

(2012) 07 SC CK 0079

In the Supreme Court Of India

Case No : Writ Petition (C) No. 284 of 2012

Court on Its Own Motion

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21

Citation : (2012) 6 SCALE 607

Hon'ble Judges : Swatanter Kumar, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Today's 'The Times of India' and 'Hindustan Times' reports 67 deaths of pilgrims mostly because of the cardiac arrests as well for other reasons. As per these reports, this has happened in 17 days. Last year 105 persons died during the 45 days' yatra. Thus, this year it appears to be on the rise. In our considered view, the pilgrims have a constitutional right under Articles 21 and 19(1)(d) to move freely throughout the territory of India, free of fear, with dignity and safety and to ensure enforcement of such right is the primary obligation of the State and the Central Governments.

2. Where it is a matter of common knowledge that the yatra to the 'Holy Cave of Amarnath' is an occasion of privilege and pride for a devotee, there it is also a matter of great concern for the Government of India, the Government of the State of Jammu & Kashmir and the Amarnath Shrine Board, Some of the events that have been widely reported in the newspapers compel us to take a judicial notice of the lack of necessary facilities, essential amenities and the risk to the lives of the yatis, en route and around the "Holy Cave of Amarnath",

3. On 3rd July, 2012, it was reported in the Hindustan Times, Delhi Edition, that two more pilgrims died of cardiac arrest on Sunday, taking the toll to 22. Both the pilgrims were stated to be in their mid-thirties.

4. One pilgrim was on her way to the holy shrine while the other was returning to Pahalgam Base Camp (Names: Ms. Anita Chourasia and Sadhu Ram). The same daily on 2nd of July, 2012 had reported that there were deaths of five more devotees as a result of cardiac arrest at the Pahalgam and Baltal Base Camps. These were the deaths reported to have occurred between 25th June, 2012 to 2nd July, 2012 on the twin tracks of Baltal in Ganderbal and Pahalgam in Amarnath. This daily also reported that nearly 1.20 lakh pilgrims had so far paid obeisance to the shivalingam at the holy cave. This newspaper also showed the path and the weather conditions to which the yatri to the Holy Cave were exposed and the amenities that were available at the glacier.

5. The Times of India, New Delhi Edition on 29th June, 2012 had reported that there was an unidentified body of 55-year old pilgrim which was recovered along the Pehalgam cave route in Anantnag district.

6. Similarly, on 28th June, 2012, the Hindustan Times, while referring that the Management had directed increase of security at the yatri base camps to maintain proper schedule, had reported that the death toll within the first three days of the commencement of the yatra was six. The same newspaper dated 27th June, 2012 had shown a photograph of the passage that more than 18000 pilgrims had visited the holy cave, which is at the height of 3,880 metres, in three days. It showed one of the passages leading to the holy cave. From this picture itself, it is clear and even otherwise it is a matter of common knowledge that the path leading to the holy cave is not only very small but is even unprotected. The photographs also show that hardly any amenities are available for the yatri in and around the holy cave, though thousands of people who throng the holy cave have to wait for hours and days for having the darshan. It has also been published in other papers that in the initial days of the yatra, one person had died because of the fall from the height as there was no support or protection on the path leading to the holy cave. The path somewhere is stated to be even less than six feet and does not have any grill or protection (like pagdandi), which could prevent the people walking on these constricted paths/passages from falling. All the palkis, horses and even the yatri walking on foot, travel on the same path at the same time, thus causing complete jams on the already tapered paths leading to the holy cave.

7. With the passage of time, the things have hardly improved. We may refer to what was the situation was in the year 2011, as per the newspaper reports of the relevant/concerned year.

8. The Indian Express while reporting the commencement of the yatra in its newspaper dated 29th June, 2011 reported that nearly 2.5 lakh pilgrims had registered themselves for the annual pilgrimage with the Amarnath Shrine Board till the aforesaid date and 2000 pilgrims had already left the State of Jammu for the yatra. It also reported a very unfortunate incident where a person named Rajinder Singh, aged 55 years, resident of Jaipur had died due to cardiac arrest at Baltal base camp in Ganderbal district of Kashmir.

9. Again on 1st July, 2011, the same paper reported that a group of men and women, young, elderly and children with their backpacks walked up the winding steep gradient of the road to the cave shrine. In this report reference was made to the statement of the public that there were no vehicles and it was very difficult for the pilgrims to travel and walk such long distances. From Baltal route, 13,000 pilgrims left while 9000 pilgrims left from Chandanwari for darshan to the holy cave.

10. With the increase in the number of pilgrims coupled with the poor management, it appears that there was a sharp increase in the casualty rate. In the Indian Express dated 6th July, 2011, it was reported that 18 yatris had died within a week of the commencement of the journey. This included elderly people as well as young victims. One Mr. Vikram Rathore, who died, was only aged 25 years. It appeared from this report that constraints on the availability of medical aid and medical examination is writ large.

11. The same newspaper on 8th July, 2011 reported that three more pilgrims died during the yatra raising the toll to 27. Even a constable namely Inderjeet Singh posted with 28 Battalion, Central Reserve Police Force (for short 'CRPF'), Srinagar, died of heart attack while returning from the cave. Another person aged about 54 years hailing from Gujarat also died of cardiac arrest at Sangam top much ahead of the shrine. Still another detailed Article appeared in the Times of India dated 18th July, 2011 detailing the lack of facilities, referring to the rush of the pilgrims at the base points as well as at the holy cave. A pilgrim from Guwahati stated: "Half-an-hour after starting out for the shrine from Panchtarni, which is a place 6 km from the holy cave, we were trapped in a jam for close to two hours. There was not an inch of space on the path. There was pushing and shoving as yatris got restless. A sudden movement or a horse or commotion in a Section of the crowd could have caused a big stampede". Referring to the statement of an officer, the report stated that the pilgrims had to be regulated from the base camps and there was very little that the members of the Forces could do at the narrow pathways or the holy cave to control the situation. Nearly 22,000 pilgrims visited the shrine daily while the limit, as per the administration itself, was reported to be 3,400 per day only. It is again a matter of great regret that obviously because of lack of proper aid and amenities, the death toll had gone upto 85 on 21st July, 2011, as was reported in "The Hindu" of the even date.

12. All these reports clearly showed disregard to the human life. Lack of facilities at the shrine and on the paths leading to the shrine is evident from all the aforestated Articles and the photographs published therein. This Court has repeatedly held that in terms of Article 21 of the Constitution of India, a person has a right to live with dignity and not be subjected to inhuman treatment, particularly in such places where large number of people are bound to visit because of their faith. It can also be hardly disputed that huge revenue is generated as a result of visit of large number of pilgrims to the Holy Cave. The

Amarnath Shrine Board receives huge amount of money not only by way of offerings but also from the charges/fee it takes from the pony-owners, palkiwallahs as well as the helicopter services available between Baltal and Panchtarni.

13. It is also evident that there is a complete lack of adequate essential amenities and facilities for the yatris who come to pay their tribute at the 'Holy Cave at Amarnath'. Lack of medical facilities and limitations of the officers/officials of the Forces are some other facets which need to be considered by the concerned authorities.

14. It also appears to be a very sensitive place from the environmental point of view and in terms of the provisions of the Environment Act, 1986 and the constitutional obligation placed upon the concerned authorities, it is expected that proper measures be taken to prevent such high death rate, controlling pollution and providing the requisite facilities and improving the services required for successful completion of such yatras.

15. It is expected of a Government and the concerned authorities to devote more attention and provide appropriate amenities and facilities to protect the life of the individuals, the environment as well as ensure to make the yatra effective and successful, preferably without any human casualty. The authorities cannot shirk from their responsibility of providing minimum essential facilities including medical assistance, roads and other necessary infrastructure. Visit of lacks of people to the State of Jammu & Kashmir generates revenue for the State, in fact, for the residents of that State and add to the need for better tourism facilities. The authorities are also expected to better equip the Forces posted at the holy cave, base points and en route to the holy cave.

16. It is a settled canon of constitutional law that the doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'pollutor-pays principle' flow from the core value in Article 21. The Supreme Court in its judicial dictum in the case of *Glanrock Estate (P) Ltd. Vs. The State of Tamil Nadu*, has held "forests in India are an important part of the environment. They constitute a national asset and intergenerational equity is also part of the Article 21 of the Constitution and cautioned that if deforestation takes place rampantly, then intergenerational equity would stand violated.

17. Right to life is enshrined under Article 21 of the Constitution which embodies in itself the right to live with dignity. The State is not only expected but is under a constitutional command to treat every citizen with human dignity and ensure equal treatment to all. In our considered view and as demonstrated by these newspaper reports, inhuman, unsafe and undesirable conditions are prevailing at the base camps and en route to the holy, cave. The yatris do have a right and the State is under constitutional obligation to provide safe passages, proper medical aid, appropriate arrangement and at least some shelter to the thousands of yatris visiting the holy cave every day. They are also expected to equip the

forces deployed with appropriate equipments facilities and the authorities should ensure that no untoward incident occurs at the holy places. In our view, the following questions arise for consideration of the Court:

1. Whether there exists proper medical facilities to prevent human casualties. Further to provide emergency medical aid in the event of these yatris falling sick because of cardiac and other related problems.?
2. What steps are being taken and have been taken to protect the environment in that area?
3. What essential amenities have been provided at the base camps and en route to the holy cave keeping in view that lakhs of people are visiting the shrine every day.
4. What measures are being taken and methods being adopted for collection and disposal of the waste including domestic and human waste generated by the yatris en route and around the holy cave?
5. What are the facilities and equipments available, particularly for protecting or treating conditions such as dyspnoea, cardiac arrest and other heart related problems.
6. What is the cause for such high casualty rate and whether there exists the required medical equipments to ensure that in future such casualties can be avoided?
7. What measures and means are available with the authorities on ground for handling such huge crowd and why seven times the requisite number of people coming to visit the cave per day are being permitted and if so, whether there is requisite infrastructure at the site for handling such huge crowd?
18. The time intervening the previous and the current year clearly demonstrates that the authorities have not taken any effective and appropriate measures for protecting the life of thousands of devotees who visit the holy cave during this limited period, despite the print media repeatedly bringing this to the notice of all concerned. Thus, within the constitutional mandate of Article 21, this Court would have no option but to pass appropriate directions.
19. All these aspects need to be taken care of by the concerned authorities certainly with greater emphasis and they cannot escape their obligation to provide minimum essential facilities including roads as an approach to the holy cave. They are expected to equip their Forces posted in an around the cave so as to have complete human dignity for the persons working there as well as for the pilgrims coming to the holy cave. They are also expected to make appropriate arrangements for darshans at the holy cave so as to avoid health hazards and injuries, provide proper paths and one-way system passages to the pilgrims to the Holy Cave. Therefore, taking suo moto notice of the Articles which are placed below and to appropriately deal with this serious subject, answer the above

questions and evolve solutions within the framework of law, we require the following to appear and answer before this Court:

Union of India, through Ministry of Home Affairs, through its Secretary.

Ministry of Environment and Forests, through its Secretary.

State of Jammu and Kashmir, through its Chief Secretary.

Chairman/President of the Amarnathji Shrine Board.

20. Issue notice, returnable within a week. Dasti.