

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AD-HOC NO. WP-LD-VC-350 OF 2020
WRIT PETITION (ST.) NO. OF 2020

All India Idaara-E-Tahafuz-E-Hussainiyat ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

Mr.Rajendra Shirodkar, Sr. Adv. a/w. Mr. Asif Naqvi, Mr. Jafer Nadeem, Mr. Archit Shirodkar i/b. Shehazad Naqvi for the Petitioner.

Mr.A.A.Kumbhakoni, Advocate General a/w. Ms. Purnima Kantharia, Govt. Pleader, Ms. Geeta Shastri, Addl. Govt. Pleader, Mr.Akshay Shinde, B Panel Counsel for the Respondents.

**CORAM : S.J.KATHAWALLA, &
MADHAV J. JAMDAR, JJ.**

**DATE : 28TH AUGUST, 2020
(THROUGH VIDEO CONFERENCING)**

P.C. :

1. The Petitioner All India Idaara-Tahafuz-E-Hussainiyat through its General Secretary Shri Habib Nasir has stated in the above Petition that they are one of the oldest organization of the Shia Community.

2. By the above Writ Petition, the Petitioner is seeking appropriate writ, order or direction to allow the rituals of Muhurram to be performed during the present pandemic, from 27th August, 2020 till 30th August, 2020 daily for two hours.

3. In the above Petition, this Court passed an order in the present matter on 27th August, 2020 whereby the Principal Secretary, Home Department and Secretary, Disaster Management Department were directed to hear the President and the General Secretary of the Petitioner Organization at 05.00 p.m. yesterday itself. Both the aforesaid Secretaries were directed to submit their decision with reasons to this Court by 11.00 a.m. today.

4. Accordingly, the parties have been heard by both the aforesaid Secretaries and they have taken a decision with detailed reasons today i.e. on 28th August, 2020. The same has been submitted with this Court at 11.00 a.m. as directed. A copy thereof, has also been served on the learned Advocates for the Petitioner.

5. We have perused the aforesaid decision dated 28th August, 2020 and we have heard the learned Senior Advocate for the Petitioner, as also the learned Advocate General for the State of Maharashtra, who was requested to appear in the matter for the State, along with the learned Government Pleader and Additional Government Pleader.

6. Both the parties have agreed that in view of the limited order, that is being passed hereunder, no reasons in support of this Order be recorded, especially since this Order is being passed as and by way of as exception, which is not intended to be used as a Precedent by other persons, to seek permissions, to hold any festival / festivities, which would involve by their very nature congregation of people.

7. On behalf of the Petitioner, the General Secretary Shri Habib Nasir, has

attended the hearing and we have heard him personally, via Video Conferencing, though limited to the extent mentioned hereunder.

8. The said General Secretary, Mr.Habib Nasir has given following undertakings to this Court, which are hereby accepted :

i. In a representative capacity for and on behalf of the entire Shia community residing in the State, there will be only one 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 one mentioned hereinabove, will be carried anywhere in the State.

ii. The aforesaid one 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 a truck i.e. transport vehicle large enough to accommodate it. There will not be any procession as such, for carrying the said one Taziya, in the aforesaid manner.

iii. In no case whatsoever, any congregation of people at any point from the beginning till the end of the said journey of aforesaid one Taziya will be allowed.

iv. The aforesaid one Taziya will be carried along strictly aforesaid one route.

v. The aforesaid one Taziya will be carried along the aforesaid route on Sunday 30th August, 2020 from 4.30 p.m. to 5.30 p.m.

vi. Not more than five persons will carry the aforesaid one Taziya on a

truck, as aforesaid along with one videographer. However, after taking the aforesaid one Taziya down near the graveyard, it will be carried on foot, for a distance of not more than hundred meter. The names, age and addresses of these five persons will be submitted with the office of the Commissioner of Police, Mumbai by 5.00 p.m., on 29th August, 2020.

vii. The Petitioner and all its members will strictly abide by the rest of the guidelines issued by the Home Department, State of Maharashtra, regarding Muhurram-2020, dated 19th August, 2020, a copy of which is annexed to the above Writ Petition as Exhibit-A.

9. The State Government shall, if not already imposed, impose a restriction over gathering of people at the appropriate places, by issuing appropriate orders, including the point where aforesaid one 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 one 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 one Taziya.

10. The Writ Petition is accordingly disposed of.

10. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MADHAV J. JAMDAR, J.)

(S.J.KATHAWALLA, J.)