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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 421/2021**

DELHI WAQF BOARD THROUGH ITS CHAIRMAN..... Petitioner

Represented by: Mr.Ramesh Gupta, Sr.Advocate with
Mr.Wajeeh Shafiq, Standing Counsel
for Delhi Waqf Board, Ms.Ramsha
Shan and Mr.Shailendra Singh,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI AND ANR..... Respondent

Represented by: Mr.Amit Peshwani, Advocate for
Ms.Nandita Rao, Additional Standing
Counsel for State/respondent No.1.
Mr.Amit Mahajan, CGSC, Mr.Rajat
Nair, Mr.Dhruv Pandey and
Mr.Shantanu Sharma, Advocates for
respondent No.2/UOI.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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15.04.2021

The hearing has been conducted through Video Conferencing.

1. This petition has been filed by the petitioner seeking directions to the respondents to re-assess the necessity of keeping the Waqf premises, that is, Municipal Nos.168, 168A, 168B situated at Basti Hazrat Nizamuddin between Dargah Hazrat Nizamuddin and Police Station Hazrat Nizamuddin under locks and direct the respondents to consider adopting more advanced and scientific methods for securing the conditions of the interiors of the Waqf premises besides directions to cause only necessary and minimum interference with the operation of the aforesaid religious place.

2. Notice in this petition was issued by this Court on 24th February, 2021 when the learned Solicitor General of India and the learned Additional Solicitor General appearing for Union of India sought time to place on record the stand of the Ministry of Home Affairs. The petition was thus listed on 5th March, 2021 when further time was sought to file the status report by the Union of India.

3. On 24th March, 2021 further time was sought by the learned Additional Solicitor General to file the status report on behalf of Union of India when learned Senior Counsel appearing on behalf of the petitioner pointed out that on 27th March, 2021 the religious ceremony of Shab-E-Barat was required to be performed. A statement on instructions was made by the learned Additional Solicitor General as per which in case the petitioner applied to the concerned SHO for permission of 50 persons performing the religious ceremony on 27th March, 2021, the necessary permission would be granted to perform the ceremony in Masjid Bangley Wali, the mosque area of Markaz. The writ petition was thus listed for 12th April, 2021.

4. On 12th April, 2021, a request was made on behalf of the learned Senior Counsel for the petitioner that for the month of Ramzan starting from 14th April, 2021, the mosque area be made operational for the devotees to offer prayers. Learned counsel appearing on behalf of Union of India fairly stated that the same can be permitted subject to the guidelines issued by Delhi Disaster Management Authority (in short 'DDMA') to maintain social distancing in the wake of rise of Covid-19 cases in Delhi. Thus this Court permitted a joint inspection by the SHO, PS Hazrat Nizamuddin and the office bearers of the mosque in the presence of learned counsel by

measuring the area of the mosque where devotees can offer Namaz five times keeping in mind the guidelines issued by DDMA.

5. When the matter came up before this Court on 13th April, 2021, learned Solicitor General of India pointed out towards the notification of the DDMA dated 10th April, 2021 whereby all social/political/sports/entertainment/academic/cultural/religious/festival related and other gatherings and congregations were prohibited. Thus this Court directed the respondents to file an affidavit of the competent authority indicating the manner in which Clause (ii) of the prohibition at Sr.No.1, Annexure-A to the order dated 10th April, 2021 of the DDMA is being implemented and whether religious/festival related and other gatherings and congregations are being permitted to take place or not including in the temples, mosques, churches etc. in the region of NCT of Delhi.

6. A status report has been filed by the respondent/Union of India under the signatures of the Assistant Commissioner of Police, Sub-Division, Lajpat Nagar, Delhi dated 15th April, 2021 which reads as under:

“1. The present affidavit is filed in respectful compliance of this Hon’ble courts order dated 13.04.2021.

2. It is submitted that presently the covid situation in within the NCT of Delhi has become grave and the infection levels is at it’s all-time peak so far. Considering this grave and unprecedented situation, DDMA of GNCT vide its order dated 10.04.2021 has banned all religious and festivals related gathering and congregations within NCT of Delhi.

3. It is submitted that the said notification is applicable to all the religious places within the GNCT. However, this Hon’ble Court in its wisdom and discretion may permit such person as it deem fit and proper to perform namaz only on the ground floor of the Bangle Wali Masjid. This Hon’ble Court may also direct that all Covid related protocols issued by the

GNCT and UOI may be strictly be followed by the petitioner, the persons offering namaz and the management of the Bangle Wali masjid during performance of such namaz. This Hon'ble Court may further direct that complete recording of the event through the CCTV installed by the petitioner in consultation with SHO PS. Nizamuddin may be done and be made available to the authorities, if required."

7. It is evident from the reading of the status report that no clear stand has been taken as to whether any religious and festival related gatherings or congregations are being permitted in other religious places, that is, temples, churches, mosques etc.

8. Presently the issue before this Court is whether the Masjid Bangley Wali can be permitted to be opened for performing Namaz during the holy month of Ramzan by the devotees. It is the stand of the Union of India/respondent as well that Masjid is opened five times a day and five persons are being permitted to perform Namaz everyday and thereafter it is locked. In the wake of the pandemic of Corona virus, lockdown issued in the country on 23rd March, 2020 when all institutions including the religious places were shut down. The lock down was partially lifted by various notifications and vide the notification dated 15th April, 2020 passed by DDMA pursuant to the Ministry of Home Affairs' order dated 15th April, 2020 the lock down was extended on various activities including all social/political/sports/ entertainment /academic/ cultural/religious functions/other gatherings and all religious places/ places of worship were closed for public, besides religious congregations were strictly prohibited.

9. It is thus evident that the DDMA made a clear distinction between religious places/ place of worship and cultural/religious functions and

gatherings. Further vide the notification of the DDMA dated 7th June, 2020 in accordance with the office order of Ministry of Home Affairs dated 4th June, 2020 certain activities were permitted and amongst the permitted activities religious places/ places of worship were opened for public. The said religious places/ places of worship were opened for public subject to the SOP laid down. Vide the notification dated 10th April, 2021 being referred to by the Central Government what has been prohibited is all social/political/sports/ entertainment/academic/cultural/religious/festival related and other gatherings and congregations. It is evident that there is no prohibition nor any directions to close the religious places/ places of worship for public.

10. Learned counsel appearing on behalf of Union of India states that the Masjid Bangley Wali was sealed pursuant to FIRs registered particularly FIR No.63/2020 under Section 3 of the Epidemic Diseases Act, 1897 read with Sections 51/58 (1) of the Disaster Management Act, 2005 read with Section 304/308/336/188/269/270/271/120B IPC read with Section 14(B) of the Foreigner Act registered at PS Crime Branch. Learned Senior Counsel for the petitioner states that all the foreigners who were booked in these FIRs have been acquitted/compounded/discharged. Learned counsel for Union of India responds by stating that revision petitions have been filed and/or are in the process of being filed challenging the said orders of acquittal/compounding/discharge.

11. Cognizant of the fact that Masjid Bangley Wali is a religious place/ place of worship for public, it is a fair stand of the respondent that it has been permitting offering of Namaz five times a day in the Masjid area of the premises by five persons.

12. Considering the fact that the religious places/ places of worship have not been closed for the public vide the notification dated 10th April, 2021, this Court finds that the petitioner has made out a case wherein devotees are required to be permitted to perform Namaz during the month of Ramzan at Masjid Bangley Wali, however, the performance of the said Namaz has to be strictly in accordance with the SOPs laid down by the DDMA.

13. While issuing the notification dated 7th June, 2020 the DDMA had laid down the following SOPs in relation to the religious places /places of worship for public.

4th June, 2020

*Government of India
Ministry of Health and Family Welfare*

SOP on preventive measures to contain spread of COVID-19 in religious places/places of worship

1. *Background*

Religious places/places of worship get frequented by large number of people for spiritual solace. To prevent spread of COVID-19 infection, it is important that required social distancing and other preventive measures are followed in such premises.

2. *Scope*

This document outlines various generic precautionary measures to be adopted in addition to specific measures to be taken at particular places to prevent spread of COVID-19. Religious places/places of worship for public in containment zones shall remain closed. Only those outside containment zones will be allowed to open up.

3. *Generic preventive measures*

Person above 65 years of age, persons with co-morbidities, pregnant woman and children below the age of 10 years are advised to stay at home. Organisations managing the religious institutions to advise accordingly.

The generic preventive measures include simple public health measures that are to be followed to reduce the risk of COVID-19. These measures need to be observed by all (workers and visitors) in these places at all times.

These include:

- i. Individuals must maintain a minimum distance of 6 feet in public places as far as feasible.*
- ii. Use of face covers/masks to be mandatory.*
- iii. Practice frequent hand washing with soap (for at least 0-60 seconds) even when hands are not visibly dirty. Use of alcohol-based hand sanitizers (for at least 20 seconds) can be made wherever feasible.*
- iv. Respiratory etiquettes to be strictly followed. This involves strict practice of covering one's mouth and nose while coughing/ sneezing with a tissue/handkerchief/ flexed elbow and disposing off used tissues properly.*
- v. Self-monitoring of health by all and reporting any illness at the earliest to state and district helpline.*
- vi. Spitting should be strictly prohibited.*
- vii. Installation & use of Aarogya Setu App shall be advised to all.*

4. All religious places shall also ensure:

- i. Entrance to have mandatory hand hygiene (sanitizer dispenser) and thermal screening provisions.*
- ii. Only asymptomatic persons shall be allowed in the premises.*
- iii. All persons to be allowed entry only if using face cover/masks.*
- iv. Posters/standees on preventive measures about COVID-19 to be displayed prominently. Audio and Video clips to spread awareness on preventive measures for COVID-19 should be regularly played.*
- v. Staggering of visitors to be done, if possible.*
- vi. Shoes/footwear to be preferably taken off inside own vehicle. If needed they should be kept in separate slots*

for each individual / family by the persons themselves.

- vii. Proper crowd management in the parking lots and outside the premises – duly following social distancing norms shall be organized.*
- viii. Any shops, stalls, cafeteria etc., outside and within the premises shall follow social distancing norms at all times.*
- ix. Specific markings may be made with sufficient distant to manage the queue and ensure social distancing in the premises.*
- x. Preferably separate entry and exits for visitors shall be organized.*
- xi. Maintain physical distancing of a minimum of 6 feet at all time when queuing up for entry.*
- xii. People should wash their hand and feet with soap and water before entering the premises.*
- xiii. Seating arrangement to be made in such a way that adequate social distancing is maintained.*
- xiv. For air-conditioning/ventilation, the guidelines of CPWD shall be followed which inter alia emphasizes that the temperature setting of all air conditioning devices should be in the range of 24-30°C, relative humidity should be in the range of 40-70%, intake of fresh air should be as much as possible and cross ventilation should be adequate.*
- xv. Touching of statues/idols/holy books etc. not to be allowed.*
- xvi. Large gatherings/congregation continue to remain prohibited.*
- xvii. In view of potential threat of spread of infection, as far as feasible recorded devotional music/songs may be played and choir or singing groups should not be allowed.*
- xviii. Avoid physical contact while greeting each other.*
- xix. Common prayer mats should be avoided and devotees should bring their own prayer mat or piece of cloth which they may taken back with them.*
- xx. No physical offerings like Prasad/distribution or*

sprinkling of holy water, etc. to be allowed inside the religious place.

- xxi. Community kitchens/langars / “Ann-daan”, etc. at religious places should follow physical distancing norms while preparing and distributing food.*
- xxii. Effective sanitation within the premises shall be maintained with particular focus on lavatories, hand and foot-washing stations/areas.*
- xxiii. Frequent cleaning and disinfection to be maintained by the management of the religious place.*
- xxiv. The floors should particularly be cleaned multiple times in the premises.*
- xxv. Proper disposal of face covers / masks / gloves left over by visitors and/or employees should be ensured.*
- xxvi. In case of a suspect or confirmed case in the premises:*
 - a. Place the ill person in a room or area where they are isolated from others.*
 - b. Provide a mask/face cover till such time he/she is examined by a doctor.*
 - c. Immediately inform the nearest medical facility (hospital/clinic) or call the state or district helpline.*
 - d. A risk assessment will be undertaken by the designated public health authority (district RRT/treating physician) and accordingly further action be initiated regarding management of case, his/her contacts and need for disinfection.*
 - e. Disinfection of the premises to be taken up if the person is found positive.*

14. Considering the fact that devotees are required to perform the Namaz five times, during the holy month of Ramzan and at the same time it has to be taken care that covid-19 infection does not spread, which is increasing exponentially in Delhi and does not affect the health of the public at large and the devotees visiting the Masjid Bangley Wali, this court directs the

SHO, PS Hazrat Nizamuddin, to permit 50 persons to perform the Namaz five times at Masjid Bangley Wali in the first floor above the basement in the designated area for offering Namaz by the devotees by maintaining social distancing and SOP laid down by the DDMA in the notification dated 7th June, 2020.

15. Learned counsel for the petitioner states that besides the first floor of the premises, there are other floors in the Masjid Bangley Wali however, there are three more floors which are operational and further permission of 50 devotees each in the other three floors be also granted. The petitioner would be at liberty to make an application in this regard to the SHO, PS Hazrat Nizamuddin who will consider the same in accordance with law.

16. This order will be subject to any further notification of the DDMA in relation to religious places/ places of worship by public.

17. Learned counsel for Union of India states that he will be filing his detailed affidavit in response to the petition taking objection to the maintainability of the present petition in view of Article 25 of the Constitution of India and the judgment rendered by the Hon'ble Supreme Court reported as (1994) 6 SCC 360 *Dr. M. Ismail Faruqui and Others vs. Union of India and Others*.

18. Reply affidavit be filed within four weeks. Rejoinder affidavit be filed within three weeks thereafter.

19. List on 16th July, 2021.

20. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

APRIL 15, 2021/‘vn/vk’