



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 17737 OF 2024

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- 1] Zainab Abdul Qayyum Choudhary)
Age: 19, student, T. Y. [Computer Science)
Road No.9/18/J, Sanjay Nagar,)
Baiganwadi, Govandi, Mumbai- 400043)
)
- 2] Nazreen Bano Mohd. Tanzim Shaikh)
Age: 20, Student, T.Y. B.Sc)
Plot No.29/G/S, Road No.11, Near Kirana)
Store, Baiganwadi, Govandi, Mumbai-400043)
)
- 3] Nazneen Mazhar Ansari,)
Age: 19, Student, S.Y. B.Sc)
Plot No.3/B/10, Road No.8, Baiganwadi,)
Govandi, Mumbai – 400 043)
)
- 4] Naziya Waliullah Khan,)
Age : 19, Student, T.Y. B.Sc,)
Plot No.2, New Gautam Nagar,)
Shivaji Nagar Road, Govandi,)
Mumbai – 400 043.)
)
- 5] Ayesha Saeed Nakhwa,)
Age : 20 Student, T.Y. [Computer Science])
Room No.201, Building No.17/B, Lallubhai)
Compound, Mankhurd, Mumbai – 400043)
)
- 6] Shaheen Iftekhar Khan)
Age : 21, Student, T. Y. B.Sc,)
Room No.1, Plot No.43, Road No.5,)
Line M, Near Usmaniya Bakery,)
Shivaji Nagar, Govandi, Mumbai-400043)
)
- 7] Anjum Bano Saeed Khan,)
Age: 19, Student, T.Y. B.Sc)

Room No.B-84, Rafik Nagar Zo.28,)
Shivaji Nagar, Govandi, Mumbai-400043)

8] Ummulwara Mohd. Zahid Shaikh)
Age: 19, Student, T.Y. B.Sc,)
Room No.67, Chawl No.5, Gaikwad Nagar,)
Near Rahmani Masjid Thorat Marg, Govandi,)
Mumbai – 400 043)

9] Mariyam Jalil Khan,)
Age : 19, Student, T.Y. B.Sc)
Room No.08, Plot No.15, Road No.5,)
Line D, Road No.10, Baiganwadi, Govandi,)
Mumbai – 400 043)

..... Petitioners.

V/s

1] Chembur Trombay Education Society's,)
N.G. Acharya and D.K. Marathe College of)
Art, Science and Commerce, Shri N.G.)
Acharya Marg, Chembur, Mumbai -400071)
acharya—marathecollege@yahoo.co.in)
ctesamc@gmail.com)

2] University of Mumbai)
through its Vice Chancellor, M.G. Road, Fort,)
Mumbai – 400 032)
chancellor@mu.ac.in)

3] Directorate of Higher Education,)
Government of Maharashtra, 412, E, Bahirat)
Patil Chowk, Model Colony, Shivaji Nagar,)
Pune – 411016 director.dhepune@nic.in)

4] State of Maharashtra,)
Through its Principal Secretary,)
Ministry of Higher and Technical Education,)
411, 4th Floor, Mantralaya Annex,)
Madam Cama Road, Nariman Point,)

Mumbai – 400 032)
)
5] University Grants Commission (UGC),)
Bahadur Shah Zafar Marg, New Delhi-110002)
)
6] Union of India,)
Through Ministry of Education,)
122-C, Shastri Bhawan, New Delhi-110001)Respondents.

Mr. Altaf Khan alongwith Mr. Akash Mangalgi, Mr. Shamsheer Shaikh, Ms. Nilofar Sayyed, Mr. Gulfam Khan, Ms. Supriya Ghadge and Ms. Roohita Shaikh for the petitioner.

Mr. Anil V. Anturkar, Senior Advocate alongwith Mr. Harshavardhan Suryavanshi, Mr. V. Mannadiar and Ms. Dhannya Prasad instructed by Mannadiar & Co. for respondent No.1.

Mr. Yuvraj Narvankar alongwith Mr. Mayur Mohite for respondent No.2.

Ms. P.H. Kantharia, GP alongwith Ms. Jyoti Chavan, Addl. G.P and Ms. Pooja Patil, AGP for the respondent Nos.3 and 4-State.

Mr. Devang Vyas, ASG alongwith Ms. Savita Ganoo and Mr. D.P. Singh for respondent No.6-UOI.

**CORAM: A.S. CHANDURKAR &
RAJESH S. PATIL, JJ.**

DATE: 26th June, 2024

JUDGMENT: (Per A. S. Chandurkar, J.)

1] Nine Students pursuing their second and third year education for undergraduate courses at the College run by the first respondent – Chembur Trombay Education Society have raised a challenge to the Instructions issued to students requiring them to follow the prescribed dress code. In addition,

a notice-cum-whatsapp message dated 01/05/2024 issuing instructions in the matter of following the dress code is also under challenge. The petitioners allege that the prescription of dress code as a result of which they are restrained from donning a Hijab or Nakab is arbitrary and discriminatory. It affects their fundamental rights guaranteed especially under Article 19(1)(a) and Article 25 of the Constitution of India.

2] According to the petitioners, prescription of dress code for the first time after they took admission at the College couple of years ago is against the spirit of the University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, the Rahistriya Uchhastar Shiksha Abhiyan – RUSA as well as the National Education Policy, 2020. While seeking admission to the second and third year undergraduate course for the Academic Sessions 2024-25, they learnt about the aforesaid Instructions on 07/05/2024. They raised an objection to the same by addressing e-mail to the College and the Management. Thereafter, they made a complaint before the Hon'ble Chancellor as well as other

Authorities concerned. By urging that imposition of the dress code would affect their right to education, they have approached this Court.

3] Shri Altaf Khan, the learned Counsel for the Petitioners submitted that there was no justification whatsoever on the part of the College to have prescribed the dress code for the first time. Under the said dress code, the petitioners who professed Islam religion were precluded from donning a Hijab or Nakab. On the contrary, students were permitted to wear a formal and decent dress while girl students were to wear any Indian/Western non-revealing dress. By this manner, Hijab and Nakab were sought to be labeled as indecent for being worn by girl students in the College. Referring to the provisions of Article 19(1)(a) of the Constitution of India, it was submitted that the petitioners could not be prevented from dressing appropriately by donning a Hijab or Nakab since they had a right of expression. The restrictions imposed affected the petitioners' right to dignity and bodily integrity. In fact, the dressing items that were prohibited were decent and it could

not be said that the restrictions imposed were in any manner reasonable. The action on the part of the College was discriminatory and also was not in accordance with the provisions of the Maharashtra Public Universities Act, 2016. Since the intention of various Regulations was the aspect of inclusiveness, the dress code prescribed resulted in indiscrimination. The learned Counsel to substantiate his contentions referred to the decisions in *Justice K.S. Puttaswamy vs. Union of India*, **(2017) 20 SCC 1**, *Bijoe Emmanuel and others vs. State of Kerala and others*, **(1986) 3 SCC 615**, *St. Stephen's College Rep. by its Supreme Council vs. University of Delhi & Anr.*, **2008 (106) DRJ 401 (DB)** and to the judgment dated 29.07.2005 passed by High Court of South Africa in the matter between *Navaneetham Pillay vs. Kwazulu – Natal Mec of Education INA Cronje and others* in Case No. AR 791 of 2005, judgment dated 07.11.2006 passed by the Constitutional Court of South Africa in *Kwazulu-Natal Mec of Education Ina Cronje vs. Navaneethum Pillay* [CCT 51/06][AR 791/05], judgment dated 17.10.2018 passed by the International Covenant on Civil and Political Rights, United

Nations in *Miriana Hebbadj vs. France* [CCPR/C/123/D/2807/2016], judgment dated 07.12.2018 passed by the International Covenant on Civil and Political Rights, United Nations in *Sonia Yaket vs. France* [CCPR/C/123/D/2747/2016] and urged that this Court be pleased to quash and set aside the aforesaid Instructions. It was pointed out that though the Full Bench of the Karnataka High Court in *Resham vs. State of Karnataka and others, (2022) 1 High Court Cases (Kar) 43* had struck down the Government Order dated 05/02/2022 permitting prescription of a dress code, the challenge to the aforesaid decision was pending before the Supreme Court. On account of difference of opinion expressed by the two learned Judges of the Supreme Court, the matter had been referred to a larger Bench.

Without prejudice to the aforesaid contentions, it was urged that donning of a Hijab or Nakab was an essential religious practice of the petitioners. Precluding them from donning such robes was therefore violative of the guarantee under Articles 14 and 19(1)(a) of the Constitution of India. In that regard, the

learned Counsel sought to rely upon the extracts from the English translation of Kanz-ul-Iman. It was thus urged that even on this count, the dress code as prescribed was liable to be set aside.

4] Shri Anil Anturkar, the learned Senior Advocate for the 1st respondent–Education Society opposed the aforesaid contentions. At the outset, he submitted that the College had merely issued Instructions with regard to the dress code and that the notice-cum-whatsapp message dated 01/05/2024 had not been issued at the behest of the Management or the College. The Education Society was thus implementing only the Instructions as issued with regard to the dress code. It was submitted that the dress code as prescribed did not in any manner offend the petitioners’ rights as claimed under Article 19(1)(a) and Article 25 of the Constitution of India. The Instructions were applicable to all students and they were not restricted in their application to students from any particular religion or community as regards their dress. The object behind prescribing the dress code was that religion of the

students should not be revealed and that discipline in that matter was sought to be ensured. The restrictions imposed were only in that regard. The students taking education in the College ought to focus and concentrate on their studies and it was with that object in mind that the dress code had been prescribed. Moreover, the College had provided a changing room for girl students to ensure that they were comfortable inside the campus. It was then submitted that the College had the necessary authority in law to prescribe a dress code. It could not be interfered with if the same did not result in violating any constitutional rights of any student. The Regulations relied upon by the petitioners did not in any manner prohibit the College from prescribing any dress code. Being a matter of internal administration and discipline, there was no scope for interfering with such exercise. It was then submitted that the Full Bench of the Karnataka High Court in *Resham* (supra) had held in clear terms that donning of Hijab or Nakab was not an essential religious practice of girl students professing Islam religion so as to preclude such students from wearing the same. Though challenge to the said judgment was

pending before the Supreme Court, the learned Senior Advocate referred to paragraph 60 of the opinion of Hon'ble Hemant Gupta, J. (as the learned Judge then was) to point out that anything worn by the students under his/her clothes that was not visible was not treated as objectionable. In other words, openly exhibiting one's religion through attire was impermissible. It was urged that the petitioners ought to concentrate on their studies rather than finding fault with the dress code. It was pointed out that the Instructions to students were notified on 01/05/2024 and despite that the petitioners took admission in the College thereafter. He also questioned the bonafides of the petitioners by pointing out that even before the writ petition was listed for admission, the petitioners had approached the media and had sought to gain publicity of the present proceedings. It was thus submitted that the challenge raised by the petitioners was without any merit and the writ petition was liable to be dismissed.

5] We have heard the learned Counsel for the parties and we have perused the documentary material on record. At the

outset it may be stated that in view of the categorical stand of the College that it had not issued any whatsapp message on 01/05/2024 and that it would only enforce the Instructions for students in the matter of prescribing the dress code, it is not necessary to refer any further to the said whatsapp message. Since the Petitioners have raised a challenge to the Instructions issued by the College prescribing the dress code for its students, it would be necessary to quote the relevant portion of those Instructions. Clause 2 thereof reads as under:-

“2. You shall follow the dress code of college of formal and decent dress which shall not reveal anyone’s religion such as No Burkha, No Nakab, No Hijab, No Cap, No Badge, No Stole etc. Only full or Half shirt and normal trousers for boys and any Indian/western non-revealing dress for girls on the college campus. Changing room available for girls.:

Thus under the aforesaid dress code, the dress of the students is expected to be formal and decent that should not reveal the religion of any student. What is permitted for girl students is any Indian/Western non-revealing dress on the college campus. It further states that a changing room for girls

has been provided.

6] According to the petitioners, the dress code as prescribed results in they being unable to wear Hijab or Nakab thus affecting their right to choose as well as their right to privacy under Article 19(1)(a) of the Constitution of India. They contend that in such a manner their right to expression is also affected. The source of power available with the College Administration to prescribe the dress code is not indicated. Alternatively, it is urged that wearing of a Hijab or Nakab is an essential religious practice of the petitioners and they cannot be prevented from donning such apparel. On the other hand, the dress code is supported by the College Administration by urging that it has a right to administer its educational institution and that the dress code is not intended to impose restrictions on students belonging to any particular religion. It is aimed at ensuring discipline in the college campus and to prohibit the students from revealing their religion through their clothes.

7] At the outset, we may note that this Court had an occasion to consider a challenge to the prohibition of wearing head scarf by girl students while attending class on the premise that such direction was violative of the students' rights. Reference can be made to the judgment of the Coordinate Bench in *Miss Fathema Hussain, a minor Vs. Bharat Education Society and Ors.*, **AIR 2003 BOM 75**, wherein a direction issued by the Principal of a High School to a girl student that she could not attend classes wearing head scarf was under challenge. On behalf of the student, it was urged that the direction issued by the Principal was violative of her fundamental right of freedom of conscience and professing, propagating and practicing Islam religion. Considering such challenge, it was held that by merely asking the student to maintain the dress code prescribed by the school, it could not be said that the student's fundamental right of freedom of conscience and free profession, practice and propagation of religion was violated. There was no breach of the provisions of Article 25 of the Constitution of India. It was further held that a girl student not wearing the head scarf while studying in a

girls section could not in any manner be inconsistent with verse 31 of Chapter 24-64 of the Holy Quran. The challenge was accordingly negated.

8] We may refer to the paragraphs 6 and 7 of the aforesaid decision wherein it has been held as under:-

6. By asking petitioner who is student in class VIth standard of respondent No.2 school to maintain the dress code prescribed by the school, how can it be said that the petitioners fundamental right of freedom of conscience and free profession, practice and propagation of religion is violated. Article 25 guarantees that every person in India shall have freedom of conscience and shall have the right to profess, practice and propagate religion, subject to restrictions imposed by the state on the grounds of (i) public order, morality and health; (ii) other provisions of the Constitution; (iii) regulation of non-religious activity associated with religious practice; (iv) social welfare and reform etc. There does not seem to be such established practice and profession of the Islam religion from covering their heads by the girls studying in all girls school. The learned counsel for the petitioner however, sought to place reliance upon verse 31 of chapter 24-64 of Holy Quran (Quran-E-Majid). Verse 31 reads thus-

"31. And say to the believing women that they cast down their looks and guard their private parts and not display their ornaments except what appears thereof, and let them wear their head-coverings over their bosoms, and not display their ornaments except to their husbands or their fathers, or the fathers of their husbands, or their sons, or the sons of their husbands, or their brothers, or their brothers sons, or their sisters sons, or their women, or those whom their right hands possess, or the male servants not having need (of women), or the children who have not attained knowledge of

what is hidden of women; and let them not strike their feet so that what they hide of their ornaments may be known; and turn to Allah all of you, O believers! so that you may be successful.

7. A girl student not wearing the head-scarf or head covering studying in exclusive girls section cannot be said to in any manner acting inconsistent with the aforesaid verse 31 or violating any injunction provided in Holy Quran. It is not an obligatory overt act enjoined by Muslim religion that a girl studying in all girl section must wear head-covering. The essence of Muslim religion or Islam cannot be said to have been interfered with by directing petitioner not to wear head-scarf in the school.

9] Reference to the decision of the Full Bench of the Karnataka High Court in *Resham* (supra) is also necessary. A Government Order dated 05/02/2020 issued by the Government of Karnataka permitting prescription of a dress code in Government Schools, Private Schools as well as Pre-University Colleges was the subject matter of challenge before the Karnataka High Court in various writ petitions. Similar contentions as raised herein by the learned Counsel for the petitioners were also raised therein. It was urged that prescribing such dress code was violative of the fundamental right to freedom of conscience and right to practice religious faith under Article 25 of the Constitution of India. The

contention based on wearing of a Hijab or Nakab as a part of essential religious practice was also urged. In its detailed judgment, the Full Bench held that prescribing such dress code did not result in violation of any fundamental rights as claimed under Article 19(1)(a) and Article 25 of the Constitution of India. It was held that the dress code when prescribed for all students was intended to treat them as one homogeneous class so as to serve constitutional secularism. The object of prescribing a uniform code would be defeated if there was non-uniformity in the matter of uniforms. In paragraph 23 of the said decision, it was observed as under:-

“23. Prescription of school dress code to the exclusion of hijab, bhagwa, or any other apparel symbolic of religion can be a step forward in the direction of emancipation and more particularly, to the access to education. It hardly needs to be stated that this does not rob off the autonomy of women or their right to education inasmuch as they can wear any apparel of their choice outside the classroom.”

The challenge was thus turned down and the writ petitions were dismissed.

10] The aforesaid decision has been challenged before the

Supreme Court and a reference to a larger Bench is stated to be pending in the light of differing views expressed by two learned Judges. Be that as it may, in our view, the Full Bench of the Karnataka High Court has considered a similar challenge and has found that prescription of such dress code was not violative of any constitutional rights of students professing Islam religion. We are in respectful agreement with the view expressed by the Full Bench that prescription of a dress code is intended to achieve uniformity amongst students in the school/college so as to maintain discipline and avoid disclosure of one's religion.

11] We may also note that a similar challenge to prescription of dress code by which head scarf and full sleeve shirt prescribed for girl students was the subject matter of challenge before the Kerala High Court in *Fatima Thanseem (Minor) and another vs. The State of Kerala and others*, **(2019) 1 KLT 208**. It was held that though there may be a fundamental right for a student to choose a dress of his/her own choice, there was also a fundamental right of establishing, managing and

administering an educational institution. Between competing rights, an individual could not seek imposition of his/her fundamental right as against the larger right of the educational institution. On this premise, the challenge was turned down.

12] While considering the present challenge it must be noted that what has been done by the College in the form of Instructions for students is to prescribe a dress code at the College. The regulation of such a dress code has to be treated as an exercise towards maintaining discipline at the Institution. This right flows from the recognized fundamental right to establish and administer an educational institution under Article 19(1)(g) and Article 26 of the Constitution of India. In *TMA Pai Foundation and others vs. State of Karnataka and others* **(2002) 8 SCC 481** it has been held by the Supreme Court that the aforesaid fundamental right to establish and administer an educational institution is subject to the provisions of Article 19(6) and Article 26(a) of the Constitution of India. We do not find as to how the prescription of the dress code by the College offends the provisions of Article 19(1)(a) and

Article 25 of the Constitution of India. The object behind prescribing the dress code is evident from the Instructions since they state that the intention is that a student's religion ought not to be revealed. It is in larger academic interest of the students as well as for the administration and discipline of the College that this object is achieved. This is for the reason that students are expected to attend the educational institution to receive appropriate instructions for advancement of their academic careers. The insistence for following the dress code is within the college premises and the petitioners' freedom of choice and expression is not otherwise affected. Moreover, a changing room has also been provided for girl students. In our view, the dress code as prescribed cannot be held to violate the petitioners' rights claimed under Article 19(1)(a) and Article 25 of the Constitution of India. The College Administration and the Management have a fundamental right to administer the educational institution under Article 19(1)(g) of the Constitution and in exercise of that right as well as with the object that education can be seriously pursued, the same has been issued. In that view of the matter, the decisions

relied upon by the learned Counsel for the petitioners do not take their case any further especially since they have been considered by the Full Bench of the Karnataka High Court in *Resham* (supra)

13] The learned Counsel for the petitioners sought to draw support from the UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012. Under Clause 3 thereof, a higher educational institution is required to take measures against discrimination. Discrimination on the basis of caste, creed, religion, language is prohibited. We do not see how these Regulations further the case of the petitioners. The Instructions issued by the College are applicable to all students irrespective of their caste, creed, religion or language. In fact, the Instructions seek to prevent students from disclosing their religion through their dress.

The Rashtriya Uchhatar Shiksha Abhiyan aims at improving standards of higher education with focus on access and equity. The Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization on Campuses

published by the University Grants Commission deal with the issue of gender sensitization in Universities and Colleges. The National Education Policy 2020 aims at equity and inclusion in higher education amongst other objectives. Similarly, the Guidelines to provide Equitable Opportunity for the Socio-Economically Disadvantageous Groups in Higher Educational Institutes framed by the University Grants Commission intends to make higher educational institutions inclusive, equitable and sensitive to Socio-Economically Disadvantaged Groups.

All the above guidelines and instructions attempt to promote a non-discriminatory atmosphere in higher educational institutions. The object is to discourage discrimination on any count whatsoever. We do not find as to how these guidelines and instructions are violated by the Instructions issued by the College. On the contrary, the Policy on Code of Ethics laid down by the Management of the College seeks to enforce the aforesaid guidelines and instructions. Students are expected under the said policy to abide by and conform to the rules and regulations of the College. The Instructions thus issued are not against the spirit and object of

the aforesaid guidelines and instructions issued by the University Grants Commission.

14] Coming to the alternate contention raised on behalf of the petitioners that donning of a Hijab and Nakab is an essential religious practice, reference will have to be made to the law in that regard. The concept of a practise or ritual being an essential or intergral part of religion has been considered by the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras vs. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, **AIR 1954 S.C. 282** and *Commissioner of Police and others vs. Acharya J. Avadhuta*, **2004 INSC 158**. In the latter decision it has been observed as under:-

“What is meant by ‘an essential part or practices of a religion’ is now the matter for elucidation. Essential part of religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is

essential to the religion is to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution.”

15] The aspect of pleadings and proof for sustaining a plea based on essential religious practise also has material bearing. Whether the donning of a Hijab or Nakab is an essential religious practise has to be determined historically as well as factually. The importance of pleadings with regard to an essential religious practise has been highlighted in *A.S. Narayana Deekshitulu vs. State of Andhra Pradesh (1996) 9 SCC 548* as well as in *Indian Young Lawyers Association vs. The State of Kerala, 2018 INSC 908*.

In the writ petition, it has been pleaded that the

petitioners have been donning a Hijab and/or Nakab for last few years. The pleadings in the writ petition to support the plea that donning of a Hijab or Nakab is an essential religious practice however are insufficient. Except for stating that the same constitutes an essential religious practice on the basis of the English translation of Kanz-ul-Iman and Suman Abu Dawud, there is no material placed to uphold the petitioners' contention that donning of Hijab and Nakab is an essential religious practice. The contention in that regard therefore fails.

16] For the aforesaid reasons, we are satisfied that the Instructions issued by the College under which a dress code has been prescribed for its students does not suffer from any infirmity so as to violate provisions of Article 19(1)(a) and Article 25 of the Constitution of India. The object behind issuing the same is that the dress of a student should not reveal his/her religion which is a step towards ensuring that the students focus on gaining knowledge and education which is in their larger interest. The Instructions have been issued by the College Administration in exercise of its right to

administer the educational institution under Article 19(1)(g) and Article 26 of the Constitution of India. The writ petition therefore fails. It is accordingly dismissed with no order as to costs.

In the passing, we may note that the learned Counsel for the petitioners was not able to justify the action of the petitioners, who are students, in seeking publicity of filing of the present proceedings even prior to the writ petition being considered for admission. This led to the College questioning the bonafides of the petitioners. Since the petitioners are students, we say nothing more and let the matter rest at that.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]