

W.P. No. 5479 (W) of 2020.

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

In the matter of :

An application under
Article 226 of the
Constitution of India.
(Public Interest
Litigation)

-And-

In the matter of :

Vineet Ruia

.... Petitioner

- VERSUS -

Principal Secretary,
Ministry of Health & Family
Welfare, Govt of West Bengal
& Ors.

.... Respondents

PETITION

In-person

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SYNOPSIS

The people of West Bengal have the right under Article 21 and 25 of the Constitution of India to approach the Calcutta High Court for redressal of their grievances.

In a world grappling with a pandemic of unforeseen proportions, and in the face of mounting helplessness of peoples and governments at large, what stands out as the only beacon of reliability and relief, is the belief of the citizens in the Fundamental Rights enshrined in the Constitution of India, and the Honorable Courts that have relentlessly upheld such rights. Of all the Fundamental Rights mentioned in Part III of the Indian Constitution, it is the Right to life and personal liberty, under Article 21, that has been interpreted in an expansive and progressive manner by the Courts in a litany of rich judgements, to render a massive chunk of a formidable law that guarantees to the citizens, not only life, but also all the allied conditions necessary and essential to the very meaning and existence of life. As such, at a time when the citizens are losing their lives to a monstrous and merciless disease, the undisputed need to underline this very right becomes necessary.

The novel coronavirus, by virtue of its highly communicable and dreadful disease, of COVID19, has resulted in a scare so colossal that the dead are being denied dignity. There has been so much stigma attached to the patients and corpses affected by COVID19, that

despite every rationale and absence of scientific backing, the COVID corpses are being treated in a faceless and nameless manner even though they didn't choose the disease, the disease chose them. Not even criminals deserve such deaths.

It becomes clear then, that there is no written law under the Indian Constitution which relates to the rights of a deceased. However, various shades given to Article 21 of the Constitution of India, by judicial pronouncements and delivered as part of the Courts' judicial activism, from time to time, leave no room for doubt that the right to decent burial of the dead body in a dignified manner and by following the applicable religious procedures is a part of right to life under Art. 21 of Constitution of India, in which right to live includes right to life with dignity. Living with dignity includes not only the dignity of a person when alive, but also the dignity following his death, and the dignity of the deceased person's loved ones who cherish his memory and pay homage. The Supreme Court through various cases has held that the right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death.

The bereaved family members of the deceased have a right to see the body for last time before carrying it to the crematorium/burial ground and to perform the last rites in the manner/religion professed by them. Even during unprecedented lockdown due to pandemic of COVID-19, said rights cannot be suspended or bulldozed by the State and

same can be protected, preserved and permitted to be perform under controlled conditions, especially since, both the World Health Organization(WHO), as well as the guidelines from the Ministry of Health and Family Welfare(MoHFW) have clarified that a controlled and suggested handling of covid corpses does not pose any additional threat of infection. Several High Courts of the country have also voiced their objections to the inhumane treatment being given to such dead bodies.

As such, exercising the right under Article 226 of the Indian Consitution, through this petition, the Petitioner is bringing unheard of and unfortunate processes of disposal of dead bodies followed by the State of West Bengal to the knowledge of this Hon'ble Court and seeking appropriate Writ or directions to redress and protect the said rights as the State is obliged under law - both under directives as a Welfare State as well as duty to protect the rights of dead person in its extended meaning under Article 21 of the Constitution of India - to ensure a decent and dignified cremation/burial in accordance with the religious beliefs the man kept or professed.

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-And-

In the matter of :

A Writ in the nature of
Mandamus and/or any
other appropriate writ or
writs, order or orders
and/or direction or
directions there under;

-And-

In the matter of :

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The people of West Bengal in general being affected due to non-dignified and disgraceful handling of DEAD BODIES of the persons affected due to COVID -19 pandemic.

-And-

In the matter of :

Improper reporting of COVID-19 cases or COVID-19 deaths including comorbidity.

-And-

In the matter of :

Prayer for allowing a dignified death & last rites/cremation/burial to the persons deceased because of COVID-19 and/or Comorbidity thereof.

-And-

In the matter of :

Vineet Ruia son of Rajkumar
Ruia, of 307 Narayani
Building, 27 Brabourne
Road, Kolkata - 700001

... Petitioner.

-Versus-

1. Principal Secretary,
Ministry of Health and
Family Welfare, Govt of
West Bengal, Swasthya
Bhawan, GN-29, Sector V,
Slatlake City, Kolkata -
700091

2. Home Secretary, Ministry
of Home Affairs & Hill
Affairs, Govt of West
Bengal, Nabanna, 325, Sarat
Chatterjee Road, Shibpur,
Mandirtala, Howrah - 711102

3. Home Secretary, Ministry of Home Affairs, Govt of India, North Block, Cabinet Secretariat, Raisina Hill, New Delhi 110001 and also office at M.S.O. Building, CGO Complex, DF Block, D wing, 2nd Floor, Saltlake City, Kolkata 700064

4. Secretary, Ministry of Health and Family Welfare, Govt of India, Nirman Bhawan, Central Secretariat, New Delhi - 110001

... Respondents.

To

The Hon'ble Thottahil B. Nair Radhakrishnan, Chief Justice and His Companion Justices of the said Hon'ble High Court.

The humble petition on
behalf the petitioner
abovenamed -

Most Respectfully Sheweth :

1. The petitioner is president of Bharat Bachao Sangathan an NGO and involves into reforms of various types of irregularities and other evils entering into the Indian Society. The petitioner is a post graduate with a degree of Human Rights from the Indian Institute of Human Rights (IIHR). The present issues which are subject matter of this writ petition also involve gross irregularities, lack of transparency and gross violation of Human Rights in the immediate situation of COVID-19 faced by the entire world. Hence, the present writ petition in the Public Interest is being filed before this honorable Court under fact and premise stated here under. Whereas in the current scenario, when thousands of cases of COVID-19 are active and thousands of new cases are coming every day in the country and the state of West Bengal, there is no way to register people's protest with any authority and no response is being received from any corner, the petitioner has no other alternate than to approach this Honorable Court.

2. That the Indian Constitution has ensured Right to Life and a Dignified Life under Article 21 as a fundamental right. The Supreme Court through various cases has held that the right to dignity and fair

treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death.

In **Pt. Parmanand Katara Vs. Union of India (1995 (3) SCC 248)**, The Apex Court noted the word and expression 'person' in Article 21, and said that

"We agree with the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death. We thus find that the word and expression 'person' in Article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed. The State must respect a dead person by allowing the body of that dead person to be treated with dignity and unless it is required for the purposes of establishing a crime, to ascertain the cause of death and be subjected to post-mortem or for any scientific investigation, medical education or to save the life of another person in accordance with law, the preservation of the dead body and its disposal in accordance with human dignity."

Thus, Respecting the living means respecting the dead too.

3. India has been a state with unity in diversity and with a respect for all religions. Hindu scriptures and culture speaks about the Last Rites as a great term "ANTIM SANSKAAR" and the word "SANSKAAR" means sacraments which itself is sacred. The "ANTIM SANSKAAR" could only be achieved if the deceased gets a Dignified Cremation or Last Rites, and scripturally, this is what determines the afterlife of the dead, *thereby making it an essential practice in the observance of the religion for the Hindus*, for whom death is always followed by a cycle of rebirth. India has been following the tradition of dignified cremation/burial in form of last rites for thousands of years. Different religions practiced in India, have distinct and specific ways to honor their dead, and for some minorities like the Muslims and the Christians faiths, cremation or burning of their dead is strictly against their religious faith. A situation has arisen today due to COVID-19 because of which there is a confusion among the common man about the cremation/burial/last rites. In fact, the legal heirs and family of members of the deceased are deprived of performing last rites of the deceased who died due to the COVID-19 pandemic.

4. That the Ministry of Health and Family Welfare has issued certain guidelines on account of COVID-19 : Guidelines on Dead Body Management on 15th March 2020. Copy of such guideline is enclosed herewith and marked as **"Annexure P1"**

5. That the World Health Organisation (WHO) has also issued guidelines : Infection Prevention and Control for the Safe Management of a dead body in the context of COVID-19 on 24th March 2020. Copy of such guideline is enclosed herewith and marked as **"Annexure P2"**

6. Similar guidelines have been issued by the Respondent No. 1 through its official website. However, the guidelines are only on paper and not being practically followed on ground. The situation is grave in the State of West Bengal, which constrained the Petitioner to approach this Hon'ble Court in public interest, for the following reasons :

- (a) In West Bengal, the family members of the person who is hospitalized are not allowed to meet the patient as soon as he is admitted to the hospital. So, the family is not aware of as to what types of treatment is being given to patient and what is progress of his/her health.
- (b) As soon as the patient dies, the hospital packs the body in plastic sheets and calls the health department. In the meantime, the family of the deceased is called only for the purpose of making the payment of hospital bill amounting to a few lakh rupees. The dead body is not shown to the family.
- (c) Once the payment is made, especially for deaths in Kolkata, the health department takes the body away to a place called "DHAPA" in Kolkata which is totally barricaded by the Police having no public

access. Not a single family member is allowed to see the dead body. Some people also say that 2-3 dead bodies are being burn at a time in one electric chamber though this is not known for sure as no one is allowed to enter into the area.

- (d) After about 2 / 3 days of death, the family member can collect the Cremation Certificate from a place called "Peace Haven" in Kolkata. None of the family members even get to see the body or the face of the deceased as if he or she disappeared like a ghost into nowhere.
- (e) The Honorable Governor of West Bengal had written a letter to the Chief Minister of West Bengal on 4th May 2020 but things have not been corrected. Copy of such letter from the Governor is enclosed herewith and marked as "**Annexure P3**".

It is pertinent to mention that a PIL was recently filed on the fear that COVID19 would spread because of burial of covid dead bodies. However, in dismissing the plea, the Honorable Division Bench of the **Bombay High Court comprising Chief Justice Dipankar Datta and Justice SS Shine**, declared that there was no scientific proof to show that dead bodies spread the infection.

The Ld Court also quoted Oscar Wilde by saying:

"Death must be so beautiful. To lie in the soft brown earth, with the grasses waving above one's head, and listen to silence. To have no yesterday, and no tomorrow. To forget time, to forget life, to be at peace."

The Madras High Court took Suo moto notice of one DR. Simon's case and the division bench comprising of Justices M Sathyanarayanan and M Nirmal Kumar noted :

"It prima facie appears that as a consequence of the above said alleged acts, a person who practised a noble profession as a doctor, and breathed his last, has been deprived of his right to have a burial in a cemetery earmarked for that purpose"

The Delhi High Court also took suo moto cognizance of the aforesaid violations of human rights and by its order, relying heavily on the Pt. Parmanand Katara, Advocate vs. Union of India, (1995) 3 SCC 248 judgements of the Supreme Court, brought the same to the notice of the Hon'ble Chief Justice, to take up the aforesaid matter in public interest, for issuing requisite directions.

7. Few instances of disrespect or disgrace to dead bodies were taken up either Suo-Moto or through petitions in different High Courts in India including Chennai, Delhi and Mumbai. Copies of orders arising out of such petitions are enclosed herewith and marked as **"Annexures P4, P5, P6, P7 and P8"**

8. Media Reports related to disrespect or disgrace to the dead bodies, not informing the family about the deceased and under-reporting have been reported by different print and digital media. Media Reports from

different media houses have been collectively marked as **"Annexure P9"**.

9. That the guidelines by the Ministry of Health and Family Welfare, Govt of India (hereinafter referred to as MOHFW) as well as the World Health Organisation (hereinafter referred to as WHO) are very similar and almost on the same lines. It has been clearly stated that -

"the main driver of COVID-19 is through droplets and mainly the lungs of the COVID-19 patient could be mainly infectious"

as a matter of fact, the dead body cannot breathe or sneeze. Hence, the chance of the dead body infecting the environment or the persons coming in contact with it are bare minimum. The Bombay High Court order above has also specifically mentioned the same. The MOHFW has issued clear guideline similar to that of WHO for handling the body at the Crematorium/Burial ground which include:

- A. The Crematorium/ Burial Ground staff should be sensitized that COVID 19 does not pose additional risk.
- B. The staff will practice standard precautions of hand hygiene, use of masks and gloves.
- C. Viewing of the dead body by unzipping the face end of the body bag (by the staff using standard precautions) may be allowed, for the relatives to see the body for one last time.

- D. Religious rituals such as reading from religious scripts, sprinkling holy water and any other last rites that does not require touching of the body can be allowed.
- E. Bathing, kissing, hugging, etc. of the dead body should not be allowed.
- F. The funeral/ burial staff and family members should perform hand hygiene after cremation/ burial.
- G. The ash does not pose any risk and can be collected to perform the last rites.
- H. Large gathering at the crematorium/ burial ground should be avoided as a social distancing measure as it is possible that close family contacts may be symptomatic and/ or shedding the virus.

10. That when a guideline has been issued by a Central Ministry as well as the state for a certain disease or a temporary pandemic, the state country should follow the same process/rules as written.

11. That it is a right of the deceased to get a dignified cremation/burial/last rites and same is part and parcel of one of the sheds of Art 21 of Constitution of India.

12. That it is a right of the bereaved family of the deceased to have a last glance of their family member who will never be seen again specially in a country where the next two generations still continue to do a "Tarpan" or "Shradh" (Pitra Paksha) for decades even

after the death of their beloved fathers/forefathers or ancestors.

13. That as a tradition with all renowned leaders and our brave soldiers, the dead bodies are flown in from different countries around the world and even when a body is blown off in a bomb blast or plane crash, still, the mortal remains are brought back and cremated/buried and last rites performed with national honour. Every citizen of the country has a right to get a respectful death, cremation/burial and last rites.

14. That the local state Govt should not only hand over the dead body of the COVID-19 deceased to the family but should also ensure that the cremation/burial along with last rites are performed keeping in view the health safety measures suggested by the MOHFW. However, if at any point of time, if the MOHFW changes its guidelines to include that fact that the COVID-19 dead bodies should not be handed over to the family of the deceased, still, at-least five or four family members of the deceased should be allowed to attend the cremation of the deceased member of their family duly wearing Personal Protection Equipment (PPE) and be allowed to identify the body, take pictures or video, perform the cremation formalities and collect the ashes if they wish to. If a family denies to take the body, the Govt may dispose it at its own discretion, after obtaining necessary written undertaking from family members.

15. That it is the apprehension of the petitioner that lot of patients who might have had a minor ailment or past history of any other disease which was never life threatening and when such people became COVID-19 positive, the patients were declared to be not deceased because of COVID-19 and the death certificate mentions the reason for death as Comorbidity with primary reason for death as something else and still the dead body not handed over to the family members. This could again lead the under-reporting of the actual number of cases or deaths due to COVID-19. A copy of one such Death Certificate is enclosed herewith and marked as "**Annexure P10**"

16. That there has to be a transparency in the declaration of the COVID-19 cases. All the State & Union Territorial Govts and based on the same, the Union Govt of India are keeping complete data of each and every person who contracts the pandemic. They are also declaring the number of active cases, number of people recovered and total number of deaths each day in the States & Union Territories individually and the country as a whole. This means that they all have the complete data about each person contracting the disease. For the purpose of transparency, the Govt of West Bengal may be directed to publish a district wise list with names of all the persons with regard to whom the numbers are being declared on their official websites. This would help the Govt track each case thereby helping it to monitor and control the spreading disease.

The question arises as to whether the prayers herein are appropriate for consideration or not. The petitioner put forward the prayers on the following grounds:

G R O U N D S

- I. For that the COVID-19 is a sudden pandemic that has affected the entire world and it was never expected.
- II. For that the deaths because of the COVID-19 are not natural deaths and there are no specific rules/law to cover the situation that has been created specially with respect to rules about the deceased on account of this pandemic.
- III. Article 21 of the Constitution of India provides various facets of life which include right to decent last rites after death of person in accordance with the religion which he used to profess, propagate and follow during his life time.
- IV. For that there are no rules specified for the cremation/burial and last rites of a deceased in the country.
- V. For that the bereaved family members of the deceased have a right to see the body for one last time and equally have a right to perform the last rites.
- VI. For that the family has the right to read holy scriptures, sprinkle holy water or any other similar acts for the departed soul.

- VII. For that the cases of comorbidity also need to be covered under the COVID-19 pandemic as otherwise the deceased was surviving well with the ailment.
- VIII. For that there has to be a complete transparency in declaration of the COVID-19 cases in the state in order to closely monitor and control it.

17. Unless orders are made as prayed for, the family, society and country cannot do justice to the deceased or the bereaved family members. This would in turn cause a social unrest, dilemma and mental agony to the society at large.

18. Your petitioner has no alternative and efficacious remedy and the relief prayed for herein, if granted, will afford complete relief and justice not only for him but for the entire country.

19. That on the self-same cause of action no other writ petition has been preferred by the petitioner though a petition on pan India basis was preferred before the apex court in the past and the apex court directed the petitioner to refer to High Court and after which the Bombay and Delhi High Courts have also taken up similar matters.

20. That there is no delay or laches on the part of the petitioner.

21. That the application is made bonafide and for the ends of justice.

PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased:

- i) This Hon'ble Court be pleased to issue Writ in the nature of mandamus directing that the dead body of any deceased on account of COVID-19 be not only handed over to the family members but also the guidelines earlier issued by the MOHFW and also the West Bengal State Health and Family Welfare Department be compulsorily followed and the Government of West Bengal ensure safe and proper cremation/burial of the dead bodies in such manner, as may be directed by this Hon'ble Court following social distancing norms
- ii) An order be passed to direct the Respondents to issue a circular that the dead body of any deceased on account of COVID-19 be not only handed over to the family members but also the guidelines earlier issued by the MOHFW and also the West Bengal State Health and Family Welfare Department be compulsorily followed and the Government of West Bengal ensure safe and proper cremation/burial of the dead bodies.
- iii) An order be passed to direct the Respondents that in situation that if at any time the rules regarding the handing over of dead bodies changes and the Govt performs the funeral/burial, the family members of the deceased be given right to see the body for one

last time, perform the cremation/burial with due safety and collect the ashes for last rites.

- iv) An order be passed to direct the Respondents to publish a district-wise list of all names of persons contracting with the COVID-19 disease each day, the persons under active cases, persons recovered and the persons dead.
- v) And pass such other appropriate writ as Your Lordship may deem fit and proper.
- vi) Rule NISI in terms of prayers (i), (ii), (iii), (iv) and (v), above and to make the Rule absolute if no cause is shown and/or insufficient causes are shown
- vii) to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.

For which act of kindness, the petitioner shall as in duty bound, ever pray

Filed By:

Vineet Ruia

Petitioner-In-Person

Drawn: Vineet Ruia
Filed On: 1st June 2020

Affidavit in Support

I, Vineet Ruia s/o Sri Rajkumar Ruia aged about 43 Yrs by faith Hindu by occupation business and also a social worker being president of Bharat Bachao Sangathan residing at 6/13 Brijdham Housing complex, 255 Canal Street, Shreebhumi, Kolkata - 700048 P.S. Lake Town and working for gain as well as social activities at 307, Narayani Building, 27 Brabourne Road, 3rd Floor, Kolkata - 700001 do hereby solemnly affirm and say as follows :

1. That I am the Petitioner herein and am well conversant with the facts and circumstances of the case.
2. That the statements in paragraph 1 to 21 of the petition are true to the best of my knowledge and the rest are my humble submissions before the learned court.

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