

IN THE HIGH COURT OF DELHI AT NEW DELHI
31.

W.P. (C) No. 2222 of 2008

DORJEE SHUGDEN DEVOTEES CHARITABLE
and RELIGIOUS SOCIETY

Petitioner

Through: Mr. Jayant Tripathi and Mr. Sarafaraj Ahmad, Advocates.

versus

UNION OF INDIA and ORS. Respondents

Through: Mr. Atul Nanda with Ms. Rameeza Hakeem, Advocate for R-1 and R-2.

Mr. TVS Raghavendra, Advocate for R-3 and
R-4.

CORAM: JUSTICE S. MURALIDHAR

O R D E R

05.04.2010

W.P.(C) No. 2222 of 2008 and CM No. 4260 of 2008 (for stay)

1. The grievance of the Petitioner Society, which states that it was formed to protect and preserve a part of the Tibetan Mahayana Buddhist School of Philosophy, is that it is being ?systematically attacked, reviled and desecrated by the acts of omission and commission of the Respondents 3 and 4, the Tibetan Government in Exile located in Dharamshala, Himachal Pradesh and Tenzin Gyatso, the 14th Dalai Lama, respectively. The Petitioner also prays for a mandamus to be issued to the Union of India (Respondent No.1) and the State of Himachal Pradesh (Respondent No.2) ?to take effective steps to ensure that the members of the Petitioner Society, and other worshippers of the Dorje Shugden are not harassed, attacked and otherwise maltreated by the Respondent No.3 and the Respondent No.4 and his adherents.? The other prayer is to restrain Respondents 3 and 4 from inciting communal and religious hatred and making statements against the Petitioner Society.

2. Pursuant to an order dated 8th April 2008, the petition was permitted to be amended. In the amended petition, the prayers remained the same. The only amendment was the addition of Petitioner No.2 Kundeling Rimpoche and certain consequential additional references to him in the petition.

3. Pursuant to notice being issued in the petition, replies have been filed by the Respondents. The reply of Respondent No.1 points out that the affidavit in support of the original writ petition is dated 2nd April 2008 whereas the writ petition itself is dated 5th April 2008. This anomaly persists even in the

amended petition which again has a supporting affidavit by Petitioner No.2 dated 5th April 2008. It is pointed out that this Court has no territorial jurisdiction over a dispute involving Respondents 3 and 4 as in any event they

are located in Dharamshala in Himachal Pradesh. Moreover it is for Respondent No.2, the State of Himachal Pradesh, to investigate the allegations against Respondents 3 and 4, for the alleged offences committed within the territory of Himachal Pradesh. It is pointed out that the dispute between the Petitioner on the one hand and Respondents 3 and 4 on the other pertains to matters of religion with which the Union of India is not concerned. It is stated that the Government of India does not recognise the so-called Tibetan Government in Exile and, therefore, the question of running a parallel government by Respondents 3 and 4 does not arise. It is further stated that worshipers of Dorje Shugden have a right to freedom of religion as enshrined under Article 25 of the Constitution.

4. An apprehension was expressed by the Petitioners that members of Petitioner No.1 Society were not being issued identity cards at the instance of Respondent No.3. By an order dated 2nd September 2009, this Court had required Respondents 3 and 4 to file an affidavit giving details of the names and addresses of persons who are members of the Dorje Shugden sect and have been issued identity cards.

5. Pursuant to the above order, an additional affidavit has been filed on behalf of Respondent No.3 dated 5th December 2009 categorically stating that the role of Respondent No.3 in the process of the Central Government issuing registration certificates and identity cards is merely facilitative. The details of the followers of the Dorje Shugden who were issued registration certificates and identity cards have been enclosed with the affidavit. It is stated that Respondent No.3 does not have the list of members of the Petitioner No.1 Society.

6. This Court has heard the submissions of learned counsel for the parties.

7. Given the prayers made in the writ petition, it appears to this Court that the question of directions being issued to Respondents 3 and 4 not to harass or maltreat the members of Petitioner No.1 Society does not really arise particularly in the absence of any specific instances of any such attacks on the members of Petitioner No.1 Society by the Respondent No.3. Further, there is no mention of any complaint having been made to the police by Petitioners regarding such attacks, which have not been acted upon by the police authorities.

8. The writ petition refers to certain remarks made by Respondent No.4 during a visit to Mundgod in Karnataka which is supposed to have led to attack by the followers of Respondent No.4 upon the worshippers of Dorje Shugden. Apart from this averment being vague, it appears that no formal complaint was lodged by the members of Petitioner No.1 Society in relation to such instance with the police in Karnataka. There is also no averment regarding the police in Karnataka having

failed to take action on such complaints. Apart from the fact that this Court cannot possibly issue directions to the police in Karnataka, there is no question of any interference on the basis of such vague averments particularly when the criminal law remedy available to the Petitioners has not been availed of by them. This would be a matter concerning the local police and administration.

9. In para 24 of the writ petition, it is stated that the State of Himachal Pradesh is not prepared to consider any complaints made by Petitioner No.1 ?in respect of the violence committed against them by the supporters of Respondents 3 and 4.? This is again a vague averment. No details are given of any such complaint made which has not been considered. In any event, this Court fails to appreciate why the Delhi High Court should issue directions to the State of

Himachal Pradesh in relation to alleged incidents that were supposed to have taken place in the State of Himachal Pradesh.

10. The petition adverts to issues concerning the religious practices adopted by the Petitioner which are apparently opposed by Respondents 3 and 4. On their part, Respondents 3 and 4 have, in their counter affidavit, referred to an understanding reached whereby it was left to the monks to decide whether they would want to be associated with the practices of Dorje Shugden. It is submitted that there is no personal ban on the Petitioners.

11. This Court does not consider it appropriate to express any view on these issues. These do not partake of any public law character and therefore are not justiciable in proceedings under Article 226 of the Constitution. Matters of religion and the differences among groups concerning propitiation of religion, cannot be adjudicated upon by a High Court in exercise of its writ jurisdiction.

12. For all of the above reasons, this Court finds that it cannot entertain the present writ petition. It is however clarified that the dismissal of this petition will not preclude any individual member or members of the Petitioner No.1 Society to seek appropriate remedies as may be available to them in law before the appropriate forum in respect of any specific instance of inaction by local police or authorities on any complaint made to them by such member or members.

13. The writ petition and the application are dismissed.

S. MURALIDHAR, J.
APRIL 05, 2010
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