
(2018) 05 DEL CK 0024
In the Delhi High Court
Case No : W.P.(C) 7550 of 2017

DSGMC AND ORS

APPELLANT

Vs

UNION OF INDIA AND ORS

RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 25(1), 25, 26, 26(b)

Citation : (2018) 05 DEL CK 0024

Hon'ble Judges : S. RAVINDRA BHAT ,A. K. CHAWLA

Bench : Division Bench

Advocate : A.P.S. Ahluwalia,S.S. Ahluwalia, Jatin Teototia , Harpreet Singh
Hora,Amit Bansal ,Seema Dolo

Final Decision : Disposed Of

Judgement

S. RAVINDRA BHAT, J.

CM APPL. 31145/2017 & CM APPL. 17491/2018

1.These applications were filed in a pending public interest litigation which was heard from time to time, on several dates.Â The applications

(particularly CM 17491/2018) was moved for urgent orders, since the concerned bench could not assemble on account of the absence of the Acting

Chief Justice, this week.Â As the examination is scheduled for 06.05.2018, the applicants mentioned the matter; with consent of parties the matter

was listed today.

2.The petitioners/applicants are aggrieved by the conditions imposed on the candidates expected to appear in National Eligibility cum Entrance Test

(NEET Examination) to fill the seats set apart for MBBS.Â The petitionersâ?? specific grievance is that the wide nature of the restriction or

prohibition of entry of candidates with objects such as rings, bracelets, nose-pins, earrings, pendants, chain/necklace and metallic objects would

preclude them from wearing the kara and the kirpan which are mandatory for all those who profess the Sikh religion.Â Â

3. In support of their arguments, the petitioners rely upon Explanation 1 to Article 25(1) of the Constitution of India which expressly states that

â??wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religionâ??.Â He also relied upon the ruling of the

Supreme Court, in Commissioner of Police v. Acharya Jagadishwarananda Avadhuta & Anr. (2004) 12 SCC 770 and the recent judgment in Subhash

Kashinath Mahajan (Dr.) v. State of Maharashtra (2018) III SLT 33.Â Â

4. It is urged that in the absence of any recorded incident of misuse of the two articles of faith such as the kara or the kirpan, the neutral language

outlining â??what are banned itemsâ?? should not be read as to prevent Sikh candidates, from carrying the two articles of faith in question.Â It is

besides emphasized that no law prohibits the wearing of the kirpan or the kara and, on the other hand, wearing them in other public places and even in

under special conditions such as in aircrafts during flights and such other places is permitted.Â Learned counsel submits that if there are indeed any

apprehensions with respect to likely misuse of metallic objects including the two articles of faith, the NEET Examination conducting body i.e. the

Central Board of Secondary Education (CBSE) can make special accommodation in that regard by directing the concerned candidates to report

earlier for special screening, etc, and wherever objectionable objects are found, prevent the entry of such articles.Â Â

5. Counsel for the CBSE who has filed a reply in response to the application contends that the regulations, especially those which prohibit entry of

metallic items and objects was necessitated on account of incidents of use of unfair means in the past.Â He relies upon an order of the Supreme

Court in Students Islamic Organization of India v. Central Board of Secondary Education & Anr., W.P.(C) 486/2015 (order dated 24.07.2015) and

further on a judgment reported as Tanvi Sarwal v. Central Board of Secondary Education & Ors. (2015) 6 SCC 573 where the CBSE was directed to

conduct examinations afresh, upon proving allegations of widespread malpractices in the examination process.Â It is submitted that the ban on the

entry of metallic objects is made applicable uniformly and is not directed to members of any particular sect or religion.Â Â

6.Learned counsel emphasized that it is in the larger public interest that the restriction on the entry of metallic objects has been insisted upon.Â

Learned counsel further submitted that the description of the banned items is suggestive of the likely or possible misuse of common articles and

objects such as shoes, pens, metallic objects, etc. and, given these circumstances, ban on the entry of carrying even articles of faith such as kara and kirpan cannot be objected to.Â Â

7.Article 25 of the Constitution of India reads as follows:

â??25.Freedom of conscience and free profession, practice and propagation of religion. â?" (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, practise 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.Â

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.â??

8.In the judgment relied upon i.e. Acharya Jagadishwarananda Avadhuta (supra), the Supreme Court had occasion to consider the legality of the

Police authorities, restrictions and ban on the Tandava dance, performed by the Ananda Margis who claimed it to be part of their essential religious

practice.Â The dance entailed, inter alia, carrying of small knives and a skull in procession, in public view.Â The majority view was that the

performance of the Tandava dance was not an essential part of the religious functions of the Ananda Margis; on that ground the Court upheld the

authoritiesâ?? restrictions.Â

In the course of a separate judgment (of Laxmanand, J.), the meaning of the expression "public order" was considered. In the context of the present case, some of those observations " in the opinion of this Court, are relevant. They are extracted below:-

60. Moreover, "public order" has a larger connotation than "law and order". Contravention of law to affect public order must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not one which affects "public order". (See Ram

Manohar Lohia (Dr.) v. State of Bihar [AIR 1966 SC 740 : (1966) 1 SCR 709] .)

61. Similar processions by other communities even with use of swords e.g. Sikhs, Muslims and Bharat Sevashram Sanghs have been permitted by the Commissioner of Police.

62. The Police Commissioner answers the charge of discrimination by stating that "activities of Ananda Margis cannot come within the scope of religious functions or practices as compared to well-established practices in festivals of Muslims and Sikhs". It is not for the Police Commissioner to give his disapproval to a practice of a particular sect which is in his opinion not well established. To allow any authority to judge the truth or falsity of a religious belief or practice is to destroy the guarantee of religious freedom in the Constitution (see United States v. Ballard [88 L Ed 1148 : 322 US 78 (1943)] .)

63. At the time of hearing, a promise was made that the Ananda Margis are willing to abide with any regulatory condition imposed by the Police Authorities in their procession so long as their religious beliefs and practices of Tandava dance in a procession are not abrogated.

64. Whilst our Constitution is neutral in religion, it at the same time, is benign and sympathetic of all religious creeds however unacceptable they may be in the eyes of the non-believers. Articles 25 and 26 embody a tolerance for all religions. This Court has rightly said [(1986) 3 SCC 615 : AIR 1987 SC 748 : (1986) 3 SCR 518] : (SCC p. 632, para 27)

"[O]ur tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it."

It is in that spirit of tolerance that creeds like the petitioner with their practices must be accepted in our society.

65. This Court has explained in a number of decisions that what constitutes an

essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself and the court cannot say that a belief or practice is not part of religion. This proposition was authoritatively laid down by the Constitution Bench of this Court (seven Judges) in Shirur Mutt case [AIR 1954 SC 282 : 1954 SCR 1005] as extracted in paras supra.

This is the most essential part of the fundamental right of freedom of religion. This Court in subsequent cases has followed the proposition in Shirur Mutt case [AIR 1954 SC 282 : 1954 SCR 1005] , Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] (five Judges), SCR at pp. 531-32 and in Seshammal v. State of T.N. [(1972) 2 SCC 11 : AIR 1972 SC 1586] (five Judges), SCC at p. 21.

70. Subject to consideration of public order, health and morality, it is not open for anybody to question the tenets and practices of religion, however irrational they may appear to an outsider.

71. It is brought to our notice that the following observation in Acharya Jagdishwaranand Avadhuta case [(1983) 4 SCC 522 : 1984 SCC (Cri) 1] is not correct in law: (SCC p. 530, para 9)

“Mr Tarkunde had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga is not a separate religion, application of Article 25 is not attracted.”

As rightly stated by this Court in Bijoe Emmanuel case [(1986) 3 SCC 615 : AIR 1987 SC 748 : (1986) 3 SCR 518] , SCC at p. 631, this sentence appears to have crept into the judgment by some slip.

71-A. Article 25(1) states that all persons are entitled to freedom of religion. Hence every member of a religious denomination is entitled to the fundamental right of freedom of religion under Article 25. It necessarily follows that every sect or denomination is entitled to freedom of religion under Article 25. It is undisputed that under Article 26(b) a denomination is entitled to manage its own affairs in matters of religion.

71-B. The above observation in Jagdishwaranand case [(1983) 4 SCC 522 : 1984 SCC (Cri) 1] is also contrary to the interpretation of Article 25(1) given by this Court in the Constitution Bench of seven Judges in Shirur Mutt case [AIR 1954 SC 282 : 1954 SCR 1005] where the Court observes that: (AIR p. 289, para 14) “Institutions, as such cannot practise or propagate religion; it can be done only by individual persons and whether these

persons propagate their personal views or the tenets for which the institution stands is really immaterial for the purpose of Article 25.â??

72. In this context, I can also usefully refer to the decision of this Court in *Ratilal Panachand Gandhi v. State of Bombay* [AIR 1954 SC 388 : 1954 SCR 1055].â??

9. In the present case, concededly there is no law which per se bans the entry of karas or kirpans or such like objects or articles of faith.Â Every

practising Sikh is enjoined to wear the kara and carry the â??kirpanâ??.Â Our Constitution has gone to the length of clarifying that those articles of

faith are deemed to be a profession of the Sikh religion.Â At the same time, the regulating bodyâ??s remit extends to decide what according to its

best judgment can be or cannot be permitted inside the examination hall.Â A fact not disputed is that karas and kirpans are commonplace even in

highly restricted areas such as aircraft, during flights, during travel and in a number of other public places.Â Obviously, even in those places too the

issue of public order or the possible threat of secondary use of such articles would be there; at the same time, the authorities have to ensure the

provision of the Constitution is the rule rather than otherwise.Â In the absence of any objective facts indicative, or suggestive of, real threat of use of

unfair means by those wearing karas and kirpans, the blanket ban on metallic objects would not be justified.Â â??Public orderâ?? is not a mechanical

incantation, to justify every restriction, but refers to proximity to a real threat, which has to be correspondingly dealt with a proportionate response by

the State.Â (Ref. *Ram Manohar Lohia v. State of Bihar* AIR 1966 740). Â Therefore, clearly, CBSEâ??s lack of accommodation for Sikh

candidates is unjustified.

10. In order to balance the regulatory concerns of the CBSE and the right of the Sikh candidates to wear the two articles or objects of faith, this Court

is of the opinion that having regard to paucity of time, the CBSE should forthwith indicate a special procedure â?? in addition to the existing procedure

(which apparently requires those wearing customary or special dresses to report earlier) particularly stating that such of the Sikh candidates who wish

to wear the objects concerned (kara and kirpan) on their person should report one hour before the reporting time i.e. latest by 8:30 a.m.Â If upon

screening it is discovered that any candidate is actually carrying, within the kara

or kirpan, a suspect device, he may be asked not to take it in the examination hall.Â Â

The applications are disposed of in the above terms.

W.P.(C) 7550/2017

Â List on the date already fixed, i.e. 13.08.2018, before the concerned Bench.

Order dasti under the signatures of the Court Master.Â Â Â