

(1984) 11 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No. 10995 of 1984

Perunchithirananar

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Constitution of India, 1950 — Article 15, 226

Citation : AIR 1986 Mad 83 : (1985) 98 LW 208

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : Party in person, for the Appellant;

Judgement

Natarajan, J.—While the nation is still mourning the death of the late Prime Minister Srimathi Indira Gandhi while the citizens of the country

are still paying, reverential homage to the departed soul with tearful eyes and bleeding hearts, while the National Flag is still flown half-mast and

while the country is observing State mourning, this writ petition has come to be filed under Art. 226 of the Constitution praying for the issue of a

writ of Mandamus or any other appropriate writ, order or direction to the State oil Tamil Nadu, the Union of India and the Chief Minister of Tamil

Nadu to forbear from keeping the Urns containing, the ashes of the cremated body of late Srimathi Indira Gandhi for public dharshan or from

taking the same to various places in India and from spending public revenue and using Government machinery for the said purposes.

2. The petitioner, Thiru Perunchithirananar, has described himself in his affidavit as a rationalist and socialist working for the development of Tamil

society all over the world and to be a publisher of a Tamil magazine, a Tamil weekly and a children's monthly magazine, The petitioner has averred

in his affidavit that scientifically, the ashes of cremated human bodies are of no significance or importance and consequently, the ashes of the late lamented Prime Minister cannot stand on a better footing. It is only superstition and religious beliefs, particularly among Hindus. Which tend to give importance to the ashes of cremated human bodies. Under the Constitution, the State is secular in nature and hence the Government is bound to adopt a neutral attitude towards all religions, it has neither power nor authority to participate in religious functions or spend funds from the public exchequer for the performance or observance of religious functions. Contrary to this position the Central and State Governments are engaged in taking the ashes of the late Prime Minister to different parts of India including Tamil Nadu and this would amount to the Government actively engaging itself in the propagation of Hindu religious beliefs among the public. "The practice of placing urns containing ashes for public dharshan, not only amounts to indulgence in unscientific practices, but will also constitute an unwise precedent to be followed when leaders of other Parties meet their end. It also paves way for the public to neglect their duties and waste their precious hours. Governmental obligations should stand confined only with ensuring decent burial or cremation of dead bodies and as such, Government has no power or authority to spend public funds for the carrying of the ashes of any departed leader from place to place by means of aeroplanes, trains etc. for dharshan by people. By reason of such practices, no benefit or advantage is conferred on the public; on the contrary, it would amount to political propaganda, and it is for the purposes of political gain the ruling party is indulging in this practice. As the act of the respondents is ultra vires the Constitution, this Court should make them forbear by means of a writ of mandamus from taking the urns to various places for public dharshan and from spending from the public revenue and using the Government machinery.

3. When the petition came up for admission, the petitioner appeared in person and argued his case. Besides reiterating the averments contained in the affidavit. the petitioner stated that as a citizen of India, he has a fundamental duty under Art 51A of the Constitution to abide by the Constitution and respect its ideals and institutions, and to promote harmony and the spirit of common brotherhood amongst all the people of India transcending

religious, linguistic and regional or sectional diversities.

4. Reduced to legalistic propositions for consideration, by the Court, the rationalist's contentions are as below:

1. The ashes of cremated human bodies are alike and do not bear distinctive features and, as such, it is wrong to give a reverential or elevated

status to the ashes of the late Prime Minister;

2. Government is under no duty or obligation to make arrangement for taking the ashes to various parts of the country as its obligation ends with

ensuring decent burial or cremation of dead bodies of human beings.

3. Government is not entitled to utilize public revenue for taking the ashes of leaders to different places in the country.

4. Giving importance to ashes, of cremated human bodies is a peculiar trait of the Hindu faith and as such. Government's participation in making

arrangement; for the public dharshan of the late Prime Minister's ashes will amount to Government's propagation of the Hindu faith and Customs.

5. Shocking and repulsive as the contentions of the petitioner are, as may presently be seen, the Court would be justified in rejecting the petition

with no more words than the disyllabic word "dismissed" or, in the alternative, to give a quietus to the petition as having become infructuous on the

ground the impugned exercise of Government is by now over as the ashes have already been taken care of by being scattered over the majestic

Himalayas in fulfilment of the wishes of the departed soul. But, neither of the courses would provide an effective reply to the sacrilege committed

on humanity by the petitioner filing this petition. I shall therefore proceed to evaluate the contentions of the petitioner on their merit and render

judgment.

6. Every religion has its own way of returning the dead bodies of human beings to the natural elements. Cremation, embalmment, burial,

consignment to watery graves and offering, to birds are the known modes of returning the dead bodies to the bowels of Mother Earth. But,

Whatever be the form of disposal of the lifeless bodies, every religion and every faith commends the dead bodies to be treated with reverence and

dignity till the last vestiges of the bodies merge with the elements. It so happens that large sections of the Hindu faith resort to the ordained practice

of cremating dead bodies. After the body is consigned to the flames what are left

over are the remnants of the bones and the ashes. Do these remnants have significance or value, is the poser for consideration.

7. Thinker, as the petitioner claims to be, he fails to see that there are different levels of thoughts the ethereal and subterhuman, the lofty and the debased, the refined and the vulgar, the mature and the immature. Viewed from higher perspectives, the ashes of cremated human beings are not mere ashes, but symbolic remains of the venerated and beloved, departed soul, the fragrant and cherished relic of the bygone one; viewed at, the subterhuman and vulgar level, the ashes may appear to be, nothing ignore than the sooty dust of a corpse: the valueness remnant of all that was once a human embodiment. Then, again, it has to be borne in mind that to the near and dear ones the mortal remains of a kindred being, whether buried or burnt to ashes, will have sentimental values which may not be shared by those, unknown to and unconcerned with the deceased persons. Profanity has blurred with vision and dwarfed the thought of the petitioner leading to failure of realisation of these higher values and instead made him think, ironically in the name of reason, that ashes of human beings have no value or significance.

8. In so far as great leaders are concerned, their services and sacrifices earn for them an everlasting place in the hearts and affections of men and women. Their thoughts deeds leave an indelible imprint in the minds of people. On account of these factors their mortal remains, even in the form of ashes, acquire value and command reverence. It would therefore be an error, arid a colossal one at that, to think that the millions of people flocking to view the ashes, would be only viewing them "qua ashes" arid nothing more, The reality, however, is that they go to see the ashes to figure in them the face, figure and form of the beloved leader, the reality that once was, but now reduced to ashes by the purifying fire, before being consigned to the elements as tile inevitable place of return of all mortals. The petitioner, if he is able to elevate his thoughts and vision, will realize that the folly lies, not in the people attaching reverential value to the ashes of the departed soul, but in his limited and distorted perspective.

Suffice, it, therefore, to say that the first contention of the petitioner merit"s a rightful dismissal.

9. The second and third contentions can be conveniently taken together and

dealt with. The fundamental mistake manifest in the submissions of the petitioner is that, he overlooks the fact that in any democracy, and more so in India, proclaimed the largest democracy in the world, Government has to respond to the will and wishes of the people. Whenever there is a tragic demise of a beloved and respected national leader, there is spontaneous upsurge among the people to pay their homage and respect to the departed soul. While those residing in areas near the place of demise can trek or travel to the scene of cremation and pay their homage to the mortal frame, others living far away cannot do so. Their feelings of disappointment, anguish and pain at not being able to witness the funeral, have to be assuaged in some measure at least, and it is only for that purposes, the ashes of the cremated body are taken down round the country and placed at different centres. It is, therefore, the bounden duty of the Government to fulfill the aspirations of its people. Mankind's philosophy is not to commit the sin of ingratitude, for, as Saint Thiruvalluvar has said, there can be a salvation of any kind of sin, but not the sin of ingratitude. Therefore, no Government, worth its name, much less a democratic Government, can be unmindful of the implorations of the people to pay their grateful homage to the memory of their departed national leader, and since Government's money is people's money, it has not only a right, but a duty to, avail of public funds for defraying the expenses for taking the sacred ashes to various parts of the country for being viewed by the public.

10. What remains last for consideration is the alleged embargo placed on a secular State's participation in professed religious activities of any one religion, to wit Hindu religion in this case. Here again, the proposition put forward contains a serious flaw. The word "secular", among other things, means pertaining to the present world, or to things not spiritual, civil ecclesiastical; lay; not concerned with religious, not bound by monastic rules. A "Secular State" means, a "non-religious" and not "irreligious" State. What follows is that the Government should not be wedded or bound to any one religion, but should give equality of treatment to every religion practised in the country. Art. 15 of the Constitution proscribes the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The State is therefore bound to give protection and afford facility to various sections of people to practice and follow

their religious customs. In the case of national leaders, when calamity or tragedy overtakes them, the State is obligated to arrange for their funeral and obsequies, in a manner befitting their status and in accordance with the pursuits of the particular religion to which the departed personality belonged. The performance of such duty by the State can, by no stretch of imagination, be characterised as non-secular activity. The argument of the petitioner to the contrary is, obviously based on a misconception. Therefore, this poser also merits dismissal.

11. It is unfortunate that the petitioner, a self-professed rationalist, should have filed this petition accusing the Government and others of irrationality. The most learned of men have confessed that man's learning can at best be handful, but what is unlearned is oceanful. Therefore, an attempt to fathom the unfathomable by any one with his limited learning, will only take him beyond the realm of sanity. The petition has therefore to be rejected. But before pronouncing the operative line in the order, I think it apposite to point out that, in his own way, though diabolically, the petitioner has also paid homage to the memory of the departed soul. In very few countries in the world where the nation is wailing over the sad and untimely demise of a great leader, would a citizen like the petitioner be allowed to raise a jarring note regarding proprieties and legalities to be observed in the payment of tributes and homage to the departed leader. But, in our country, the Mahatma, Pandit Jawaharlal Nehru, other illustrious leaders, the founding fathers of the Constitution, and the late Prime Minister, have given to the people a true and vibrant democracy, which has enabled the petitioner to file this petition in the name of law and seek a verdict of Court on his untenable and irreverential contentions. In the comforting thought that the petitioner would at least realise this position, I decline the issue of a rule and dismiss the writ petition.

12. Petition dismissed.