

(2026) 08 BOM CK 3181

In the Bombay High Court, Nagpur Bench

Case No : CRIMINAL WRIT PETITION NO.107 OF 2026

Vijaya Ukarda Aathor (Aathavale)

APPELLANT

Vs

State Of Maharashtra & Ors.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Constitution of India — Article 21, 32, 226
Bharatiya Nyaya Sanhita, 2023 — Section 301

Citation : (2026) 08 BOM CK 3181

Hon'ble Judges : Nivedita P. Mehta, J;Urmila Joshi-Phalke, J

Bench : Division Bench

Advocate : Mrs. S.P. Giratkar, Mr. S.S. Hulke

Final Decision : Dismissed

Judgement

RULE. Rule made returnable forthwith.

2. Heard finally with the consent of learned Counsel for both the parties.

3. The petitioner is seeking direction to respondent No.3 – the Commissioner of Police, Amravati to take action against respondent No.4 – The Police Station Officer, Police Station Frezarpura, Amravati and respondent No.5 - The Police Station Officer, Police Station Gadgenagar, Amravati for illegally taken the custody of dead body of the mother of the petitioner and also seeking the compensation of Rs.50 lacs on account of the mental agony and administrative arbitrariness.

4. As per the contention of the petitioner, she belongs to the Scheduled Caste and was agitating along with her mother namely Shanta Ukarda Aathor (Aathavale) at Jantar Mantar at New Delhi. She continued her agitation in front of Collector office at Amravati. As her demand has not been fulfilled by respondent No.2 – Collector, and therefore, she has started her agitation in front of the office of respondent No.2 – Collector for taking action against Sagar Ukarda Aathavale. It is her contention that the father of the petitioner, namely

Ukarda Pundalik Aathavale died due to sickness on 18/06/1997. After the death of her father, she approached to the Municipal Corporation, Amravati for getting appointment on compassionate basis. She also submitted an application with a legal heir certificate in the Amravati Municipal Corporation. After the death of her father, she as well as her mother were not having any other source of income. Due to the poor financial condition, they have applied for getting appointment on compassionate basis but Sagar Ukarda Aathavale was the son of her father begotten from illicit relations, who has applied for the appointment on compassionate grounds.

5. The Amravati Municipal Corporation has provided him appointment on the compassionate basis as the petitioner have already married, therefore, the present petitioner has preferred the Writ Petition No.1341/2013. The said petition came to be dismissed by order dated 20/07/2016. Thereafter she has filed a Special Leave Petition before the Hon'ble Apex Court bearing SLP No.37600/2016, which also came to be dismissed on 05/07/2018. Thereafter she made an application to the Commissioner of Municipal Corporation, Amravati for taking action against said Sagar Ukarda Aathavale and also placed on record certain documents showing that those documents were false and bogus for getting compensation amount, and therefore, action be taken against him. As per her contention said Sagar Ukarda Aathavale availed the benefits of compassionate appointment as well as the other benefits, and therefore, she started agitation with her mother initially, at Jantar Mantar, New Delhi and thereafter in front of the Collector Office at Amravati. During the said agitation, respondents authorities have not visited the place where they were agitating and due to the ill-health the physical condition of her mother was deteriorated and finally during the treatment in the hospital, her mother died on 13/10/2025. The petitioner has brought her mother's dead body at the place of agitation in a cool storage box.

6. On the same day, police personnel of Gadgenagar police station visited the place of agitation and showed disrespect and started dragging the box of dead body of her mother. Despite she has made a representation to respondent Nos.3 and 4 for returning back her mother's dead body for performing the process of last rites. Respondent No.3 has taken the dead body of the petitioner's mother without giving any prior notice by using a forceful police force. Such arbitrary act of the police is an illegal use of the powers, and therefore, she approached to this Court.

7. It is her contention that the respondents failed to protect the right of the petitioner and her mother i.e. right to dignity and fair treatment under Article 21 of the Constitution of India, and therefore, action be taken against respondent Nos.4 and 5 along with the award of compensation.

8. The said contention is strongly opposed by the State on the ground that as the compassionate appointment was given to the son of the deceased Ukarda Aathavale who was working as a Clerk in the Municipal Corporation. The present

petitioner approached to this Court by filing writ petition which came to be dismissed. She also approached to the Hon'ble Apex Court by filing the Special Leave Petition which was also dismissed and thereafter, she started agitating along with her mother. The agitation was continued for so many months. Respondent No.5 had been continuously monitoring and visiting the ongoing agitation. During agitation, the mother of the petitioner was not well and her health was deteriorating, therefore, petitioner admitted her mother to the General Hospital, Amravati but she died on 13/10/2025. Instead of performing the last rites, the petitioner brought her mother's dead body to the place of agitation in a cold storage box. On the same day i.e. on 13/10/2025, the office of respondent No.2 i.e. the Collector, Amravati issued a letter to respondent No.5 i.e. the Police Officer, Gadgenagar police station, Amravati. Upon receipt of the said communication of respondent No.2, respondent No.5 visited the agitation pendal and requested the present petitioner to take her mother's dead body for performing the funeral. Despite repeated requests, the petitioner has refused stating that unless and until her demands were fulfilled by the respondents-authorities, she would not take away her mother's dead body, and therefore, revenue officers of the office of respondent No.2 requested that the body of the deceased be respectively taken in an ambulance and kept in a mortuary at General Hospital, Amravati. The entire proceeding was recorded on camera by respondent No.5. Thus, it was the present petitioner who disrespected and disregarded the corpse. The relevant entries are also taken in the station diary, and therefore, the contention of the present petitioner is without any substance.

9. Heard learned Counsel for the petitioner. She reiterated the said contentions and submitted that it is a violation of right to dignity and fair treatment under Article 21 of the Constitution of India, and therefore, the petitioner is entitled for compensation as well as the action against the present respondents.

10. Per contra, learned APP submitted that, in fact, it was the present petitioner who had disrespected the dead body. Though her mother died in a General Hospital, she brought the dead body in a cold storage box to the place of agitation and, despite the various requests, has not taken the dead body for the last rites. Therefore, the offence was also registered against the present petitioner vide crime No.867/2025. The Investigating Officer has recorded the various statements of the witnesses. The general diary entries which are taken by the investigating agency also discloses that, it was the present petitioner who has disrespected the corpse of her mother. On the contrary, the respondents have taken the said corpse and kept in the mortuary at Irvine Hospital, Amravati. The petitioner was also informed in writing to perform the last rites.

11. On perusal of the entire documents, it reveals that the petitioner was claiming compassionate appointment in Municipal Corporation, Amravati. As the same was denied to her, she approached to this Court by filing Writ Petition No.1341/2013. This Court after considering the law laid down as far as the compassionate appointment is concerned, dismissed the petition of the present

petitioner and it is held that, being she is a married daughter she is not eligible for compassionate appointment, and therefore, respondent No.3 - Sagar Ukarda Aathavale was considered to be a person eligible for the appointment. Thereafter, she approached to the Hon'ble Apex Court by filing Special Leave Petition (SLP)No.37600/2016 which also came to be dismissed. After dismissal of the said Special Leave Petition (SLP), she again approached to the Collector demanding the compassionate appointment and action against respondent No.3.

12. During her agitation, her mother's health was deteriorated, and therefore, she was admitted in the General Hospital, Amravati wherein on 13/10/2025, she succumbed to the death.

13. Despite the various communication by the investigating agency, the petitioner was not ready to perform the last rites, and therefore, it was respondent Nos.4 and 5 who requires to take action. The general diary entry No.34 dated 28/01/2026 was taken which shows that the video recording was obtained by the police and the same was deposited with the Investigating Officer during the investigation. The communications dated 13/10/2025 itself shows that respondent No.5 - Police Officer of Gadgenagar police station informed the present petitioner that the dead body of her mother is kept in a mortuary in Irwin Hospital, Amravati and whenever she will approach to them the said dead body will be handed over to her for performing the last rites. Thus, the entire documents on record shows that it was the present petitioner who has not performed the last rites. On the contrary, the offence was registered against the present petitioner vide crime No.867/2025 for showing the disrespect to the corpse.

14. Admittedly, the FIR was quashed in Criminal Application (APL) No.401/2026 (Vijaya Ukarda @ Ullasrao Aathor (Aathavale) Vs. The State of Maharashtra and anr.) dated 01/04/2026. The FIR was quashed as the crime was not made out under Section 301 of the Bharatiya Nyaya Sanhita, 2023. The FIR was quashed by observing that FIR is completely silent showing the intention of the present applicant regarding insulting the religion or wounding the feelings of any person. As none of the ingredients are fulfilled to attract the offence under Section 301 of the BNS, the FIR came to be quashed.

15. As far as the contention of the learned Counsel for the petitioner that there is a violation of right to dignity and fair treatment under Article 21 of the Constitution of India is concerned. It reveals that the investigating agency on the contrary took the dead body from the agitation centre and kept it in mortuary and issued the communication to the present petitioner that she shall take the custody of the dead body to perform the last rites. Therefore, as far as the contention of the present petitioner that respondent Nos.4 and 5 insulted or violated her fundamental right i.e. right to life and personal liberty or right to live with dignity is affected is not substantiated.

16. Admittedly, the right to human dignity is not restricted to a living human

being but available even after death or might be as to have been recognised by the Apex Court first in public interest litigation filed by an Advocate in 1995. There can be no dispute about the fact that the petitioner has right to perform the last rites of her mother. However, the facts on record nowhere discloses that it was the respondents who have restrained her from performing the last rites. On the contrary, it was the present petitioner who brought the said dead body at the place of agitation and was insisting to the authority that unless and until her demands are not fulfilled, she will not perform the last rites, and therefore, the respondent constrained to take the dead body and to keep it in the mortuary.

17. The claim for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interest shall be protected and preserved.

18. Grant of compensation in a proceeding under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21 is an exercise of the course under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the state which went in the discharge of its public duty to protect the fundamental rights of the citizen. Here in the present case, nothing is on record to suggest that it was respondent Nos.4 and 5 who has dealt any wrongful act and disrespect the dignity of the petitioner or her mother. On the contrary, by keeping the said dead body in mortuary maintained the dignity of human body, and therefore, the contention of the petitioner in this petition is not sustainable.

19. It is now a well accepted proposition that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants. However, the claim of the citizen requires to be based upon the principle of strict liability which is absent in the present case, and therefore, question of compensation which depends upon the peculiar facts of each case. The entitlement of compensation itself is not established, and therefore, the petition be devoid of merits and liable to be dismissed.

20. Hence, the writ petition is dismissed. No costs.

21. Rule discharged.