

02
14.07.2020
CHC

W.P. No. 5930(W) of 2020
(C.A.N. 4073 of 2020)
(Via Video Conference)

Srabani Chatterjee & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Advocate
Mr. Jayanta Narayan Chatterjee
Mr. Soumya Dasgupta
Mr. Samim Ahmed
Mr. Bikram Banerjee
Mr. Sudipta Dasgupta
Mr. Jamiruddin Khan
Ms. Sayanti Sengupta.
... for the petitioners.

Mr. Abhratosh Majumdar, Ld. Addl. Advocate General
Mr. Amitesh Banerjee
Ms. Ipsita Banerjee.
... for the State

The grieving parents are before Court seeking reliefs with regard to the death of their son.

Learned Senior Advocate appearing for the petitioners submit that, the son of the petitioners died due to medical negligence. The son of the petitioners was denied appropriate medical treatment. Two hospitals refused admission to the son of the petitioners when the petitioners took their ailing son to such hospitals. Ultimately, the son of the petitioners was admitted at Calcutta Medical College on

July 10, 2020. The petitioners were informed that son of the petitioners expired on July 10, 2020 at 9:45 P.M. by the hospital authorities on July 11, 2020. The petitioners were made to sign a consent form by the Municipal Authorities. The petitioners lodged a complaint with the police on July 12, 2020. At this stage, the petitioners pray that they should be allowed to be present in the Post Mortem. Upon completion of the Post Mortem, the mortal remains of the son of the petitioners be made over to them and they be allowed to perform the last rites of their deceased son.

Learned Additional Advocate General appearing for the State submits that the police authorities treated the complaint of the petitioners as a First Information Report (FIR) on July 12, 2020 itself. The police are investigating into such F.I.R. He submits that, the petitioners cannot be allowed to be present in the Post Mortem. He submits that, the State is not averse to a Post Mortem being conducted. The Authorities will follow the ICMR guidelines in conducting the Post Mortem and also in dealing with the dead-body.

It appears from the records made available to the Court that, the deceased son of the petitioners was initially taken to the Employees' State Insurance Hospital, Kamarhati

on July 10, 2020 when the son of the petitioners was referred to Belgharia Midline Nursing Home. There a COVID test was conducted on the son of the petitioners. There is a document at page 20 of the writ petition which states that the son of the petitioners was COVID positive. The petitioners thereafter took their son to different clinical establishments for treatment. According to the petitioners, two of the clinical establishments refused admission. He was ultimately admitted at the Calcutta Medical College and Hospital.

The son of the petitioners expired on July 10, 2020 at about 9:45 P.M. The petitioners claim that they were informed of the death only on July 11, 2020. There is a document stating that the petitioners gave consent for the disposal of the body of their son. Petitioners thereafter lodged a complaint with the police on July 12, 2020 which has since been registered as First Information Report. According to the State the investigation is in progress.

Petitioners seek Post Mortem to be conducted.

Given the fact that the State is not adverse to conducting a Post Mortem it would be appropriate to permit the State Authorities to conduct Post Mortem on the deceased. The State Authorities will video record such Post

Mortem. Such Post Mortem Report and the videograph thereof will be subject to directions of the appropriate Court. Upon Post Mortem being completed, the State Authorities will permit the petitioners to see mortal remains of the son. The State Authorities will also permit the petitioners to undertake such religious rituals as are permitted by ICMR guidelines on the deceased. The petitioners and every person present during such rituals will observe the ICMR guidelines in this regard.

At this stage, learned Senior Advocate appearing for the petitioners draws the attention of the Court to COVID-19. Guidelines on deadbody management dated March 15, 2020. He draws the attention of the Court to Clause 11 thereof under the heading "At the crematorium/burial ground". He submits that, the petitioners should be allowed to be present at the crematorium in order to ensure that mortal remains of the son of the petitioners is dealt with properly. Moreover, he submits that such guidelines permit the near relatives of the deceased which includes the petitioners to be present at the crematorium. Therefore, he submits that, appropriate direction should be given by the Court to permit the petitioners to be present at the time of cremation.

Learned Additional Advocate General submits

that, the guidelines cannot be said to be binding.

In any event, the State Authorities are permitting the petitioners to view the deadbody. He submits that, the body bags presently used in the State of West Bengal are such that, there is a transparent cover at the region where the face of the deceased appear. By reason thereof, it is not required to unzip the bodybag so as to view the face. The face of the deceased can be viewed through such transparent material on the body bag. He submits that, the State will permit the petitioners to perform the last rites at the designated place. The body will then be taken to a crematorium designated for disposal of COVID-19 patients. The State is ready and willing to videograph the entire process of cremation of the mortal remains of the deceased so as to allay any fears of the petitioners. He submits that, the State is ready and willing to submit areport in this regard.

There are guidelines issued by the Government of India, Ministry of Health and Family Welfare, Directorate General of Health Services under the heading COVID-19 Guidelines on deadbody management dated March 15, 2020. Clause 11 of such Guidelines allow the relatives of the deceased to perform the religious rituals relating to sprinkling

of holy water, reading of the scriptures that does not require touching of the body. Such guidelines do not allow bathing, kissing, hugging etc. of the deadbody.

Given the nature of the pandemic presently, it would be prudent to err in favour of caution, if one is required to err. The medical fraternity is largely unanimous so far as maintaining social distancing is concerned. Apparently, maintenance of social distancing is a method so as to prevent the spread of the pandemic. Presence of humans in large numbers is discouraged. Touching the dead body of a COVID 19 or a suspected COVID 19 patient is discouraged.

In the facts of the present case, the petitioners should be allowed to perform the last rites in accordance with the COVID-19 Guidelines on deadbody management. The State is not averse to the petitioners performing such last rites. The State does not want the petitioners to accompany the deadbody to the crematorium since the crematorium, according to the State is a designated COVID-19 crematorium and that State requires presence of persons at the minimum.

There is some substances in the contention of the State. It would enure the benefit of public at large so as to minimize the presence of persons at the time of cremation of

a person who is COVID positive or suspected to be COVID positive. The guidelines of the Ministry of Health and Family Welfare does not require that the family members of the deceased need to be present at the crematorium itself. In the present case, the State is ready and willing to allow the petitioners to perform the last rites of their son at a place designated by the State. Given the pandemic situation, in my view, it is a reasonable suggestion on behalf of the State which can be expected. Therefore, the State will allow the petitioners to view the mortal remains of the son after the Post Mortem and to perform the last rites at a place to be designated by the State.

In accordance with the submission made on behalf of the State by the Learned Additional Advocate General, the State will videorecord the entire process of the viewing of the deceased by the petitioners, the performance of the last rites in accordance with the COVID-19 guidelines as referred to above and the ultimate cremation of the deadbody. The State will submit a report to such effect on the next date.

It is clarified that the Court did not decide the issue as to whether the deceased died due to COVID-19 or not.

Let affidavit-in-opposition be filed within four weeks from date; reply thereto, if any, be filed a week thereafter. The writ petition will be treated as 'ready for hearing' immediately on completion of the time period prescribed for filing affidavits.

(Debangsu Basak, J.)