

**Court No. - 40**

**Case :-** WRIT - C No. - 28463 of 2024

**Petitioner :-** Khidmate Khalq Educational Welfare Society And Another

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** S.M. Iqbal Hasan

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shekhar B. Saraf, J.**

**Hon'ble Manjive Shukla, J.**

1. Heard learned counsel appearing on behalf of the petitioners and Sri Mukul Tripathi, learned Standing Counsel appearing on behalf of the State.
2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioners are seeking the following reliefs:

*“(I) A writ of Mandamus commanding and directing the respondent-authorities to grant permission to the petitioner to carry out the procession of “Eid Miladun-nabi (pbuh)/Barawafat” schedule to be held on 12 Rabi-ul-awal i.e. 16/17 September, 2024 on their conventional route.*

*(II) A writ, order or direction in the nature of Mandamus commanding and directing respondent-authorities to permit to carry out the procession of Eid Milad-un-nabi (pbuh)/(Barawafat) scheduled to be held on 12 Rabi-ul-awal i.e. 16/17 September, 2024 on the alternative route suggested in para 12 of the writ petition.*

*(III) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

*(IV) Award the cost of the petition to the petitioners.”*

3. From a plain reading of the prayers made in the writ petition, there does not appear to be any specific challenge to any order passed by the authorities. The prayers simpliciter seek a writ of mandamus upon the respondent authorities to grant permission. Without any challenge to a particular order, no cause of action arises. The extraordinary jurisdiction of the writ Court being a discretionary one, the writ Court is required to exercise its jurisdiction judiciously. In the present case, once it was pointed

out by the learned Standing Counsel that there is no challenge to any order, counsel appearing on behalf of the petitioners produced an amendment application which has not been filed till date nor served upon the Standing Counsel appearing on behalf of the State.

4. It is to be noted that the writ petition was filed on August 24, 2024 and thereafter the matter was heard on September 4 and 11, 2024, but on none of these dates, the petitioners filed any amendment application.

5. Today an amendment application seeking amendment in the prayer clause has been filed, wherein the following prayer has been prayed to be added:

*“(I) A writ of certiorari quashing the impugned order dated 8.8.2024 passed by the Sub Divisional Magistrate Najibabad District Binjor (Respondent No.3) Annexure No.5 to the writ petition.*

6. Upon due consideration, application is allowed.

7. Let the necessary amendment be carried out forthwith.

8. The petitioners have not brought on record any factual data that would indicate that this procession has ever been carried out in the past. It appears that in the year 2022, an application was filed by the petitioners which was initially allowed but thereafter on objection being raised by the villagers, the same was refused by the authority concerned. Nothing has been brought on record with regard to the year 2023. For the present year, on an application that has been filed by the petitioners, a report has been submitted on August 6, 2024 by the Sub Inspector, Police Station Kiratpur, Bijnor stating the following:

“सेवा में,

श्रीमान क्षेत्राधिकारी महोदय,

नजीबाबाद जनपद बिजनौर

विषय:- आवेदक मौ० आदि पुत्र इददू हसन नि० ग्राम शाहअलीपुर सत्तर उर्फ मदनपुर थाना किरतपुर बिजनौर की अनुमति के सम्बन्ध में रिपोर्ट आख्या।

महोदय,

कृपया सादर अवगत कराना है कि आवेदक मौ० आदि पुत्र इददू हसन नि० ग्राम शाहअलीपुर सत्तर उर्फ मदनपुर थाना किरतपुर बिजनौर के आवेदन पत्र जिसमें आवेदक द्वारा

दिनांक 16.09.2024 व दिनांक 17.09.2024 को जश्ने ईद मिलादुन नबी इस्लाम की बातों का प्रचार प्रसार करने हेतु आवेदन किया गया है। उक्त आवेदन पत्र की जांच मुझ उ० नि० द्वारा ग्राम शाहअलीपुर सत्तर उर्फ मदनपुर में जाकर की गयी तो पाया गया कि आवेदक दिनांक 16.09.2024 व दिनांक 17.09.2024 समय प्रातः 09 बजे से दोपहर 12 बजे तक जश्ने ईद मिलादुन नबी इस्लाम की बातों का प्रचार प्रसार करना चाहता है। आवेदक साम्प्रदायिक व्यक्ति है तथा दिल्ली में रहता है बारह वफात के अवसर पर ही गांव में आकर भोले भाले लोगों का अपने विश्वास में लेकर जुलूस निकालने का प्रयास करता है। जिससे गांव में साम्प्रादिक तनाव फैलने की आशंका हो जाती है। त्योहार रजिस्टर का अवलोकन किया गया तो पाया गया कि पूर्व में ग्राम मदनपुर में जश्ने ईद मिलादुल नबी की जाति बिरादरी को लेकर कोई प्रचार प्रसार करना व बारह वफात पर किसी जुलूस को आयोजित करने के सम्बन्ध में कोई भी अभिलेख त्योहार रजिस्टर में इन्द्राज नहीं है। तथा हिन्दु समुदाय के द्वारा जुलूस का विरोध किया जाता है। यदि आवेदक की अनुमति स्वीकृत की जाती है तो ग्राम उपरोक्त में किसी भी घटना के घटित होने से इन्कार नहीं किया जा सकता है।

श्रीमान जी जश्ने ईद मिलादुन नबी के आयोजन की अनुमति की संस्तुति नहीं की जाती है।

रिपोर्ट सादर सेवा में प्रेषित है।

ह०अस्पष्ट

6/8/24

(योगेश कुमार) उ०नि०

थाना किरतपुर बिजनौर

9. The above report has been forwarded to the Sub Divisional Magistrate. From the record and from the instructions of the learned Standing Counsel appearing on behalf of the State, there does not appear to be a decision having been taken by the Sub Divisional Magistrate till date.

10. In light of the same, we direct the Sub Divisional Magistrate concerned to pass a reasoned order on the same by September 15, 2024 and communicate the same to the petitioners immediately after passing of the same. We make it clear that the Sub Divisional Magistrate should take into consideration the fact that the security and tranquillity of the area is not disturbed because of the procession being carried out through the said area. The Supreme Court and this Court have observed so in a catena of judgments that it is the job of the State Authority to ensure peace and tranquillity when peaceful processions are carried out.

11. The Sub Divisional Magistrate concerned shall be at liberty, if he is inclined to grant permission, to regulate the said procession with regard to number of persons that may take part in the procession, fixation of time and

route of such procession and direct no arms or weapons be carried during the procession. Furthermore, he should arrange for the security in the particular area and route for the said procession.

12. The observations made by this Court should be looked into by the Sub Divisional Magistrate concerned before passing the reasoned order.

13. With the above directions, the writ petition is disposed of.

**Order Date :-** 13.9.2024

Kuldeep

(Manjive Shukla, J.)

(Shekhar B. Saraf, J.)