
Charanpal Singh Bagri

Vs.

State of Haryana and others

Present: - Petitioner in-person.

This Bench is constituted today at 4.00 PM, by Hon'ble the Chief Justice, to hear a Public Interest Litigation wherein the petitioner, who is as a practicing Advocate of this Court, belonging to a Sikh community, has assailed the validity of condition No.2 contained in the announcement (Annexure P-1), purported to have been issued on 26.3.2019 by the Haryana Public Service Commission [for short 'the Commission'], prohibiting candidates appearing in the HCS (Ex. Br.) and other Allied Services Preliminary Examination -2017, scheduled to be held on 31.3.2019, from carrying religious signs etc. of any religion in the examination centre and has also prayed for issuance of a direction, impleading both the States of Haryana and Punjab as well as Union of India to enact a law permitting Sikhs to carry, wear and keep five religious signs of Sikhism i.e. Kes, Kanga, Kara, Kirpan and Kachhiara and not to impose any prohibition upon the Sikh students to wear the aforesaid five religious signs in future while appearing in any competitive examination, selection, appointment and recruitment or selection process in any department.

The petitioner appearing in person has submitted that the Commission issued an advertisement No.3 of 2018-19 dated 02.08.2018, inviting online applications for recruitment of 166 posts of HCS (Ex. Br.) and other Allied Services upto 4.9.2018. As per Clause 6 of the said advertisement, the 'Scheme of Examination' comprises of preliminary examination (for screening only), main written examination and personality

test. Pursuant to the aforesaid advertisement, online applications were submitted by the desiring candidates and while fixing the date for preliminary examination as 31.3.2019, admit cards were issued to them in which instructions were provided regarding the items which they are not allowed to bring to the examination centre. Although as per Mr. Ravi Dutt Sharma, DAG, Haryana, who is present in Court due to advance notice given by the petitioner, no complaint has been received from any candidates to whom the admit cards have been issued long back in regard to the restrictions having been imposed, which has been now announced again on 26.3.2019. Despite that, the petitioner has submitted that the issue involved is of public interest as it relates to the religious sentiments of the Sikh community. He has, thus, challenged condition No.2 of the said announcement dated 26.3.2019, whereby the Commission has restricted the candidates from carrying any religious signs etc. of any religion to the examination centre. The petitioner has submitted that baptized Sikh (Amritdhari Sikh) has to wear '5 kakars' i.e. kes, kanga, kara, kirpan and kachhiara, which are their religious signs and has referred to Article 25 of the Constitution of India regarding freedom of conscience and free profession, practice and propagation of religion and has laid emphasis on Explanation-1 thereof wherein it is provided that the wearing and carrying of kirpans shall be deemed to be included in the profession of Sikh religion. He has not denied that Article 25 of the Constitution of India opens with the words "subject to public order, morality and health and to the other provisions of this part", but it is submitted that the ceremonial dagger (kirpan) which is of the length of 9" is for defence and constitutes two words "kirpa" & "aan" wherein the word "kirpa" means compassion or kindness and the word "aan" means honour. In support of his submissions, he has

referred to a decision of Delhi High Court rendered in **WP(C) of 7550 of 2017** titled as **“DSGMC and others Vs. Union of India and others”** decided on 03.05.2018 and a decision of this High Court rendered in **CWP No.9013 of 2015** titled as **“Dilawar Singh Vs. State of Haryana”** decided on 16.3.2018. It is submitted that in the case of **DSGMC (Supra)** an application bearing CM No.17491 of 2018 was filed in pending Public Interest Litigation before Delhi High Court as the applicants therein were aggrieved against the imposition of restrictions by the CBSE upon the persons, who professed the Sikh religion to carry kara and kirpan (both metallic) while appearing in the National Eligibility-cum-Entrance Test (NEET Examination) which was being conducted on 06.5.2018 to fill up the seats of MBBS. In the said petition, the Hon’ble Division Bench of the Delhi High Court passed the following order: -

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. Every practising Sikh is enjoined to wear the kara and carry the “kirpan”. Our Constitution has gone to the length of clarifying that those articles of faith are deemed to be a profession of the Sikh religion. At the same time, the regulating body’s remit extends to decide what according to its best judgment can be or cannot be permitted inside the examination hall. A fact not disputed is that karas and kirpans are common place even in highly

restricted areas such as aircraft, during flights, during travel and in a number of other public places. 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. 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.

“Public order” 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. (Ref. Ram Manohar Lohia v. State of Bihar AIR 1966 740). Therefore, clearly, CBSE’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 – 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. 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.

Insofar as the case of ***Dilawar Singh (supra)*** is concerned, it is submitted that Dilawar Singh was a prosecution witness in a criminal trial for an offence under Section 302 IPC before the Sessions Court, Ambala. He was a baptized Sikh (Amritdhari Sikh) wearing kirpan on his person, but when he went to the Court to record his statement as a witness, the Presiding Officer directed him to remove the kirpan. In the said matter, this Court ultimately recorded the following observations:-

“The petitioner being an Amritdhari Sikh is enjoined by his religion to, at all times, wear the five kakars, of which kirpan is one. The Constitution explicitly and in the plainest terms secures to the petitioner the right to wear and carry kirpan as being included in

the profession of his religion. This right could only be subject to regulation in the interest of public order, morality or health, which regulation could be only by the mandate of a statute. Hence, in the absence of any law or valid regulation prohibiting the carrying of a Kirpan in a Court room, the petitioner could not be restrained from wearing and carrying a kirpan in the Courtroom.

The petitioner was to appear as a prosecution witness in a murder case. He was wearing a kirpan as enjoined by his religion. There is nothing in the impugned order to suggest that the petitioner was indulging in any disorderly behaviour, or that he had any past history of violent crime or that there was any other cause for even the remotest apprehension in the mind of the Presiding Judge of his behaving violently and causing harm or injury to any person. Assuming there was any such apprehension, in that event also, in the first place, any suitable protective measure, short of asking him to remove the kirpan could have been resorted to, like stationing security personnel around or close to him. But there is no need

to traverse in the realm of conjecture and contemplate a situation that did not exist, because that is not the reason for the order. Therefore, I am left with no option but to conclude, that in the present case, I see no valid cause or justification for the impugned order, which on the face of it is illegal and unconstitutional.”

Insofar as Mr. Ravi Dutt Sharma, DAG, Haryana appearing on behalf of respondents No.1 & 2 is concerned, he has not cited any judgment to the contrary, at this stage. Rather, it is submitted that the petitioner has no locus standi to pursue the present petition as it would be a case of personal grievance of the persons professing Sikh religion as baptized Sikhs. It is also submitted that the candidates of different religions are being treated equally and there is no discrimination on the part of the respondents. It is also submitted that the entire exercise has been done for the purposes of holding the examination, thereby restricting the particular items from being carried by the candidates, so as to avoid the incidents of copying and using the unfair means during the examination, which is of such an importance as it pertains to the HCS (Ex. Br.) and Allied Services. It is further submitted that it has been noticed in the past that the items, which have been restricted, are misused by the candidates by placing in these items, electronic devices as is allegedly noticed in the decision of the Delhi High Court in the case of *DSGMC (Supra)*.

It is also submitted that the writ petition has been filed at the eleventh hour as the examination is to be held tomorrow.

The petitioner has submitted that all these aspects have been looked into by the Hon'ble Delhi High Court in the case of *DSGMC (Supra)* as well the directions as contained in para No.10 of the order, have been issued.

After hearing both the sides, we are of the considered opinion that it is a matter of public interest as not only this issue is to come up before this Court again and again for the purposes of adjudication but also a prayer has been made in the writ petition for seeking direction for the purpose of enactment of a law for providing exemption to the baptiaized Sikhs to wear the five religious signs at the time of appearing in any examination.

Notice of motion for 30.4.2019.

At the asking of the Court, Mr. Ravi Dutt Sharma, DAG, Haryana, accepts notice on behalf of respondent Nos. 1 and 2 and Mr. Arvind Seth, Advocate, accepts notice on behalf of respondent No.3- Union of India.

Let notice be issued to respondent No.4 through ordinary process.

In the meantime, relying upon the decision of Delhi High Court in the case of *DSGMC (Supra)*, which has been strongly relied upon by the petitioner, it is directed that such of the baptized Sikh candidates, who wish to wear the five religious signs on their persons, while appearing in the preliminary examination of the HCS (Ex. Br.) and other Allied Services, scheduled for tomorrow i.e. 31.3.2019, should report at their respective examination centres one hour before the reporting time. If upon screening, it is discovered that any such baptized Sikh candidate, is actually carrying within the kara and kripan, any suspected device, he should be asked not to take the same into the examination centre.

Respondent Nos. 1 and 2, who are represented by Mr. Ravi Dutt Sharma, DAG, Haryana, are directed to upload this order on their official websites forthwith, especially the directions issued in the concluding part of this order in bold letters so that such baptized Sikh candidates, who intend to carry kara and kripan to the examination centre, should reach their examination centres one hour before the reporting time and allow the authorities, who are conducting the examination, to screen their kara and kripan to find out as to whether there is any suspected device, electronic or otherwise, used in the same. In case, it is found that there are suspected devices in the said religious signs, they should be restrained from carrying the same in the examination centre. It is, however, made clear that in case the said baptized Sikh candidates, fail to report at the examination centre one hour before the reporting time and fail to cooperate with the process of screening for the purpose of discovering as to whether they are carrying any suspected device (electronic or otherwise), then they should not be allowed to take the examination with such kara and kripan on their persons.

List as per Roster.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

30.03.2019

Vivek