
(2016) 04 KL CK 0059
In the High Court Of Kerala
Case No : WP(C) No. 6813 of 2016 (B)

Amna Bint Basheer and another	Vs	APPELLANT
Central Board of Secondary Education		RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 25(1), 25(2), 26

Citation : (2016) AIR(Kerala) 115 : (2016) 2 ILRKerala 854 : (2016) 2 KerLJ 605 : (2016) 3 KHC 1 : (2016) 2 KLT 601

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : M.P. Shameem Ahamed, Cyriac Tom and S.K. Saju, Advocates, for the Appellant; Devan Ramachandran, (Sr. Advocate), K.M. Aneesh, Suvin R. Menon, CGC By K.M. Aneesh By N. Nagaresh, Assistant Solicitor General, for the Respondent

Final Decision : Disposed Off

Judgement

P.B. Suresh Kumar, J. - The prescription of dress code for All India Pre-Medical Entrance Test-2016 is questioned in this writ petition. The first petitioner is a candidate appearing for the entrance test. The 2nd petitioner is the father of the first petitioner.

2. The parties profess Islam by faith. They challenge the prescription of the dress code on the ground of violation of fundamental right as guaranteed under Article 25(1) of the Constitution.

3. The Central Board of Secondary Education (Board) has been entrusted with the task of the conduct of Pre-Medical Entrance Test. In the wake of large-scale malpractices in the entrance test during the previous years, the Board decided to prescribe the dress code. It has been noted that various methods have been adopted by the candidates for copying. It appears that there were instances of taking electronic gadgets underneath the dress. These ingenious practices adopted by the candidates even resulted in cancellation of the examination

earlier conducted, by the orders of the Hon"ble Supreme Court. Therefore, in order to ensure credibility and transparency in the examination, the Board prescribed the following dress code.

"Dress Code

The candidates are instructed to follow the following dress code while appearing for AIPMT-2016.

a) Light clothes with half sleeves not having big buttons, brooch/badge, flower, etc. with Salwar/Trouser.

b) Slippers and not the shoes."

4. The petitioners would submit that the dress code prescribed as above would offend the religious prescription of the dress code, prescribed for women in Islam and therefore, this would negate the fundamental right as guaranteed under Article 25(1) of the Constitution of India.

5. In the country like India, a predominantly religious society, the Court will have to examine the religious freedom in the light of constitutional scheme. The religious freedom to profess, practise and propagate is a fundamental right, subject to public order, morality and health as provided under Article 25(1) of the Constitution. There are occasions in the matter of public affairs or related secular activities, leading to instances of conflict between religious practices and the State interest. Essentially, this conflict veers around religious practices rather to freedom of conscience, The Courts are often called upon to decide the question of conflict between the right to religious freedom and the State's duty to regulate public affairs in matters of general nature or secular activities. Therefore, the individual's religious rights when entangled in public law have to be resolved by the Court by assimilating individual rights and the State interest.

6. India is a secular State and secularism is its constitutional goal. Secularism is part of the basic structure of the Constitution. {See the judgment of the Hon"ble Supreme Court in S.R. Bommai and others v. Union of India and others [(1994) 3 SCC (1)]}. Article 25(1), while allowing the freedom of conscience and the right to profess, practise and propagate religion, reserves the State's right to interfere with the religious matters, if it involves an issue relating to public order, morality and health. Article 25(2) also enjoins the State legislative power to make regulations or restrictions on any economic, financial, political or other secular activities associated with religious practise. Article 25(2) of the Constitution, in fact, creates a dichotomy between religious affairs and secular activities which may be associated with religious practices. The Constitution makers were conscious about characteristics of the religions prevalent in India. The religion covers every aspect of life, from birth to death. However, constitutional philosophy is to have a separation of secular activities associated with the religious practices. Article 25(2) clearly alludes to the underlying philosophy as above. The State is not immune from making legislation in relation to economic,

financial, political or other secular activities. It appears that the Constitution makers want to ensure that the religious denominations should not wield any power as non-state actors entangling with State functions. The rationale behind the Article 25(2) is to limit the role of the religions as a social and cultural group and to arrest the tendencies to intermeddle with public affairs relatable to activities demarcated for the exercise of State power.

7. Article 26 enjoins any religious denomination, a right to establish a religious institution, manage the affairs in the matter of religion, etc. A combined reading of the Articles 25 and 26 would show that religious freedom is given to persons to profess, practise and propagate religion individually and collectively forming as a community or sect. The "denomination" referred in Article 26 refers to this collectively. Therefore, the individual identity as well as the identity in a religious denomination also has been protected by the Constitution.

8. However, a question may arise to what extent does the Constitution envisages protection associated with the religious practise. This is a delicate question which has been considered by various judgments of the Hon'ble Supreme Court from the year 1954 onwards.

9. The Constitution did not define religion. Therefore, it has to be understood in a normative sense. A religion could be defined as a set of practices to regulate oneself in his internal and external conducts in obedience to his belief in supreme power. Thus, the religious practices are a set of rules or principles for attainment of belief in supreme power. The religious practices are what a religion teaches. The religions like Buddhism and Jainism, do not believe in the existence of God but follow the beliefs and doctrines for the spiritual well being. {See *Ratilal Panachand Gandhi and others v. State of Bombay and others* [AIR 1954 SC 388]}. The Constitution guarantees protection to religious practices based on what one's conscience profess. Therefore, in all circumstances, he can retain his identity based on the religion. The State cannot interfere with the practise of religious affairs which would obliterate his religious identity. The environment in which one has to live is determined by the patterns of the idea formed by his conscience subject to the restrictions as referred under Article 25(1).

10. In the Constituent Assembly Debate, Dr. Ambedkar referred to the "extent" of religious freedom. It was observed as follows:

""The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if the personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by

religion"..... "we are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations, and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that, I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving power. Therefore, no one need be apprehensive of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims by the Christians or by any other community in India."

11. Following cue from the debate in the Constituent Assembly, various judgments of the Hon"ble Supreme Court would indicate that protection as afforded in Articles 25 and 26 is an essential practise of religion though, such categorisation is not explicit in the above constitutional provisions. The Hon"ble Supreme Court in *The Commissioner of Hindu Religious Endowments, Madras v. Sri. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [1954 S.C.R 1005], held as follows:

"It is to be noted that both in the American as well as in the Australian Constitutions the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection. An adjustment of the competing demands of the interests of Government and constitutional liberties is always a delicate and a difficult task and that is why we find difference of judicial opinion to such an extent in cases decided by the American courts where questions of religious freedom were involved. Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under article 26 (b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters."

Thus, Articles 25 and 26 enshrine fundamental values of neutral, liberal and secular ideals of the State to suit the pluralist religious communities in India. The constitutional philosophy therefore, alludes, religion must be a private affair and neither religious ideals would bind the constitutional polity nor would the constitutional ideals bind the religion, to stand out the religious affairs as to be

governed by the personal law. The protection of essential practise thus means that liberty is beyond the interference by the State and the State has the obligation to respect the essential religious practise. Any interference with the person's right or denominations right thus requires justification of State interest to override such protection.

It was further held by the Hon''ble Supreme Court in the Sri. Lakshmindra Thirtha Swamiar''s case (supra) as follows:

"The contention formulated in such broad terms cannot, we think, be supported. In the first place, what constitutes the essential part of religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of article 26(b)."

12. In Ratilal''s case (supra) the Hon''ble Supreme Court observed that what constitutes the essential part of a religion has to be ascertained primarily from the religious doctrine itself. It was observed as follows:

"13. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus, if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion, and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate."

In A.S. Narayana Deeshitulu v. State of A.P and others [1996 (9) S.C.C 548], it was held as follows:

"Essential or integral part of religion to be ascertained from the doctrine of that religion itself according to its tenets, historical backgrounds and change in evolved process and only integral or essential part of religion is protected."

It was further held as follows:

"The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. The

protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They also extend to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of the religion. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his spiritual self."

13. In dealing with the question of freedom of religious practices, the Court must dwell on to find such practices are essential to maintain the identity of a person to profess his faith in the religion he practices and if not allowed, whether it would result in the wrath of the injunctions of the religious doctrine he professes. One of the salient features of the religious tenets is the moral obligations that one has to carry in formulating his conduct, in obedience to the command of superior power in like manner his conduct has to be conducive to become obedient to the legal obligation or legal duty under the temporal law. This moral obligation cannot be allowed to be interpolated by outside ethos. If the religious tenets do not allow a woman to become a priest, the State cannot import secular ethos of gender equality to allow a woman to be appointed as a priest. If it is allowed, the constitutional protection will become void and hollow. The Hon"ble Supreme Court in *Commissioner of Police and others v. Acharya Jagadishwarananda Avadhuta and another* [AIR 2004 SC 2984] held as follows:

"What is meant by an essential part or practices of a religion" is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practise means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built, without which, a religion will be no religion. Test to determine whether a part or practices is essential to the religion is - to find out whether the nature of religion will be changed without that part or practise. If the taking away of that part or practise could result in a fundamental change in the character of that religion or in its behalf, then such part could be treated as an essential or integral part. There cannot be additions or substractions to such part. Because it is the very essence of what religion and alterations will change its fundamental character. It is such permanent essential part is what is protected by the Constitution. No body can say that essential part or practise of one"s religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-essential part or practices."

Thus the religious practise cannot be tested on the secular thoughts or any other consideration outside the religious authority. The personal law is not law within the meaning of expression "law" under article 13(1) of the Constitution. Thus, it is immune from the challenge based on constitutional parameters. {See the *State of Bombay v Narasu Appa Mai* [A.I.R 1952 Bombay 84]}.

14. The enabling power of the State is limited to the areas referred under Article 25(2)(a) and (b). However, nothing prevents the States or the Courts examining the true nature of the essential religious practise. It is open for the State to regulate or make laws consistent with the essential practise of a religion. However, while making a regulation or a law, the true import of the essential practise shall not be supplanted.

15. The Article 25(1) couches a negative liberty ensuring "free from interference or obstacle" in practicing the essential part of a religion, except in situations as referred in the said Article. According to Thomas Hobbes "A freeman is he, that in those things, which by his strength and wit he is able to do, is not hindered to doe what he has will to do" (Leviathan Chapter 21 of the liberty of subjects) Isaiah Berlin in his 1958 lecture "Two Concepts of Liberty" refers to negative liberty as follows:

"liberty in the negative sense involves an answer to the question: "What is the area within which the subject--a person or group of persons--is or should be left to do or be what he is able to do or be, without interference by other persons."

16. The upshot of the discussions as above is as follows:

- i. The fundamental right of freedom to practise religion is protected to the extent to practise essential part of the religion, subject to the restrictions enumerated under Articles 25(1) and 26.
- ii. There is no fundamental right conferred on any person about practise of non-essential part of a religion. Therefore, the State is competent to curb or regulate or interfere with the non-essential part of the religious practices on any reasonable ground.
- iii. The State is competent to make laws in areas referred under Article 25(2)(a) and (b) and also to make laws consistent with the essential part of the religious practise.

17. Coming back to the core issue in this writ petition about the dress code; it is to be noted Islam embrace and encompass guidance to the human in all walks of life. The Shariah is the Islamic law. The Shariah consists of two things.

- i. The laws revealed through Holy Quran.
- ii. The laws that are taken from the lifestyle and teachings of the prophet Mohammed. This part is called Hadiths.

The Holy Quran consist of a broad and general prepositions. It is often through Hadiths, Quranic prepositions are interpreted or explained. Therefore, validity of expected conduct of the believer rests on the credibility of reporting of Hadiths as well. The whole idea of Quranic injunctions and Hadiths is to reduce the rights and obligations to formulate certain standards of behaviour of individuals in his conduct in obedience to the commands of the God. This presuppose to bind his own behaviour as well as of the community.

18. As has been noted above the Hadiths have significant role in determining the Shariah law. In Chapter 7 "Surah" known as "The Heights", the Quran reminds the believer of the requirements of following the Hadiths. In verse 157, it is stated as follows:

"Those who follow the messenger, the prophet who can neither read nor write, whom they will find described in the Torah and the Gospel (which are) with them. He will enjoin on them that which is right and forbid them that which is wrong. He will make lawful for them all good things and prohibit for them only the foul; and he will relieve them of their burden and the fetters that they used to wear. Then those who believe in him, and honour him, and help him and follow the light which is sent down with him, they are successful." In another Chapter 59 known as "The Exile", in verse 7, the Quran commands the believer as follows:

"Whatever the messenger gives you, take it, and whatsoever he forbids, abstain from it."

However, there is a possibility of reporting Hadiths in different ways about life, sayings and teaching of prophet Mohamed, the Messenger. This is one of the reasons, the different schools of thought have come into existence among the Muslims. The different propositions that may also result in conflict of views and opinions. As far as the constitutional Courts are concerned, when called upon to decide the rights premised on the freedom guaranteed under Article 25(1) or 26 is to accommodate such different propositions to honour such freedom. The constitutional Courts are looking at the issue from the angle of freedom guaranteed and not to take up on the task of validity of such propositions, as the priests or proponents of such proposition would do. The Constitutional Courts are expected to safeguard all such propositions, stems from belief or faith, irrespective of the challenge being made for acceptance of such propositions within or outside the religion. The authority to decide what is valid or not valid should be left to the discretion of the persons referred under Article 25(1) or to the denominations as referred under Article 26. The right of denominations underscores here the right to profess and practise in an organised manner by a sect within a large group of religion. The Court will always have to protect the essence of such liberty. However, nothing would impede the State being guardian of all citizens to bring any legislation consistent with the essential practise of religion.

19. The petitioners' concern is that the dress code as now prescribed would not allow the candidates to wear the headscarf and full sleeve dress. It is the case of the petitioners that Shariah mandates women to wear the headscarf and full sleeve dress and therefore, any prescription contrary is repugnant to protection of the religious freedom as provided under Article 25(1).

20. Therefore, this Court has to examine the nature of the dress code prescribed for women in Islam and; such prescription is an essential part of the religion or not; and if it forms part of essential religious practise, can it be regulated in the

light of Article 25(1).

21. In Chapter 24 known as "The Light" in verse 31 in Holy Quran, the command is as follows:

"31. and tell the believing women to lower their gaze and be modest, and to display of their adornment only that which is apparent, and to draw their veils over their bosoms, and not to reveal their adornment save to their own husbands or fathers or husbands' fathers, or their sons or their husbands' sons, or their brothers or their brothers' sons or sisters' sons, or their women, or their slaves, or male attendants who lack vigour, or children who know naught of women's nakedness. and let them not stamp their feet so as to reveal what they hide of their adornment. and turn unto Allah together, O believers, so that ye may succeed."

[Ref: Ibid]

22. In the original text in Arabic, the veil is referred as a "Khumur". In "the Islamic digest of Aqeedah and Fiqh" by Mahmoud Rida Murad "Khumur" is mentioned as follows:

"Khumur, or head cover, is the cloth which covers all of the hair on the head, while the work, "juyooob" (pl. of jaib) means not only the bosom, as commonly thought, but it includes the neck too."

23. In the Chapter 33 known as "The Clans" in verse 59 of the Holy Quran, the command is as follows:

"O Prophet, tell your wives and your daughters and the women of the believers to lower over them a portion of their jilbabs. That is more suitable that they will be known and not be harmed. and even Allah Forgiving and Merciful."

(Ref: Ibid)

24. The reference of jilbab in the above chapter would indicate that the Islamic dress code for women not only consists of a scarf that covers the head, the neck and the bosom but also includes the overall dress that should be long and loose. The jilbab in Arabic Dictionary like lisanu-Al-Arab referred as the loose outer garment.

25. In one of the Hadidhs (words of Prophet Mohammed), explaining the Quranic verses to his sister-in-law "Asma" is as follows:

"O Asma! It is not correct for a woman to show her parts other than her hands and face to strangers after she begins to have menstruation."

[Reported by Abudawud ref: hadith no 4092 kitab al libas (book of clothing Sunan Abu Dawud)]

26. In another Hadidh reported by Thirmidi is as follows:

"Abdullah, son of Umar bin al-Khattab, with whom Allah is pleased, reported that the Messenger of Allah, said:

On the Day of Resurrection, Allah will not look at the man who trails his garment along boastfully". Thereupon, Umm Salamah asked, "What should women do with their garments?" The Prophet said: "They should lower their garments a hand span," Umm Salamah further said, "Women's feet would still be uncovered." The Messenger of Allah (S), replied: "Let them lower them a forearm's length, but not longer."

[Ref: The Islamic Digest of Aqeedah and Fiqh by Mahmoud Rida Murad]

27. The prescription of the dress code as above is essential or not has to be understood with reference to the Shariah injunctions. There are five kinds of rules recognised in Islamic law to classify the nature of the law for its operation which are as follows:

- i. Farz: Strictly obligatory. Five times prayer, Compulsory payment (zakat), Fasting, etc.
- ii. Haram: Those are strictly forbidden. Consumption of liquor, eating of pork etc.
- iii. Mandub: Things which are advice to do. These are things which one fails to perform would not cause any harm to him like additional prayers apart from the five times obligatory prayers.
- iv. Makruh: Which means advice to refrain from. These sins are a lesser category which is short of forbidden, such as wasting food, water, etc
- iv. Jaiz: This is about the things, the religion is indifferent. These things are lawful and would not reap any rewards.

(Ref: Outlines of Mohammadan Law by Asaf A.A Fyzee)

28. In the event of infringement of the dress code, punishment is referred in the Hadiths as follows:

"Fudhalah bin Ubaid reported that the Messenger of Allah (s) said.

Three people about whose evil fate you should not feel sorry: a man who disassociates himself from the Muslim Ummah, disobeys his Imam (the ruler of the Muslim Ummah), and dies in that state; a slave who runs away from his master and dies before returning to him; a woman whose husband goes away after having provided her with provisions but she displays her beauty, in tabarruj during his absence. So do not be concerned about them.

The jilbab must conceal the underclothes. Such requirement applies to the garment a Muslimah should wear for Salah as well. He said.

There will be, in the latter days of my Ummah, women who will be dressed and yet undressed. (They will be wearing) On their heads (things) resembling

camels" humps. Curse them. They are accursed."

29. Thus, the analysis of the Quranic injunctions and the Hadiths would show that it is a farz to cover the head and wear the long sleeved dress except face part and exposing the body otherwise is forbidden (haram). When farz is violated by any action opposite to farz that action becomes forbidden (haram). However, there is a possibility of having different views or opinions for the believers of the Islam based on ijithihad (independent reasoning). This Court is not discarding such views. The possibility of having different propositions is not a ground to deny the freedom, if such propositions have some foundation in the claim. As has been adverted above, the claim of the petitioners is well founded even though, a different view is possible. This Court is only expected to safeguard such freedom based on the Constitution in preference to giving a religious verdict.

30. The discussions as above would show that covering the head and wearing a long sleeve dress by women have been treated as an essential part of the Islamic religion. It follows a fortiori, Article 25(1) protects such prescription of the dress code. Then the only question remains is the essential practise as above would offend the public order, morality, and health or is it necessary to regulate such essential practise to give effect to other provisions of Part III of the Constitution. In *Bijoe Emmanuel and others v. State of Kerala and Others* [(1986) 3 SCC 615], the Hon"ble Supreme Court held as follows:

"Therefore, whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must invoke, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do."

31. The rationale for prescribing dress code by the Board is to avoid malpractices in the examination. The prescription as above is not by invoking an interest of public order or morals of the society. The public order is one which would affect community or public at large. The morality is pertaining to conscience or moral sense of the prescribed standards in the society. The health denotes well-being of a person. The restriction by the Board can be only on any grounds referred as above. In the absence of any conditions referable under Article 25(1), the essential practise cannot be regulated or restrained. No doubt, a restriction can be imposed under Article 19(2) of the Constitution in the interest of the security of the State as contemplated under Article 25(1) which also states the freedom would be subject to the provisions of Part III of the Constitution.

32. The right of women to have the choice of dress based on religious injunctions is a fundamental right protected under Article 25(1), when such prescription of

dress is an essential part of the religion. As has been noted above, that right can be negated only in any of the circumstances referred under Article 25(1). The attempt of the Board to ensure transparency and credibility of the examinations also cannot be ignored by this Court. However, the approach of the Court is always to harmoniously accommodate the competing interest without there being any conflict or repugnancy. The interest of the Board can be safeguarded by allowing the invigilator to frisk such candidates including by removing scarf. However, safeguard has to be ensured that this must be done honouring the religious sentiments of the candidates. Therefore, women invigilators can be permitted to frisk such candidates. It is to be noted that this Court, for the last year examination, in a similar challenge in W.P.(C).No. 21696/2015 ordered as follows:

".... there shall be a direction that at the two centres indicated in the writ petitions, the Invigilator along with a woman Invigilator or another authorised officer shall be present half an hour before the examination commences. The petitioners who intend to wear a dress according to their religious custom, but contrary to the dress code, shall present themselves before the Invigilator half an hour before the examination and on any suspicion expressed by the Invigilator, shall also subject themselves to any acceptable mode of personal examination as decided by the Invigilator, shall also subject themselves to any acceptable mode of personal examination as decided by the Invigilator, but however carried on only by an authorised person of the same sex. If the Invigilator requires the head scarf or the full sleeve garments to be removed and examined, then the petitioners shall also subject themselves to that, by the authorised person. It is also desirable that the C.B.S.E issue general instructions to its Invigilators to ensure that religious sentiments be not hurt and at the same time discipline be not compromised."

33. The learned counsel for the petitioner fervently urged before this Court that all similarly situated students must be given the same relief. He relied on judgment of the Hon'ble Andhra Pradesh High Court in *M. Peeran Saheb and others v. Special Officer cum Collector, Punganur Municipality and other*, [AIR 1988 Andhra Pradesh 377], wherein it was held as follows:

"The learned Advocate General further contended that in case of violation of fundamental right, the person whose right is violated should alone come and seek relief and that general relief cannot be granted by the Court. I am afraid I cannot accede to the contention of the learned Advocate General in view of the judgment of the Supreme Court in *Judges transfer case*. The petitioners claim the relief on the ground of violation of Article 25. Having regard to the nature of the relief granted, it is not necessary that every one who objects to be photographed should approach this Court. Those of the citizens who have declined to be photographed but did not approach this court will also be entitled to the benefit of the order provided they fall within the class held entitled to the relief."

34. The learned Senior Counsel appearing for the Board opposed this prayer. He

would submit that no such omnibus relief can be granted to unidentifiable applicants and there would be a practical difficulty for the Board in implementing such directions.

35. This Court already found that the right to practise the essential part of the religion as guaranteed under Article 25(1) is a negative liberty which means the person is insulated from interference by the authority or the State except in situations referred therein. Therefore, the Board cannot restrict the claim of any similarly situated persons. It is only when a claim is based on a positive liberty, the relief being granted by the Court should be restricted. When this Court declares the law as above, all similarly situated persons would be entitled to such benefits without approaching the Court. In this writ petition, involving a question of negative liberty, the substantial relief is granted as a declaration. Therefore, such declaration cannot be confined to the first petitioner alone. All similarly situated persons forming into such class would be entitled for the relief granted by this Court. In fact, such declaration is not a declaration of the first petitioner's right alone but a declaration of the law itself.

36. However, the practical difficulty in implementing the direction of this Court has to be considered. This Court taking note of the practical difficulty of the Board for the conduct of the examination during the last year, in W.P.(C). No. 21696/2015 had provided sufficient safeguards. This Court is of the view that the same can be followed for this year as well, and the Board can take necessary steps for the next year onwards, while inviting applications itself, to protect such rights. It is to be noted practical difficulty cannot be an excuse to honor the fundamental rights. Therefore, this Court is of the view that for this year the Board shall permit all candidates, who based on the religious practise want to wear head scarf and full sleeved length dress, to appear for the exams.

37. This Court need not interfere with the dress code prescription as referred in the Board's prospectus as others are bound by such prescription except to hold that the dress code as above shall not be enforced against the candidates, who by virtue of Article 25(1) are protected from wearing such dress as prescribed in the injunctions of their faith. The writ petition is allowed and disposed of by granting relief as ordered in W.P.(C). No. 21696/2015 to all who fall within the same class as protected under Article 25(1). It is made clear that all such candidates will have to report at the Centre at least half an hour before the schedule time.