
(2022) 08 UK CK 0066
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 69 Of 2021

Ishwar Chand Verma

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 25-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 25

Citation : (2022) 08 UK CK 0066

Hon'ble Judges : Vipin Sanghi, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : B.S. Adhikari, Pradeep Joshi, Sandeep Kothari

Final Decision : Disposed Of

Judgement

Vipin Sanghi, CJ

1. This writ petition has been preferred in public interest to seek the following reliefs:-

"i. A writ, order or direction in the nature of mandamus directing respondent nos.1 and 2 to make the cremation of COVID-19 infected dead bodies mandatory by Electric Cremation Furnace in the State of Uttarakhand.

ii. A writ, order or direction in the nature of mandamus directing the respondent nos.2 & 3 to make functional the existing Electric Cremation Furnace situated at Cremation Centre, Kharkari (Haridwar).

iii. A writ, order or direction in the nature of mandamus directing the respondents to establish and maintain at least one Electric Cremation Furnace at cremation centre in every municipal limits".

2. Though, the writ petition was preferred in May, 2021 when the second wave of COVID-19 pandemic was raging, the issue raised by the petitioner with regard to installation of electric cremation furnace in the State of Uttarakhand is an important and serious issue. Due to lack of such facilities, which are otherwise

available in other parts of the Country, the cremation of dead bodies is leading to large scale deforestation. It is a known fact that persons, who are not able to arrange wood for cremation of their near and dear ones, are leaving the bodies un-cremated and simply dumping them in rivers and waterways. Cremation of dead bodies with the use of wood, or the disposal of such bodies in river and waterways is also leading to air and water pollution.

3. The position which emerges from the records is that only one electric furnace for cremation has been installed in the State of Uttarakhand at Haridwar, which too is lying un-operational/ defective.

4. We are of the view that fundamental rights of the people of the State under Article 21 of the Constitution of India are seriously jeopardized due to such lack of facilities being provided in the State by the State Government. Right to a decent cremation of the dead is also a fundamental right guaranteed under Article 21 of the Constitution of India, as it infringes under Right to dignified existence and closure on demise. We may refer to the judgment of the Supreme Court in *Pt. Parmanand Katara, Advocate vs. Union of India & another*, (1995) 3 SCC 248, and the decision of the Allahabad High Court in *Suo-Moto In re: Right to Decent & Dignified Last Rites/ Cremation vs. Staet of U.P, thru Additional Chief Secretary, Home & others*, 2020 SCC OnLine All 1088. The Supreme Court in *Pt. Parmanand Katara* (supra) held:

"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".

5. The Allahabad High Court in *Suo-Moto In re* (supra) observed:-

"12. We, in this regard, may refer to the decision of the Hon'ble Supreme Court reported in (1995) 3 SCC 245; *Pt. Parmanand Katara v. Union of India* (UOI); where the Hon'ble Supreme Court had an occasion to consider various facets of the Right to Life enshrined under Article 21 of the Constitution of India. It agreed with the contention of 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. It being the legal position, the deceased victim after her death was entitled to honourable, decent and dignified last rites/ cremation to be performed by her family members in keeping with the customs and traditions followed by the family which as per the electronic media report was a follower of Sanatana/Hindu traditions, which, as alleged, was not allowed. If this is found to be true, then it would be a case of gross violation of basic human and fundamental rights enshrined under Article 21 and Article 25 of the Constitution of India in a most blatant and uncalled for manner something which is absolutely unacceptable in our country governed by Rule of Law and the Constitution.

13. We may also refer to a Division Bench judgment of this Court reported in (2009) 5 All LJ 376, *Ramji Singh @ Mujeeb Bhai v. State of U.P.*; wherein also

facets of Right to Life under Article 21 came up for consideration and it was held that this right extends to a dead person in a limited sense that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his 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 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 postmortem 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 disposal in accordance with human dignity.

14. At this juncture it would be worthwhile to quote Oscar Wilde who said that "Death must be so beautiful. To lie in the soft brown earth, with the grasses wearing 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."

15. The matter before us also involves the rights available to the deceased victim and the family members under Article 25, as, last rites are performed as per religious traditions followed by the family, as already noticed. Reference may be made in this regard to a decision of the Calcutta High Court dated 16.09.2020 rendered in the case of Vineet Ruiya v. The Principal Secretary, Ministry of Health and Family Welfare, Government of West Bengal.

16. We may also refer to a judgment of the Bombay High Court in the case of Pradeep Gandhi v. State of Maharashtra; 2020 SCC OnLine Bom 662; wherein Right to a decent burial commensurate with the dignity of the individual was reiterated as a recognized facet of the Right to life guaranteed under Article 21 of the Constitution".

6. Lack of such facilities is also leading to air and water pollution, which is also affecting the quality of life of the people in the State. Right to a clean environment is also an inbuilt right under Article 21 of the Constitution of India.

7. The respondents have pointed out that an alternative to electric furnace for cremation is a gas fired furnace for the same purpose.

8. In our view, that is a call that the State may take keeping in view the availability of gas/electricity in any given area.

9. We, therefore, dispose of this petition with the direction to the State of Uttarakhand to ensure installation of at least one electric cremation furnace, or gas fired cremation furnace in every municipal body in the State. The respondents should take steps to ensure that this direction is complied with in the next six months. The State shall file the action taken report in this regard on the first of every month, starting from 01st October, 2022. In case of non-compliance, it shall be open to the petitioner to bring the situation to the notice of the Court for further directions.