

**High Court of Judicature at Allahabad
(Lucknow)**

Reserved

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 16150 of 2020

Petitioner :- Suo-Moto Inre Right To Decent And Dignified Last Rites/Cremat

Respondent :- State Of U.P. Thru Additional Chief Secretary Home And Ors.

Counsel for Petitioner :- Abhinav Bhattacharya, Ajit Singh, Anjani Kumar Mishra, Ashish Kumar Agarwal, Atul K. Singh, Atul Kumar Singh, Digvijay Singh Yadav, Jaideep Narain Mathur (Ac), Nadeem Murtaza, Onkar Singh, Pradeep Kumar Singh, Seema Kushwaha, Sharad Bhatnagar

Counsel for Respondent :- C.S.C., A. S, G., Anurag Kumar Singh, Ashok Shukla, Dr. Ravi Kumar Mishra, Manjusha, Pranjal Krishna, Satyaveer Singh

Hon'ble Rajan Roy, J.

Hon'ble Jaspreet Singh, J.

The right of dignified life under Article 21 of the Constitution of India is not only available to a living person but also to the 'dead'. Even a dead person has the right of treatment of his body with respect and dignity which he would have deserved had he been alive, subject to his tradition, culture and religion which he professed. These rights are not only for the deceased but, his family members also have a right to perform last rites as per religious traditions. Right to a decent burial has been held to be commensurate with the dignity of the individual and this has been reiterated as a recognized facet of right to

life guaranteed under Article 21 of the Constitution of India

We have already taken note of the law on the subject with reference to various decisions of Hon'ble the Supreme Court and the High Courts in our dated 01.10.2020 by which we had taken *suo moto* cognizance in this case, in public interest.

In pursuance to our orders, the State Government has placed before us a Scheme/Standard Operating Procedure (SOP) for cremation of dead bodies which was deliberated upon by the learned Amicus Curiae, Sri J.N. Mathur, learned Senior Advocate assisted by Mr. Abhinav Bhattacharya and Sri S.V. Raju, learned Senior Advocate assisted by Mr. Pranjal Krishna, learned counsel for the State and after such deliberation wherein Government Officials must have been involved, a fresh Scheme/SOP for cremation of dead bodies has been filed before us by the State Government through the affidavit of Sri Rajesh Kumar Rai, Special Secretary, Home, Government of U.P., Lucknow.

We have perused the said scheme. We have the following suggestions to make in this regard:

(1) In paragraphs 2, 3 and 8 wherever there is a reference to relevant communication to be made through E-mail or Whatsapp, such communication should be

preserved for a reasonable period, of say, one year and, if during this period any legal proceeding before the Court of law or any other Forum are initiated in respect of the events mentioned therein, then, the same shall not be weeded out till disposal of such proceedings so as to avoid unnecessary complications and further litigation.

(2) The disposal of bodies consequent to a pandemic as is mentioned in paragraph 14 of the Scheme/SOP is a separate issue which should be kept aloof from the Scheme under consideration which primarily relates to cremation of bodies generally and as a consequence of accidents or any crime, except to the extent if the cremation of such body consequent to an accident or crime is of a person who was affected by any such disease in connection with pandemic/epidemic, then, the guidelines for cremation of such bodies as applicable during pandemic/epidemic would prevail over the scheme/SOP in question, as was also suggested by Sri Raju during the course of hearing.

(3) The Officers and employees under the State who are to be involved in cremation of such bodies should be sensitized and counselled to follow the scheme/SOP strictly and in a manner so as to achieve the object rather than to defeat it. The observance and adherence to the scheme/SOP should not be an eye-wash nor an empty formality. The letter and spirit of the scheme/SOP is

paramount as it touches upon valuable constitutional and fundamental rights as already referred hereinabove, therefore, the entire exercise should be conducted in a solemn manner with due respect to such rights.

Subject to above, the State can notify the aforesaid Scheme/SOP and ensure that it is adhered throughout the State of Uttar Pradesh. The Scheme/SOP must be given wide publicity such as at Police Stations, Hospitals, Primary Health Centers, District Headquarters, Tehsil, Collectorate, etc. so that the Stakeholders are aware of these Scheme/SOP after being notified.

We appreciate the efforts made by learned Amicus Curiae and Sri S.V. Raju as also the Officials of the State in coming with such Scheme/SOP so that in future such disputes and complications do not arise as have arisen in this case.

We expect the State authorities to act in accordance with the Scheme/SOP as and when it is notified.

Ordered accordingly.

[Jaspreet Singh, J.] [Rajan Roy, J.]

Order Date :- 05.08.2022

Santosh/-