

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7585 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE BELA M. TRIVEDI

Sd/-

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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THE SURAT PARSI PANCHAYAT BOARD

Versus
UNION OF INDIA

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Appearance:

MR ASIM PANDYA, SR. ADVOCATE WITH MR.MANAN BHATT(6535) for the Petitioner(s) No. 1,2

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

MR KAMAL TRIVEDI, LD. ADVOCATE GENERAL WITH MS MANISHA LAVKUMAR SHAH, LD. GOVERNMENT PLEADER(1) for the Respondent (s) No. 2 & 4

MR DHAVAL G NANAVATI(2578) for the Respondent(s) No. 3

NOTICE SERVED BY DS(5) for the Respondent(s) No. 4

NOTICE SERVED(4) for the Respondent(s) No. 2

SERVED BY RPAD (N)(6) for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MS. JUSTICE BELA M. TRIVEDI

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 23/07/2021

CAV JUDGMENT

(PER : HONOURABLE MS. JUSTICE BELA M. TRIVEDI)

1. The petition was initially listed before the Single Bench having regard to the prayers contained therein, however, after the issuance of the notice, at the joint request made by the learned Advocates for the parties to list the petition along with the *Suo Moto* PIL being WP(PIL) No.53 of 2021, the Single Bench had directed the office to take appropriate orders from the Hon'ble the Chief Justice. Accordingly, as directed by the Hon'ble the Chief Justice, the petition was placed before this Court, which was hearing the WP(PIL) No.53/2021. The said PIL along with the other petitions is being disposed of by separate orders.

2. The present petition has been filed by the petitioner - The Surat Parsi Panchayat Board through its Trustee Dr. Homi D. Doodhwala, seeking following prayers :-

"10. (a) Admit and allow this petition by passing an appropriate order, direction and/or writ directing the authority to permit the petitioners and its members to perform

Dokhmenashini/last rites in Dokhmas of its member having died due to Covid 19, in accordance with their religious practices which is duly protected by the Constitution of India.

(b) Be please to declare that the Guidelines at Annexure P1 do not prohibit the Parsees to perform the last rites of any of its member died due to Covid 19 in accordance with their religion.

(c) If the Guidelines at Annexure P1 is interpreted to prohibit the Parsees to perform the last rites in accordance with their religion of its member died due to Covid 19, be pleased to declare the Guidelines at Annexure P1 being ultra vires Articles 14, 19, 21, 25, 26, and 29 of the Constitution of India.

(d) Pending admission and final hearing of the present petition, the respondents, their officers, servants and agents be restrained from creating hurdles in the exercise of the fundamental rights of the petitioners and their members to perform Dokhmenashini/last rites in Dokhmas even with regard to any of their members died due to Covid 19.

(e) Ex-parte ad-interim relief in terms of Clause 10(d) of this petition may kindly be granted."

3. As per the case of the petitioners, the petitioner No.1 is a Religious Charitable Trust registered under the Gujarat Public Trust Act, 1950 and is the apex body representing the Parsee Zoroastrian Community of Surat. The petitioner No.2 is the Trustee of the petitioner

No.1 and a devout Parsee. It is further case of the petitioners that for the last more than 3000 years the Parsee community as per their religious mandate, laid out the deceased in a secluded place known as "Dakhmas" (the Tower of Silence).

4. The respondent No.1 issued guidelines on 15.3.2020, namely "Covid-19 Guidelines on Dead Body Management", whereby two modes i.e. either cremation or burial are identified for the disposal of the dead body, who died due to Covid-19. According to the petitioners, the said guidelines are completely silent on the other mode of funeral/disposal of dead bodies and impliedly ignoring the other religious practices of other communities. Accordingly, the respondent authorities do not allow the Parsee community to follow their religious and customary mandates of the last rites of the Parsee, who died due to Covid-19 pandemic. As regards the religious practices of "Dokhmenashini", it has been stated that the Parsees across India since several centuries

have practised "*Dokhmenashini*", wherein the dead body is kept at a height in a structure known as "Well/Tower of Silence" to be eaten by vultures and the remains being exposed to the Sun to be decomposed. The well is situated at secluded place and would be accessible to "Nasheshalars", who handle the dead body and place it in the well. Most of the Parsees prefer *Dokhmenashini* for the final disposal of their dead bodies following their religious faith, however, on account of the Covid-19 Guidelines for the management of dead bodies, the Parsees are not allowed to perform their last rites *Dokhmenashini* as per their religious faith.

5. The learned Sr. Advocate Mr. Asim Pandya appearing with the learned Advocate Mr. Manan Bhatt for the petitioners vehemently submitted that the *Dokhmenashini* is an integral part of the religious practices of the Parsee community, who are in a very miniscule minority, and that it is their fundamental right to practice their religion in accordance with their faith and

belief. He further submitted that under the pretext of the impugned guidelines on Dead Body management during the Covid-19 Pandemic, the Parsees are deprived from practising their religion by not permitting the *Dokhmenashini*, which action is violative of the fundamental rights guaranteed to the Parsees under Articles 14, 19, 21, 25, 26, and 29 of the Constitution. Mr. Pandya further elaborated that the respondent authorities could not compel the Parsees to opt for either cremation or burial against their religious practices and sentiments, more particularly when the cremation or burial is considered as sinful. He also submitted that there is no scientific study made or data available that Corona virus could be spread through dead bodies or to prove that the dead bodies of such infectious patients are likely to get exposed to the animals, if not buried or cremated. Mr. Pandya also placed reliance on the unreported decision of the Bombay High Court in case of Pradeep Gandhi and Ors. Vs. State of Maharashtra & Ors. (LD-VC-46 of 2020 & Others - decided on 22.5.2020), as also the decision of

the High Court of J & K in WP (PIL) No.5 of 2020 decided on 3.6.2021 in support of his submissions. Lastly he submitted that merely because the rigours of Covid-19 Pandemic have subsided, it could not be said that the cause propounded by the petitioners has become infructuous or has become academic.

6. The learned Sr. Advocate Mr. Perci Kavina, who belongs to the Parsee community, was incidentally present during the course of hearing through the video conferencing and with the permission of the Court, he sought to put forth certain facts. He submitted that since last 100 years, the means of disposal of dead bodies of the Parsees is burial only. According to him, except the belt of Ahmedabad to Bhilad, where the '*Dakhmas*' are available, at all other places like Delhi, Panchgani, Mahabaleshwar, Ootty, Calicut, Varanasi, Culcutta, Lukhnow etc., the consecrated burial grounds are available for the Parsees. He further elaborated that the burial is neither unknown to the Parsees, nor it is considered anathematic

or sacrilegious to be buried. He also submitted that now, huge reform movement is in vogue in the cities of Ahmedabad, Surat, Baroda, where even the cremation is the preferred form of disposal of the dead bodies of the Parsees.

7. The learned Advocate General Mr. Kamal Trivedi for the respondent State, learned ASG Mr. Devang Vyas for the respondent Central Government and the learned Advocate Mr. Dhaval Nanavati for the respondent Corporation, relying upon their respective affidavits-in-replies, submitted that the impugned Covid-19 Guidelines were issued by the Ministry of Health and Family Welfare, Directorate General of Health Services (EMR Division), Government of India considering the emerging issues related to Covid-19 Pandemic for the prevention of further spread or transmission of the infection of Covid-19. Attention was drawn to the affidavit stating that the World Health Organization in its guidelines dated 4.9.2020 "Infection prevention and control for the safe management of a dead body in the context of Covid-19", has made recommendations

for the disposal of dead bodies of Covid-19 patients by cremation or burial. The said guidelines being issued in the larger interest of the public to ensure that the Covid-19 Pandemic is not further spread, the Court may not entertain such petition.

8. At the outset, it may be noted that the petitioners have sought the indulgence of the Court for declaring the impugned Covid-19 Guidelines on Dead Body Management, issued by the Ministry of Health and Family Welfare, Government of India, on 15.3.2020, by filing the present petition in May 2021 when the severity or the ordeal of Covid-19 had substantially subsided. When the petition was being heard, the curve had almost flattened. Since the Court was of the opinion that the issue raised in the petition had become academic, Mr. Pandya was specifically asked by the Court as to how many Parsees as on the date were on the death bed due to the Covid-19, who were likely to be deprived of their practising *Dokhmenashini* because of the impugned guidelines, however, Mr. Pandya was

unable to answer the query of the Court. It is well settled proposition of law that the High Court does not undertake to decide an issue unless it is a living issue. If an issue has become purely academic, the Court would not engage itself in deciding it. Beneficial reference of the decisions of the Supreme Court in case of Loknath Padhan Vs. Birendra Kumar Sahu, reported in (1974) 1 SCC 526, in case of R. S. Nayak Vs. A. R. Antulay, reported in (1984) 2 SCC 183, in case of Amit Das Vs. State of Bihar, reported in AIR 2001 SC 3575 and in case of Ramdas Athawale Vs. Union of India, reported in AIR 2010 SC 1310, be made in this regard.

9. Apart from the fact that the issue raised in the petition has become academic, there is no substance in the merits of the petition also. The impugned guidelines have been issued by the Ministry of the Health and Family Welfare Department in the wake of Covid-19 Pandemic on the management of dead bodies, in order to prevent the further spread or covid related

infection. Such guidelines issued in the larger public interest considering extraordinary circumstances prevailing in the country, would take precedence over the individual interest as also over the religious faith and belief of a particular class of community.

10. The safety and the welfare of the State is the supreme law as comprehended in the legal maxim - "*salus populi suprema lex*". Even the fundamental rights to profess, practice or propagate religion, and the right to manage religious affairs, as enshrined under Articles 25 and 26 of the Constitution of India, are subject to public order, morality and health.

11. The Supreme Court recently in the *Suo Moto* case relating to holding of annual *Kanwar Yatra* amid Covid-19 Pandemic has observed in the order dated 16.7.2021 that "*The health of the citizenry of India and their right to "life" are paramount. All other sentiments, albeit religious, are subservient to this most basic fundamental right*". The impugned Guidelines issued by the Ministry of Health and Family

Welfare considering the prevailing situation of Covid-19, in the larger public interest for the disposal of dead bodies by cremation or burial, could not be said to be violative of any fundamental rights of the Parsees, more particularly when such means of disposal of dead bodies is also in vogue in all parts of the country and when it is not anathematic and sacrilegious to the religious practices being followed by the Parsees.

12. In that view of the matter, the petition being devoid of merits is dismissed.

Sd/-
(BELA M. TRIVEDI, J)

Sd/-
(BHARGAV D. KARIA, J)

V.V.P. PODUVAL

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