

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

WPA 5479 of 2020

With

I.A. No. CAN/1/2020

(Old No. CAN 4144 of 2020)

Vineet Ruia

-Vs.-

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

Before: The Hon'ble The Chief Justice Thottathil B. Radhakrishnan

&

The Hon'ble Justice Arijit Banerjee

For the Petitioner : Mr. Vineet Ruia
(In Person)

For the State : Mr. Kishore Dutta, Ld. AG
Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Arka Kr. Nag, Adv.
Mr. Sayan Sinha, Adv.

For the UOI : Mr. Vipul Kundalia, Adv.
Ms. Rajashree Kundalia, Adv.
Ms. Tarunjyoti Tiwari, Adv.

Heard On : 05.06.2020, 11.06.2020, 26.06.2020,
01.07.2020, 28.07.2020, 25.08.2020,
03.09.2020, 09.09.2020 & 10.09.2020

CAV on : 10.09.2020

Judgment On : 16.09.2020

1. In this writ petition styled as a Public Interest Litigation the petitioner has raised four grievances regarding the manner in which the State Government is monitoring the pandemic situation caused by the deadly novel Corona Virus. The four issues are as follows:

- i) The human remains/dead bodies of persons inflicted with Covid-19 are being disposed of by the administration unceremoniously and in an undignified manner without showing even a semblance of respect to the mortal remains.
- ii) Relatives and friends of persons admitted to hospitals with Covid-19 or persons who have contracted the disease whilst in hospitals having been admitted for some other malady, and who subsequently passed away, are not being permitted to have a last look at or to pay last respect to the mortal remains of the dead person and to perform the last rites.
- iii) There is no proper reporting of Covid-19 cases or Covid-19 deaths.
- iv) District wise lists should be published containing names of all persons infected with Covid-19.

2. The aforesaid issues are no doubt of vital importance particularly having regard to the havoc-like situation created all over the world including our State, by the sinister novel Corona Virus. Lakhs of people have fallen prey to the deadly Covid-19 and have lost their lives. The situation is indeed grave. Hence, we have heard at length, the petitioner who appeared in

person as well as the Learned Advocate General appearing for the State and also the Learned Counsel for the Union of India.

3. Pursuant to our directions recorded on 5 June, 2020 and 28 July, 2020, two reports have been filed on behalf of the State Government by Dr. Saumitra Mohan, Secretary, Department of Health and Family Welfare, Government of West Bengal. We have carefully perused the said reports.

4. With regard to the first and second issues, the response of the State Government is as follows:

“... the Department of Health and Family Welfare, Government of West Bengal had already issued a notification vide memo no. H&FW-179/A/20 dated 06.06.2020 wherein and whereby the procedure of disposal of dead bodies has been stated and utmost importance has been given to the disposal process of the dead bodies of the Covid-19 patients. In the said notification, in order to ensure that the family members of deceased persons are given an opportunity to pay their last respect, a standard operating procedure for every hospital dealing with Covid-19 patients were provided and the same are as follows:-

- In the event of death of a patient, the hospital authorities shall inform the family members within one hour of death.*
- A body cover with transparent face area shall be used. The body cover supplied earlier shall not be used.*
- Mask and gloves will be provided to the family members by the concerned hospital after proper sanitization.*

- *The dead body should be kept at a suitable place for 30 minutes during which the family members shall be allowed to pay their last respects.”*

5. As regards the third issue, i.e., proper reporting of Covid-19 cases or Covid-19 deaths, the State contends :

“...that the Department of Health and Family Welfare, Government of West Bengal issued a notification vide Memo no. HPH/10P-03/2018/462 dated 05.06.2020 wherein and whereby the Department of Health and Family Welfare, Government of West Bengal informed all the Director, IPGMER/STM, the Principal (All Medical Colleges & Hospitals of West Bengal), the Chief Medical Officer of Health (All District and Health District, West Bengal), the Superintendents (All Hospitals, West Bengal) and the Director/CEO/Medical Superintendent (All Clinical Establishments, West Bengal) that the ICMR had issued a detailed guidance for appropriate recording of Covid-19 related deaths in India and all the deaths related to Covid-19 (suspected or confirmed) should only be written in the manner prescribed for the same.”

6. As regards the fourth issue, i.e., publication of names of Covid-19 infected persons in a District wise manner, the State’s response was :

“... that the Department of Health and Family Welfare, Government of West Bengal in its official website regularly publishes each day along with State wise and District wise details of New COVID-19 Cases, total COVID-19 cases, total discharged, total deaths, active COVID-19 cases, discharge rate, total number of samples tested, tests per million population, % of positive cases out of

samples tested, total testing laboratories, testing laboratories added during each week, testing laboratories pending approval, total number of hospitals dedicated for treating COVID-19, total number of Govt. Hospitals dedicated for treating COVID-19, Total Number of Pvt. Hospitals requisitioned for treating COVID-19, Total Number of earmarked COVID-19 Beds, % Occupancy in COVID Beds, Total ICU Beds in the COVID Hospitals, total number of Ventilators in the COVID Hospitals, Total Govt. Quarantine Centres, Total Number of people in Govt. Quarantine Centres, Total number of people released from Govt. Quarantine Centres, Total Home Quarantined People, Total number of people currently in Home Quarantine, Total number of people released from Home Quarantine, Total Number of Safe Homes, Total Number of Beds in Safe Homes and Total Number of Patients in Safe Homes currently and the same is updated on daily basis. It is pertinent to mention here that the Government of West Bengal has preferred not to disclose the names and/or identities of the patients affected with Covid-19 virus with a view to respect their and their family members' privacy and also to safeguard them from the social stigma which is unfortunately and undesirably associated and/or attached with the patients affected with Covid-19 virus. I further beg to state that the Department of Health and Family Welfare, Government of West Bengal has also launched software namely Covid-19 Patients Management System (CPMS) which helps the relative of the patients to track the patients' daily health status by logging in through their respective registered mobile numbers."

7. Learned Advocate General submitted that considering the gravity of the Covid-19 situation, the State Government has been closely monitoring

the entire situation and issuing appropriate and/or necessary notifications from time to time to deal with the ongoing pandemic situation. The Government has been highly vigilant and has been adopting the best possible measures to deal with the difficult situation and also to ensure that the guidelines and/or notifications of the State Government are thoroughly complied with by every person and/or institution and all concerned.

8. We have carefully considered the submissions made on behalf of the parties. There is no scope for doubt any more that the right to life enshrined in Article 21 of the Constitution of India includes the right to life with dignity. We agree with the submission of the petitioner that living with dignity includes not only the dignity of a person when he is alive but also the dignity following his death. The right to dignity and fair treatment under Article 21 of the Constitution is not only available to a living person but also to his mortal remains after his demise. Disposal of a human body, whether or not the person dies of Covid-19, whether by cremation or burial, should be done with due respect and solemnness. We also agree that the near and dear ones of a deceased person who had contracted Covid-19 should have an opportunity to have a final look at the human remains of the person and to pay their last respect and homage to the departed soul. Let us briefly note the views of the Hon'ble Supreme Court and other High Courts on this aspect.

9. In ***Pt. Parmanand Katara, Advocate v. Union of India & Anr.:*** (1995) 3 SCC 248, it was held by the Hon'ble Supreme Court that right to dignity is available not only to a living man but also to his body after his death. In that case, the petitioner had challenged the method of execution of

death sentence by hanging under the Punjab Jail Manual as inhuman and violative of Article 21 of the Constitution. The Petitioner argued that the requirement under the Jail Manual that the body of a condemned convict be kept suspended for a period of half an hour after hanging, was violative of right to dignity. Although the High Court rejected the challenge to the method of execution by hanging, it accepted the contention of the petitioner that suspending the body for a period of half an hour after death amounted to violation of his right to dignity.

10. In **Ramji Singh @ Mujeeb Bhai v. State of U.P. & Ors: 2009 SCC OnLine All 310=(2009) 5 All LJ 376**, a Division Bench of the Allahabad High Court held that the word and expression '*person*' in Article 21 of the Constitution includes a dead person in a limited sense and right to life with dignity should be extended in such a manner that his dead body is given respect, which he would have deserved, had he been alive, subject to his tradition, culture and the religion which he professed. The society should not be permitted to show any disgrace to the deceased.

11. In **Vikash Chandra @ Guddu Baba v. The Union of India & Ors.: 2008 SCC OnLine Pat 905 (2008) 2 PLJR 127**, a petition was filed regarding the undignified manner of disposal of dead bodies by Patna Medical College and Hospital. It was alleged that the dead bodies were thrown into River Ganges without even stitching the post-mortem operation openings. The Patna High Court held that it is expected from the Hospital Staff and State Officials that disposal of unclaimed and unidentified dead bodies would be done in accordance with law with utmost respect to the

deceased and in case it is verifiable, the last rites should be in accordance with the known faith of the deceased.

12. In ***Ashray Adhikar Abhiyan v. Union of India & Ors.: (2002) 2 SCC 27***, a letter was addressed to the then Hon'ble Chief Justice of India by the members of the petitioner organization making a complaint that homeless persons, when they died, are not cared for and are not given a decent burial thereby violating the right of a deceased homeless person to a decent burial. The letter was treated as a writ petition and the Supreme Court heard the matter. Affidavits were filed by the Deputy Municipal Health Officer of the Municipal Corporation of Delhi and the Deputy Commissioner of Police, Delhi stating their roles in disposal of dead bodies of the homeless. On facts, the Supreme Court was satisfied with the actions of the police and the Municipal Corporation. However, it was reiterated that the dead body of a homeless person who died on the street is entitled to a decent burial according to the religious faith to which he belonged.

13. In ***S. Sethu Raja v. The Chief Secretary [WP(MD) Nol.3888 of 2007]***, the Madras High Court in a Judgment delivered on 28 August, 2007 observed that by our tradition and culture the same human dignity (if not more), with which a living human being is expected to be treated should also be extended to a person who is dead. In that case, the High Court directed the authorities to bring back the body of the petitioner's son who had died in Malaysia having gone there to work as a labour. The Court held that there can be no dispute about the fact that the yearning of a father to perform the obsequies for his son who died in an alien land, is a result of traditional

belief that the soul of a person would rest in peace only after the mortal remains are buried or burnt.

14. Traditions and cultural aspects are inherent to the last rites of a person's dead body. Right to a decent funeral can also be traced in Article 25 of the Constitution of India which provides for freedom of conscience and free profession, practice and propagation of religion subject to public order, morality and health and to the other fundamental rights under Part III of the Constitution.

15. In ***Marimuthu v State by The Inspector of Police Pennadam Police Station, Vallalar Division, Cuddalore (Criminal Appeal No.618 of 1995)***, in its Judgment dated 7 August, 2002, the Madras High Court, placing reliance on the Supreme Court decision in ***Pt. Parmanand Katara (supra)*** observed that right to dignity and fair treatment, which is guaranteed under Article 21 of the Constitution, is not only available to a living person but also to his body after his death and that every human being is entitled to a decent burial of his body after his death in accordance with the culture and tradition and that inordinate delay in sending the dead body for autopsy when required, would be violation of the right to dignity guaranteed under Article 21 of the Constitution of India.

16. In the recent case of ***Pradeep Gandhi vs. State of Maharashtra: 2020 SCC OnLine Bom 662***, a Division Bench of the Bombay High Court addressed the issue of burial and last rites of a Covid-19 patient's dead body. In that case, initially, the Municipal Corporation of Greater Mumbai prescribed that all the dead bodies of Covid-19 patients should be cremated in the nearest crematorium irrespective of religion. The said circular further

allowed family and friends of the deceased to make their own arrangements and take the body for burial outside Mumbai City's jurisdiction after following all guidelines and precautions. On the same day, the circular was amended to allow the burial of all Covid-19 patients' dead bodies in the city's burial grounds provided they were large enough to not create the possibility of further spread in the neighbourhood. The petitioner challenged the circular on the ground that burial of Covid-19 dead bodies could lead to further spreading of the disease. The High Court dismissed the petition, upheld the amended circular and noted the right of burial as part of the right to freedom of religion. The Court observed: "*We find little reason to deprive the dead of the last right, i.e., a decent burial according to his/her religious rites, on the face of there being no evidence, at least at this stage, that Covid-19 infection may spread to living human beings from the cadaver of any suspected/confirmed Covid-19 infected individual.*"

17. In ***Common Cause v. Union of India: 2018 SCC OnLine SC 208***, a Constitution Bench of the Hon'ble Supreme Court while dealing with the issue of euthanasia, set the stage for acknowledgment of the constitutional right to die with dignity. It was observed that the right to die with dignity is an inseparable and inextricable facet of the right to life with dignity. While advertent to a situation of a dying man who is in a persistent vegetative state, the Hon'ble Judges pointed out that his process of natural death has already begun and since the death is imminent and certain, he has the right to die with dignity. The Court held that right to die with dignity is a Fundamental Right and thus an integral part of Article 21 of the Constitution.

18. We are of the view that the right to live a dignified life extends up to the point of death including the dignified procedure of death. We are inclined to interpret the phrase ‘dignified procedure of death’ in an expansive manner so as to include dignified disposal of the human remains of a deceased. We unhesitatingly hold that the mortal remains of a deceased person must be treated with care, respect and dignity and have to be disposed of by burial or burning, according to the religion, in so far as the same is ascertainable, that the deceased person practised. It makes no difference if the deceased person was infected with Covid-19. Of course, all requisite safety and precautionary measures must be taken by the persons who carry out the funeral.

19. As regards the second issue, i.e., the relatives and friends of Covid-19 victims are not being permitted to have a last look at or to carry out the last rites of the deceased; and that, the same should be permitted, the Government Notification dated 6 June, 2020 already provides opportunity for the family members of the deceased to see the mortal remains and pay their last respect. In our considered view, the family members should be permitted to perform the last rites of a deceased notwithstanding that the deceased was infected with Covid-19. We proceed to delineate our specific reasoning in that regard.

20. By and large, whether it is for a theist or atheist, freedom of conscience and free profession and practice of religion is protected under Clause (1) of Article 25 of the Constitution. The term “religion” in that Clause need not necessarily be linked to any particular religion as is

understood as a religious denomination. It is a matter of faith and of one's own conscience which could trigger the profession and practice of what may be religion in the larger sense to a particular individual. With this concept in mind, it needs to be delineated that it is not the religious practices of the different religious denominations which matter in such instances. It is a matter of connectivity with the person who has died and the near relatives may be in whatever degree of relationship. Fundamentally, human relationship between the parent and child, husband and wife, grandparent and grandchild, etc. is not based on any religious tenet. It is a matter of faith and conscience of every individual. If such a person is to take recourse to any practice and free profession on the foundation of freedom of conscience in terms of Clause (1) of Article 25 of the Constitution of India, it could get abridged only by the reciprocal covenant that such activity should be subject to public order, morality and health and to other provisions of Part III of the Constitution. This is the inbuilt mode of controlling such activities even in terms of Clause (1) of Article 25. The eligibility of a person to perform the funeral rites, be it connected to cremation or burial, may be sometimes guided by factors which may be akin to accepted practice even in religious denominations. If we were to look at the varied practices among the Hindus as a whole or different denominations of Hindus, one thing is clearly certain; the facility to provide ritualistic offerings by way of water, flowers or even certain grains are quite often seen as fundamentally for the satisfaction of the person making such offer to the dead before burial/cremation, as the case may be. Post cremation rites including, receiving the mortal remains in the form of ashes and bones which are treated as sacred to the near

relatives of the departed and further handling of those materials in accordance with faith and belief also stands accepted in such communities (profitable reading in this regard can be had from Garuda Purana, Vishnu Purana and other ancient Hindu texts and scriptures). In so far as Christians are concerned, if one were to look at different denominations, it can be seen that there are practices, which may with slight variations, generally provide for prayers before the dead bodies are disposed of by burial and by offering prayers even after disposal on different dates and times depending upon the faith, belief and practice in different Churches. A perusal of canons would show that different ritualistic processes are delineated for such matters. We have mentioned it only to indicate that there are different practices available. In so far as the Muslims are concerned, whatever be the difference in beliefs and practices among the Hanafis, who are treated as a majority group of Sunnis in India, on one hand, and the Shias on the other hand, one clear thread of connectivity is the faith and belief that the disposal of human remains is a must as well as post Kabar (Burial) rituals (Certain passages from Al-Bahr-ur-Raiq will buttress this aspect). The family also intends to have its own practices carried forward to the extent it relates to their faith and belief. We refer to all these only to demonstrate that by and large the Indian community always has the desire for intricate practices in the form of rituals with the participation of near relatives of a deceased, following what could be permissible under given circumstances. The restrictions that can be imposed in respect of public order, morality and health and to the other provision of Part III of the Constitution necessarily provide room for fair

provision for relatives of the deceased persons to participate to the extent possible in the funeral of a deceased, subject to the respective norms. We may even go to the extent of saying that it is delineable as part of human rights. We also do not see that the legislative purpose and intention behind putting the Disaster Management Act, 2005 in place is to provide a piece of legislation which could be treated as annihilative in nature. The whole concept of disaster management and the regulatory provisions which can be generated within the domain of Disaster Management Laws are to be treated, understood and applied as shield to energise and enable better governance in the wake of disaster by following preventive management, protective management and post disaster curative management of all such situations. In this spectrum of reasoning, the constitutional aspirations of the people in a civilised society cannot be discounted except when and unless it becomes disorderly behaviour which would infract the public order, morality and health. Reverting to the principles emanating out of the Constitution of India, as held by the Apex Court in *Budhadev Karmaskar vs. State of West Bengal* AIR 2011 SC 2636, the word life in Article 21 means a life of dignity and not just an animal life. The transition of the concept of animal life to lead a life with dignity which is expected for a human life necessarily postulates the freedom of the individual to maintain for him and enjoy the universal concept of love and devotion to the near and dear ones and also to suffer sorrow and do such things which would alleviate sadness which emanates out of unfortunate events. In maintaining just and reasonable human relationship built on human and constitutional values, we may also bear in mind that it is among the fundamental duties of citizens

in terms of Article 51A of the Constitution to promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of woman; to value and preserve the rich heritage of our composite culture. These are soothing balms to one and all among the Indian citizens in days of happiness as well as of sorrow. Balancing the different aspects relating to public order, morality and health which are reflected in the materials placed before us through the pleadings of the parties appearing in this case and the desiring need of the dear and near ones of the unfortunate victims of Covid-19 or comorbidity, we propose to issue certain guidelines which may be meaningfully understood and applied by those in Governance at the level of the local self-government institutions as well as the State Government.

21. The traditional belief in our country is that unless the last rites are performed before the burial/cremation, the soul of the deceased shall not rest in peace. This belief is deep rooted in our country. It also has an emotional and sentimental aspect. Hence, we firmly believe that the family members of a deceased who was infected with Covid-19 should not be deprived of the right to perform the last rites of the deceased, subject to them taking all necessary precautionary measures.

22. In terms of Article 243G read with the 11th Schedule and Article 243W read with the 12th Schedule of the Constitution of India, public health, sanitation conservancy, burials, burial grounds, cremations, cremation

grounds and electric crematoriums are matters that fall within the domain of self-government institutions, be it a Municipality or a Panchayat. The West Bengal Municipal Act, 1993, which came into being after Part IXA was inserted in the Constitution of India by the Constitution (74th Amendment) Act, 1992 with effect from 01.06.1993, contains provisions regarding restraints of infection (Chapter XXII), vital statistics including registration of births and deaths (Chapter XXIII) and disposal of dead (Chapter XXIV). Section 359 of the 1993 Act empowers the Chairman of a Municipality, with the previous approval of the Board of Councillors, in case of an outbreak of dangerous or epidemic disease, to issue public notice giving such directions to be observed by the public or by any class or section of the public, as he thinks necessary, to prevent the outbreak or spread of the disease. In a case of emergency and where immediate measure is necessary, the Chairman may take such action even without the approval of the Board of Councillors and then report such action to the Board of Councillors. Any person committing a breach of any direction given under the said Section shall deem to have committed an offence under Section 188 of the Indian Penal Code. Section 360 of the said Act empowers the Chairman of a Municipality, where any person dies from any dangerous disease, to require any person having charge of the corpse to carry the same to mortuary for being disposed of in accordance with law or prohibit the removal of the corpse from the place where death occurred, except for the purpose of being burnt or buried or being carried to a mortuary. There are similar provisions in the statutes like Kolkata Municipal Corporation Act, 1980 whereby and whereunder the Kolkata and other Municipal Corporations were constituted

respectively. In so far as the KMC Act is concerned, the provisions are to be found in Chapter XXVII (vital statistics), XXVIII (disposal of the dead) and XXIX (restraint of infection) of the Act.

23. We have referred to the aforesaid provisions of law only to show that the legislature has imposed duties on the local self-government institutions to maintain hygiene in the public domain and has empowered such institutions to take appropriate measures to combat the menace of an epidemic or deadly disease. However, these powers must be exercised by the donees of such powers responsibly and by ensuring that the rights of the citizen which are recognized by law, are not jeopardized or curtailed unnecessarily. We are of the firm view that the right of the family of a Covid-19 victim to perform the last rites before the cremation/burial of the deceased person is a right akin to Fundamental Right within the meaning of Article 21 of the Constitution of India. While exercising their power to impose restrictions on citizens in their way of life in the wake of outbreak of an endemic like Covid-19, a fine balance must be struck by the State and the local self-government institutions so that the aforesaid right of a citizen to perform the obsequies of his near and dear ones does not stand abridged or abrogated excepting for very compelling reasons. Having given our anxious consideration to the issue in hand, we have come to the conclusion that the immediate family members of Covid-19 victims be permitted to perform the funeral rites of the deceased subject to them following certain precautionary guidelines to eliminate/minimize the risk of them becoming

infected by the deadly virus which has caused devastation in the form of loss of countless lives across the world.

24. We have considered the guidelines on dead body management in the context of Covid-19 issued on 15 March, 2020 by the Ministry of Health and Family Welfare, Government of India. In addition to the procedure laid down in the State Government Notification dated 6 June, 2020, which we have referred to hereinbefore, we lay down the following guidelines:

- i) When post mortem of the dead body is not required, the dead body shall be handed over to the immediate next of kin of the deceased i.e. the parents/surviving spouse/children, after completion of hospital formalities. The body should be secured in a body bag, the face end of which should be preferably transparent and the exterior of which will be appropriately sanitized/decontaminated so as to eliminate/minimize the risk to the people transporting the dead body.
- ii) The people handling the dead body shall take standard precautions, *e.g.*, surgical mask, gloves, etc. If available and possible, PPE should be used.
- iii) The vehicle carrying the dead body to the crematorium/burial ground will be suitably decontaminated.

- iv) The staff of the crematorium/burial ground should be sensitized that Covid-19 does not pose additional risk. They will practice standard precautions.
- v) The face end of the body bag may be unzipped by the staff at the crematorium/burial ground to allow the relatives to see the body for one last time. At this time, religious rituals, such as reading from religious scripts, sprinkling holy water, offering grains and such other last rites that do not require touching of the body, should be allowed.
- vi) After the cremation/burial the family members and the staff of the crematorium/burial ground should appropriately sanitize themselves.
- vii) As a social distancing measure, large gathering at the crematorium/burial ground should be avoided.
- viii) The persons handling the dead body shall go directly from the hospitals to the crematorium/burial ground, as the case may be, and not to anywhere else including the home of the deceased where he/she last resided.
- ix) In case the body of a Covid-19 infected deceased is unclaimed, the same shall be cremated/buried as the case may be with due dignity, at State expense.

Needless to say, these guidelines are not to be taken as exhaustive and the State Government or local self-government institutions may and should prescribe additional reasonable measures as they may be advised by medical/clinical experts for the safety and protection of the health of the people who deal with the mortal remains of a Covid-19 victim.

25. As regards the third and fourth issues, i.e., proper reporting of Covid-19 cases or Covid-19 deaths and publication of names of Covid-19 infected persons district wise, we are satisfied that the State has taken adequate measures as recorded above. In our opinion no further direction need be given by us in that regard for the time being.

26. WPA No.5479 of 2020 is accordingly disposed of along with IA No. CAN 1 of 2020 (Old No. CAN 4144 of 2020). However, there will be no order as to costs.

27. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)