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**(2009) 03 AHC CK 0045**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No.38985 of 2004

Ramji Singh @ Mujeeb Bhai

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

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**Date of Decision :** 27-03-2009

**Acts Referred:**

Constitution of India, 1950 — Article 21

**Citation :** (2009) 03 AHC CK 0045

**Hon'ble Judges :** Sunil Ambwani, J and Dilip Gupta, J

**Final Decision :** Disposed Of

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## **Judgement**

Dilip Gupta, J.

Order on the affidavits of compliance dated December 3rd, 2008 of Shri Madan Kishore Srivastava presently posted as Deputy Secretary, Home Department, U.P. Civil Secretariat, Lucknow:

By this writ petition the petitioner has drawn attention of the Court to the appalling conditions in the mortuary established by the State Government in Swarup Rani Nehru Hospital (SRN Hospital) attached to the Moti Lal Nehru Medical College at Allahabad. In para 15 of the writ petition it was stated that at present there are 11590 jars with viscera in connection with 5795 criminal cases beginning from 1973 to 2003 lying in the mortuary in the year 2004, causing foul smell in the area. The eight air conditioners installed in the mortuary are in the state of disrepair. There are no exhaust fans in the mortuary house and that underground drains for left out waste is blocked causing pollution and unbearable smell in the area. The windows and the roofs are in broken condition and no ice is provided during failure of electricity causing further deterioration of the bodies, which are not claimed. The Government sanctions an amount of only Rs.500/ for disposal of the unclaimed dead bodies. It is not possible to arrange for transportation and for hygienic and safe disposal of the unclaimed bodies resulting into their disposal in the rivers and which adds to water pollution in the rivers at Allahabad.

We had by our order dated 08.9.2006 directed the Chief Medical Officer and the Senior Superintendent of Police, Allahabad to submit a report for taking steps to destroy the viscera, which are not required in law, after seeking approval of the District Judge, Allahabad and the DGC (Criminal) and to shift the remaining viscera to any other place within the control of these authorities. We also directed the postmortem house to be repaired and to submit a report with regard to providing necessary funds for taking care of the disposal of the unclaimed bodies after postmortem and the manner in which the police disposes them of.

The matter was listed before the appropriate Court, which made observation that since the matter has been heard on several dates, it will be appropriate that it may be heard by the same Bench. Hon"ble the Chief Justice by his order dated 27.7.2006 has assigned the matter to us, after which we are monitoring the directions issued by us and various Government Orders issued in compliance thereof.

On 6.10.2006, 2.2.2007 and 23.2.2007 we passed the orders as follows:

"06.10.2006

Two counter affidavits on behalf of the Senior Superintendent of Police, Allahabad and the Chief Medical Officer, Allahabad have been filed in this petition. In the affidavit filed on behalf of the Senior Superintendent of Police, a copy of the report dated 5th October, 2006 submitted by the Incharge Senior Superintendent of Police, Allahabad has been enclosed. It has been pointed out that in the Swaroop Rani Hospital, Visras in large numbers are lying in the PostMortem House and a list is being prepared by the Chief Medical Officer. It has also been pointed out that for unclaimed bodies the funds made available by the State Government are not sufficient.

In the counter affidavit filed by the Chief Medical Officer, Allahabad a report dated 5th October, 2006 has been enclosed. It has been pointed out that pursuant to the order dated 8th October, 2006 passed by us, ceiling fans and the exhaust fans have been replaced and some repair work has also been carried out in respect of the windows and walls. For the major repairing work, a proposal has been sent to the Executive Engineer for providing the necessary budget.

In such circumstances, we direct the Chief Medical Officer, Allahabad to prepare the complete list giving the details of the Visras that are lying in the PostMortem House and those which have been disposed of. The Chief Secretary, Government of U.P. shall also file his personal affidavit indicating how much money is proposed to be sent for the disposal of the unclaimed bodies.

This may be done by the next date of listing i.e. 27th October, 2006.

02.02.2007

Learned Standing Counsel has filed a counter affidavit of Dr. S.C. Gupta, Additional Chief Medical Officer (Administration) Allahabad stating therein that

necessary steps are being taken for disposal of viscera from the mortuary. We have reminded the Standing Counsel that orders were passed as long ago as on 8.9.2006 to take immediate steps for disposal of viscera and to repair the postmortem house and had also asked the Senior Superintendent of Police to submit report with regard to availability of necessary funds for taking care of the disposal of the unclaimed dead bodies after postmortem and that the manner in which the police disposes them. We are informed that the District Magistrate releases Rs. 500/ per unclaimed dead body for the purpose of its disposal. This amount is grossly insufficient and no account is kept for this expenditure.

Learned Standing Counsel states that a committee is going to be formed for disposal of the viscera. The report annexed to the counter affidavit goes to show that hundreds of labels on be jarss are either misplaced or not readable. We are not satisfied that the respondents have taken any effective steps for disposal of viscera.

On the next date the Senior Superintendent of Police, Allahabad and the Chief Medical Officer, Allahabad shall be present in person to inform the court with the effective steps taken for removal of viscera and for repairs and modernization of mortuary. We also direct Principal Secretary (Home) to look into the matter with regard to disposal of unclaimed bodies by the police providing sufficient funds to all the District Magistrate for this purpose. He will submit a report to the Court with regard to the action taken in the matter and funds provided for disposal of unclaimed body to all the districts in U.P..

List on 23.2.2007. Copy of this order be given to the learned Standing Counsel for compliance free of cost today.

23.02.2007

Two affidavits, one by the Senior Superintendent of Police, Allahabad respondent no.4 and other by Dr. Shanti Mal Singhvi, Chief Medical Officer, Allahabad respondent no.5 have been filed. These affidavits have been filed pursuant to the order dated 2nd February, 2007 passed by us in this petition.

In the affidavit filed by the Chief Medical Officer, Allahabad, it is stated that a joint meeting in connection with disposal of viscera was held on 9th February, 2007 and that on 19th February, 2007 3296 viscera pertaining to years 1984 to 2000 have been destroyed while the remaining 1019 viscera pertaining to years 2001 to 2004 were shifted from the mortuary to Police Lines, Allahabad under the supervision of the Medical Officer. It has also been stated that the 436 viscera pertaining to years 1984 to 2004 of District Kaushambi have to be destroyed for which the Superintendent of Police, Kaushambi had been informed by the letter dated 12th February, 2007 and the said viscera have also been shifted from mortuary to Police Hospital, Allahabad. It has also been stated that 853 viscera pertaining to years 1984 to 2004 still remain for disposal for which Superintendent of Police, GRP, Allahabad has been intimated.

It has also been stated that for the repairing and maintenance work at mortuary, the Junior Engineer has submitted a report and a letter dated 20th February, 2007 has also been sent to the Additional Director, Electricity/ Construction, Director General, Directorate, U.P., Lucknow for releasing the budget relating to one Deep Freezer and two Air Conditioners.

Similar affidavit has also been filed by the Senior Superintendent of Police, Allahabad.

We shall examine these matters on the next date of listing during which time the learned counsel for the petitioner may also take instructions and, if necessary, file an affidavit in reply. The personal appearance of the Senior Superintendent of Police, Allahabad and the Chief Medical Officer, Allahabad who are present in Court today is dispensed with till further orders.

List this petition on 9th March, 2007 at 2.00 PM."

In the affidavit of compliance filed by Shri B.D. Paulson, the then Senior Superintendent of Police, Allahabad it was stated that the Addl. Superintendent of Police, Yamuna Par, Distt. Allahabad supervising the procedures pertaining to disposal and maintenance of viscera, in coordination with voluntary organization for disposal of unclaimed bodies has met the District Judge, Allahabad, and that after seeking information from the concerned police stations about desirability of keeping viscera for its examination, and thereafter through the Addl. District Government Counsel (Criminal), Allahabad, a list dated 12.2.2007 jointly prepared by the Senior Superintendent of Police and the Chief Medical officer, Allahabad, was submitted to the District Judge on which the Sessions Judge, Allahabad by his order dated 15.2.2007 directed the Chief Medical Officer to ensure disposal of viscera in accordance with law. Consequently on February 19th, 2007, 3296 viscera pertaining to the year 1984 to 2000 have been destroyed in accordance with law and that 1019 viscera pertaining to the year 2001 to 2004 have been shifted from mortuary to Police Line Allahabad under the supervision of the Medical Officer of the Police Hospital. Further 436 viscera pertaining to the year 1984 to 2004 of District Kaushambi have to be destroyed in accordance with law, for which the Superintendent of Police, Kaushambi has been informed and said viscera have been shifted from mortuary to Police Hospital, Allahabad. The 853 viscera pertaining to the year 1984 to 2004, still remains for disposal, for which the Superintendent of Police, GRP, Allahabad has been intimated on 12.2.2007. For the purposes of repair of the mortuary and maintaining hygiene the Chief Medical Officer has assured that repair work shall be carried out. The Affidavit of Dr. Shanti Mal Singhavi, the Chief Medical officer dated 22.2.2007 reported that viscera have been destroyed or shifted as per report of the Senior Superintendent of Police, in coordination with him. With regard to repair and maintenance work of mortuary at Allahabad it was stated in paragraph 11 that the Chief Medical Officer had requested the Addl. Director, Electricity/ Construction; Director General, Medical & Health, Directorate, U.P. Lucknow on 20.2.2007 for releasing the budget for one deep freezer and two air

conditioners.

In the affidavit of compliance of Dr. P.K. Sinha, the Chief Medical Officer, Allahabad dated 17.10.2008 it is stated that he is posted as Chief Medical Officer, Allahabad since June 28th, 2008. The Junior Engineer in his office had intimated vide his reports dated 15.2.2007 and 20.2.2007, about completion of maintenance work of mortuary. The broken windows" glass etc. have been replaced. The electricity system, exhaust fans and ceiling fans were also replaced and were found in running condition in his inspection dated 15.10.2008. The process of installation of five air conditioners of 1.5 tonne capacity has been initiated and for which installation of cables is going on. The Financial Controller in the Directorate of Medical and Health Centre, Lucknow has been requested to release Rs.1,40,000/ so that the orders be complied with.

In the affidavit of compliance dated December 3rd, 2008 of Shri Madan Kishore Srivastava, Deputy Secretary, Home Department, U.P. Civil Secretariat, Lucknow it is stated that for ensuring compliance of the order dated 2.2.2007 steps were initiated to enhance the amount pertaining to disposal of the unclaimed bodies by the State Government and that by Government Order dated 17.10.2008 the amount of Rs.500/ has been increased to Rs.1500/. Further the State Government has sanctioned Rs.50 lacs for purchasing metallic cells at the cost of Rs.5000/ each for keeping dead bodies at the police stations as well as police line in the every district.

A perusal of the Government Order dated 17th November, 2008 would show that the earlier Government Order dated 16th July, 1999, providing for an amount of Rs.500/ for last rites of unclaimed bodies have been increased with approval of Hon"ble the Governor to Rs.1500/. It include Rs.200/ for six meters of cloth, Rs.900/ for wood/cremation including digging and filling of earth and Rs.400/ for transportation from mortuary to cremation/burial ground/ grave yard.

Learned Standing Counsel has also placed before us a report of the Chief Medical Officer, Allahabad dated 5.12.2008 reporting that the works carried out in the mortuary, and the establishment of an inspection committee consisting of Shri J.K. Tiwari, Standing Counsel and Shri Mahendra Bahadur Singh, Advocate appointed by the Court. He has pointed out to the eleven points suggested by the Committee, and the report of the Committee, which has verified that a large table covered by sunmica has been kept in mortuary, and door closures have been fitted on the doors, the water taps in the basin have been repaired. Five air conditioners have been fitted in anticipation of the budget in compliance with the order of the High Court dated 12.9.2008 and that the ventilators have been sealed. The tin shed for keeping the dead bodies is regularly cleaned and that work for constructing a new platform would begin. The denting and painting of the dead body rack is not possible and thus orders have been issued for 10 new racks and that work of fitting hydrolic doors will start as soon as the budget is received. The work of fitting tiles on the walls will also be done. The Committee found that atleast 24 deep freezer are required for which demands of

Rs.2,31,00,000/ has been placed with the State Government.

We are satisfied with some progress made in the matter so far. There is, however still much to be done. We find that the points raised by the Committee are valid and that the requirement of budget for raising platform; air conditioners and deep freezer is justified. The State Government shall immediately look into the matter and make available the necessary amount for a new platform, air conditioners, deep freezers and hydrolic doors.

The Supreme Court has interpreted Art.21 of the Constitution of India, guarantying protection of life and personal liberty to include right to travel abroad; right to privacy; right against solitary confinement; right to legal aid; right to speedy trial; right against handcuffing; right against delayed execution; right against custodial violence; right against public handing; right to health; right for doctor's assistance; right to shelter; right to development; right of shelter; right to healthy environment; right to live with human dignity apart from other rights as fundamental right included in it to give full meaning of right to life. These rights are inherent in the persons guaranteed to by the Constitution of India included in the right to life and personal liberty of a person, which cannot be denied except in accordance with the procedure established by law. The definition clause in Art.366 of the Constitution of India does not define a person. Section 3 (42) of the General Clauses Act defines a person to include any company or association or body of individuals, whether incorporated or not. Such a person would be a legal entity that is recognised by law as subject of rights and duties. The Indian Penal Code defines a person in Section 11 to include any company or association or body of persons whether incorporated or not.

A person defined in Tomlins" Law Dictionary as man or woman; also the state or condition, whereby one man differs from another. A person in law may be either natural or artificial. Natural person are such as the God of nature has formed us; an artificial are such as are created and divided by human laws for the purposes of society and government, which are called corporations or bodies politic. Natural person means and refers to living human being including a man, woman or child as individuals of human race. The reference to a statutory provisions of the word person speaking artificially excludes firm, company, partnership, society, joined stock company or association, with various manners to describe them and their rights and liabilities. The expression person, however, cannot be detached from its context. But does it include a person who has died leaving his body in the physical form to be protected by the kith or kin, friends, society or the State, if no one else can be found?.

The law has not so far defined a person to include a dead person. It, however, has some rights, which cannot be detached from it, even if the body is denuded of the life, which together forms a human being. The Indian Succession Act, 1923 provides for execution of the will of a person, after he has died. A person also has a right to protection of his dead body, to be mutilated, wasted or its organs to be taken out, except by the consent of the person, when he was alive,

or on the consent of his kith and kin or the State if body is unclaimed, under the Transplantation of Human Organs Act, 1994. The word person may not be construed narrowly so as to exclude the dead body of a human being, who was the person, when alive, which is not claimed and which is required to be cremated or buried with dignity in accordance with the religious beliefs of the person, if such beliefs can be found by establishing his identity. The State is obliged in law to maintain sanitation to remove the body, which becomes dangerous, for the safety of the other living being for its adequate disposal. An unclaimed dead body has to be claimed by the State both for the purposes of investigation of the crime, if it was committed on the human being, who did not die naturally for scientific investigation or for research and medical education. The State is obliged in law both under its powers as a welfare state, and to protect the rights of such person in its extended meaning under Art.21 of the Constitution of India for disposal of a dead body for a decent and dignified cremation/ burial in accordance with the religion beliefs the man kept or professed.

In *Jamuna Das Paras Ram Vs. State of M.P.*, AIR 1963 MP 106 with reference to Section 392 of IPC and in the matters of crime the High Court had found that the word person cannot be so naturally construed as to exclude the body of human being, who was killed in the course of some transaction in which crime was committed.

In *Pt. Parmanand Katara, Advocate Vs. Union of India & Anr.*, (1995) 3 SCC 248 the Supreme Court held in a matter relating to method of execution of death sentence of hanging under Punjab Jail Manual as inhuman and violative of Art.21 of the Constitution of India as follows:

"We agree with the petitioner that right to dignity and fair treatment under Art.21 of the Constitution of India is not only available to a living man but also to his body after his death."

Para 873 of the Punjab Jail Manual provided the body of the condemned convicted, after it falls from the scaffolds, to remain suspended for a period of half an hour. The Supreme Court held that body has to remain suspended till the time the medical officer present on the spot declares him dead. The limitation of half an hour was interpreted to be directory and only a guideline.

In *Ashray Adhikar Abhiyan Vs. Union of India & Ors.*, (2002) 2 SCC 27 the Supreme Court while examining the rights of homeless deceased unclaimed dead bodies to include right of decent burial or cremation. After recognising this right the Supreme Court found that Municipal Corporation of Delhi is taking all possible steps to provide decent burial or cremation of dead bodies in electric crematorium. The Supreme Court, however, did not find it appropriate to issue any directions with regard to suggestions of the manner in which the dead body should be removed and telecast to be made in the national network to identify the dead body. It was found that in the matter of identification, the police

prepares a proforma, which is sent along with photographs to the Missing Persons Squad and the same is published in police gazette.

We thus find that the word and expression "person" in Art.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 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 its disposal in accordance with human dignity.

We are pained to take judicial notice of the fact that in some cases the bodies of the victims of the crimes and of those who are killed in action, or in accidents are paraded in open by their kith or kin, or those, who have its temporary possession, in retaliation or in protest to the nature of the incident in which he died. Many a times recently, it is reported and had actually happened in Allahabad High Court when the dead body of Late Shri Srikant Awasthi, an Advocate was used by a section of the members of the Bar Association including its leaders, for ransom, for the demand made by them for compensation and rehabilitation of his family and more for their own selfish interest was brought from the mortuary to be kept in the portico of the Bar Association in the building of the Allahabad High Court, with threats of carrying it through the corridors of the Court, demanding action against the jailer in whose custody the person was entrusted in a contempt case and for extracting political mileage. Every day newspapers are covered with the reports of group of persons illegally confining the dead bodies on the road, or in front of the police stations holding up traffic for hours, making demands of compensation or for better road safety. The society should not permit such disgrace to the dead body. The State, which allows the possession of the dead body to be taken by a person or group of persons for such purposes, fails in its duty to preserve and to dispose of the dead body with dignity. The State through its agencies must take immediate possession of such dead bodies used for illegal means, for its decent and dignified cremation or burial in accordance with the religion or sect the person may have professed.

We are firmly of the view and direct that in all such cases, where dead body of a person is used for purposes other than a decent cremation/ burial, by the relatives and friends or where the dead body is unclaimed, the State Government is obliged in law to provide necessary facilities for its preservation and disposal in accordance with dignity and respect which the person deserves , and except in a case of establishment of crime to which person may have been subjected or to ascertain the cause of death by scientific investigation, medical studies, or to

save the life of another living person, the dead body shall not be allowed used for any other purposes.

If Courts are required to fulfill the desires of the dead person by execution of his will, the same Courts are also obliged for giving appropriate directions for the preservation and disposal of the dead bodies and for that purpose, to give an extended meaning of the expression, "person" in Art.21 to include dead bodies of the persons, who were human beings, in a restricted sense.

The State Government shall ensure that the points raised by the Committee nominated and appointed by the Chief Medical Officer, shall be considered and that requisite funds will be placed in the hands of the concerned officers in the district for both preservation of the unclaimed dead bodies and for their disposal.

List again on the date fixed in the matter.