

Court No. - 32

Case :- WRIT - C No. - 15455 of 2020

Petitioner :- Waqf Imambada Masjid Meer Imam Ali Mehdi Begum

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Syed Ahmed Faizan, Syed Farman Ahmad
Naqvi (Senior Adv.), Zaheer Asghar

Counsel for Respondent :- C.S.C.

Hon'ble Shashi Kant Gupta, J.

Hon'ble Pankaj Bhatia, J.

The present petition has been filed by Waqf Imambada Masjid Meer Imam Ali Mehdi Begum alleging that on a regular basis a Majlis (religious congregation) is performed for 10 odd days and in the present year the said Majlis was to be performed from 30th September, 2020 till the 9th October, 2020. The petitioner alleges that the Shia Waqf Board vide a letter dated 21st August, 2020 had requested that suitable police arrangements be made so as to enable the Majlis to be held without any hindrance, thus on the strength of the said letter, the petitioner claims that the petitioner was entitled to hold the Majlis. It has further alleged that despite permission granted vide order dated 21st August, 2020, the respondent no. 6 without any order being passed is not allowing the petitioner to hold the religious gathering.

Sri S.F.A. Naqvi had further argues that no written communication/order has been passed and only the petitioner were informed orally that the said permission cannot be granted in view of the prevailing Pandemic. The petitioner relies upon the guidelines issued by the State Government (contained in Annexure-3), wherein the following activities were permitted subject to the conditions as stipulated. The relevant condition no. (iii) is as under:-

“(iii) 21 सितम्बर, 2020 से समस्त सामाजिक/ अकादमिक/ खेल/ मनोरंजन/ साँस्कृतिक/ धार्मिक/ राजनीतिक कार्यक्रमों एवं अन्य सामूहिक गतिविधियों को (अधिकतम 100 व्यक्ति) शुरू करने की अनुमति होगी। जिनमें फेस-मास्क का प्रयोग, सोशन-डिस्टेंसिंग का अनुपालन तथा थर्मल स्कैनिंग और हाथ धोने/सेनेटाइजर की व्यवस्था करना अनिवार्य होगा।

शादी-विवाह सम्बन्धी समारोह में अधिकतम 30 व्यक्ति और अन्तिम –सँस्कार में अधिकतम 20 व्यक्तियों के शामिल होने की अनुमति 20 सितम्बर, 2020 तक जारी रहेगी इसके बाद अधिकतम 100 व्यक्तियों की सीमा लागू होगी।”

Thus on the basis of the said guidelines issued by the State Government, the petitioner claims that he is entitled to hold the Majlis subject to the condition stipulated in the letter dated 30th August, 2020 also known as ‘Unlock-4 Guidelines’ and restraining the petitioner from holding the congregation is violative of Article 19 (1) and Article 25 of the Constitution of India.

Sri Naqvi further argues that the freedom granted under Article 19(1) can be curtailed/restricted only in the manner provided in Article 19 (2) of the Constitution of India whereas in the present case, no such law has been framed in pursuance to the provisions of Article 19(2) of the Constitution of India. Sri Naqvi further argues that even the rights under Article 25 are only subject to public order, morality and health whereas in the present case, the Unlock-4 Guidelines itself provide for congregation up to 100 persons in respect of the religious gathering, which makes it clear that there is no foundation or apprehension of any disturbance of any public order, morality or health.

Considering the fact that no orders have been passed and only the petitioners are being restrained by means of oral communication, it is clear that the rights of the petitioner enshrined under Article 19(1) read with Article 25 are being denied without any reasons whatsoever. The mandate of article 19 is only subject to Article 19(2) in respect of the rights guaranteed under Article 19(1) and the rights guaranteed under Article 25 are subject to public order, morality and health, none of the conditions are present enabling the State to deny the rights

of the petitioner to hold the Majlis, thus we have no hesitation in holding that the action of the State in not allowing the holding of the Majlis, that too without any orders being passed, is clearly arbitrary and without any authority of law.

Thus, in the circumstances, we deem it appropriate to direct the respondent nos. 3 to 7 not to create any hindrance in holding of the Majlis by the petitioner subject to of-course the petitioner ensuring the compliance of the 'Unlock-4 Guidelines' and also ensuring the maintenance of social distancing norms and the other restrictions like wearing of Masks and Sanitization, etc.

In view of the above, the writ petition stands allowed.

The copy of the order downloaded from the official website of this Court shall be accepted as a certified copy of the order. The Standing Counsel is also directed to communicate the said order to the respondent nos. 3 to 7 for its compliance.

Order Date :- 5.10.2020

SR