protect the health of the citizens.

The State Government has filed an affidavit informing this Court that pursuant to the conscious decision taken by the Government to not allow any religious functions and congregations, has imposed a ban on all festivities such as GudiPadwa, Shree Ram Navami, Hanuman Jayanti, Mahaveer Jayanti, Easter Sunday, Buddha Purnima, Akshaya Tritiya, Ramadan Eid, Dindis to Pandharpur, Ashadi Ekadashi, Nag Panchami, Bakr Eid, Raksha Bandhan, Gokulashtami, Dahi Handi, Ganesh Chaturthi, Moharram, Navaratri etc. Learned senior counsel further brought to our notice that the Warkari Seva Sangh filed a writ petition in the Bombay High Court to permit the members of the Sangh to carry the Padukas of Saint Dhyaneswar from Wakhari to Pandharpur by walk for performing rituals of Nagar Pradakshana in Pandharpur

City on Ashadhi Ekadashi subject to the conditions that could be imposed by the State Government. He submitted that the Bombay High Court did not entertain the writ petition in spite of submissions made by the petitioners in that case, that the ritual has been prevalent for the past 100 years. He submitted that processions for Moharram and Ganesh Chaturthi were also not permitted by the State Government. He also brought to our notice that State of Maharashtra is the worst affected State from COVID 19 Pandemic and Nanded District is badly affected by the rampant spread of the disease. When this Court asked him whether the State Government would be in a position to permit the petitioner to conduct the festivities with certain conditions being imposed like having the procession in the early morning on 25.10.2020 with all the safeguards imposed by the State Government being followed, Mr. Kamat responded by saying that it will be difficult to enforce the restrictions and stop the gathering of a large crowd.

Mr. Kamat, learned senior counsel placed reliance on a judgment of this Court in *Shri Amarnath Barfani Langars Organisation versus Union of India* to submit that interference with the decision not to permit any religious procession is unwarranted. This Court held that a decision as to whether a pilgrimage should be permitted or not is a matter which falls within the domain of the executive area of the State. He submitted

that the petitioner can approach the authorities with its proposal which will be duly considered.

Though the Petitioner has come forward with a proposal of conducting the Religious event on 25.10.2020 subject to conditions that would prevent any spread of Covid-19 Virus, the State Government has expressed that any grant of permission for conducting a procession would be an invitation for danger to public health. Safety and health of the people is entrusted by the Constitution to the politically accountable officials of the States to guard and protect [*Jacobson vs. Massachusetts* 197 US 11, 38 (1905)]. When the State undertakes to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad. [*Marshall vs. U.S.* 414 US 417,427]. The Courts lack the background, competence and expertise to assess public health [*Garcia vs. San Antonio Metropolitan Transit Authority* 469 U.S. 528, 545 (1985)].

We do not intend to interfere with the decision of the State Government to not permit any religious procession at this stage. However, we are of the opinion that the petitioner should approach the Secretary, State Disaster Management Authority, Government of Maharashtra and make a fresh proposal giving all the safeguards that will be taken by them for conducting procession and religious event for Dussehra on 25.10.2020. We are not expressing any opinion on the festivals other than

Dussehra that are referred to in this writ petition because those festivals are in the month of November, 2020 and they would be governed by the fresh guidelines that might be issued by the State of Maharashtra at the end of this month.

In so far as the proposal relating to conducting Dussehra festival on 25.10.2020 by the petitioner is concerned, the Secretary, State Disaster Management Authority shall take a decision by not being influenced by the decisions taken in the past for grant of permissions relating to religious events. The State Government issued directions in exercise of the power conferred under Section 2 of the Epidemic Diseases Act, 1897 on 31.09.2020 easing restrictions. Religious functions and other large congregations were prohibited. The Unlock guidelines issued by the Union of India permitting congregations with restrictions by its order dated 30.09.2020 was not considered by the State Government. Therefore, the Unlock guidelines issued by the Union of India on 30.09.2020 shall be kept in mind by the Secretary, Disaster Management Authority while giving an opportunity of hearing to the Petitioner on 20.10.2020. Also, the fact that even the State Government is making an attempt to bring back normalcy relaxing restrictions shall also be considered by the Secretary, State Disaster Management Authority. The Petitioner is at liberty to approach the High Court if it

is aggrieved by the decision of the Authority.

We dispose of this writ petition with the aforesaid directions. Pending application(s), if any, shall also stand disposed of.

.....J.
(L.NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

.....J.
(AJAY RASTOGI)

NEW DELHI;
OCTOBER 19, 2020.

ITEM NO.1 Court 2 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 1215/2020

THE NANDED SIKH GURUDWARA SACHKHAND
SHRI HAZUR ABCHALNAGAR SAHIB BOARD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.106626/2020-EXEMPTION FROM FILING O.T.)

Date : 19-10-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Praveen Chaturvedi, AOR

For Respondent(s) Mr. Tushar Mehta, Ld. SG
Mr. Kanu Agrawal, Adv.
Mr. B. V. Balaram Das, AOR

Mr. Devadatta Kamat, Sr. Adv.
Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR
Mr. Aditya Bhat Adv.
Mr. Geo Joseph, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The writ petition is disposed of in terms of the Signed
Order. Pending application(s), if any, shall also stand
disposed of.

(GEETA AHUJA)
COURT MASTER (SH)

(ANAND PRAKASH)
BRANCH OFFICER

(Signed Order is placed on the file)