



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3323 of 2024**

- Ramlal Kashyap S/o. Late Sukado Kashyap, Aged About 36 Years R/o Podiyarpara, Village Arracote, P.S. Parpa District Bastar C.G.

-----Petitioner

VERSUS

1. State of Chhattisgarh through Secretary, Home Department Mantralaya, Naya Raipur, P.S. Rakhi, District Raipur Chhattisgarh.
2. Collector Bastar, District Bastar Chhattisgarh.
3. Superintendent of Police Bastar Division District Bastar Chhattisgarh.
4. S.H.O. Parpa District Bastar Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Pravin Kumar Tulsyan, Advocate
For Respondents-State	: Mr. Pravin Das, Dy. Adv. General with Mr. D.R. Minj, Panel Lawyer

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****01/07/2024**

1. Petitioner has filed this writ petition seeking following reliefs.

“10.A. The Hon'ble Court may kindly be pleased to call for the entire records from the court below for its perusal.

B. the Hon'ble Court may kindly be pleased to issue the appropriate writ/direction to the respondent authorities to permit him to bury his mother's death body as peaceful burial of the deceased at the Public Cemetery located at village arracote District Bastar.

C. The Hon'ble Court may kindly be pleased to grant any other relief, which deems fit and proper in the facts and circumstances of the case.

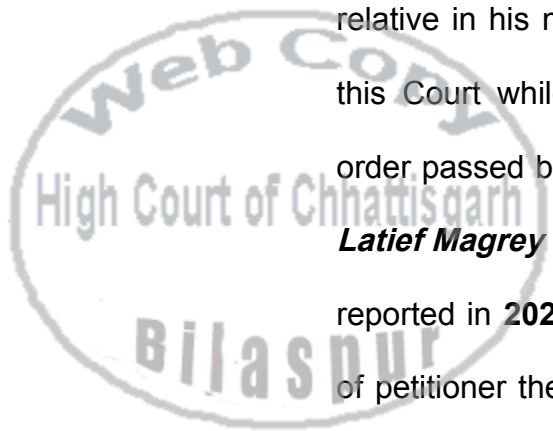
D. Cost of the petition.”

2. Learned counsel for petitioner submits that the mother of petitioner died natural death on 28.06.2024 in his house at village Arracote, P.S. Parpa District Bastar, C.G. Petitioner is following the Christianity religion and therefore some of the other villagers have objected the cremation of the dead body in the earmarked place ie., graveyard at Arracote. The arbitrary, illegal and forceful action on the part of residents of village is reported to the police station. Respondent No.4 instead of advising the



villagers, permitting the petitioner to perform the last rite of his mother at his native place ie., village Arracote, the petitioner was asked to bury the dead body in the nearby village. Looking to the starting of decomposing condition of dead body, the dead body as of now is kept at mortuary of Medical College, Jagdalpur. He contended that this type of incidents have now become common in the Bastar area and the people following Christianity are being objected to burying the dead body of their family members in the village in the common graveyard which made some of them to approach this court. In view of the objection raised, petitioner wants to bury the dead body in his private land. One Sartik Korram has filed WPC No. 2366 of 2024 and only after passing an order by this Court, petitioner therein was permitted to bury the dead body of his relative in his native place on his own land. The Co-ordinate Bench of this Court while considering the grievance raised has considered the order passed by the Hon'ble Supreme Court in the case of ***Mohammad Latief Magrey vs. Union Territory of Jammu and Kashmir and others*** reported in **2022 SCC OnLine SC 1203** and passed the order in favour of petitioner therein and therefore similar direction be issued in this writ petition also. He contended that the Station House Office is the main person who is provoking the villagers for such an act and is same person who was party as SHO in earlier writ petition.

3. Learned State counsel submits that after filing of this writ petition, he has sought instruction. He contended that the residents of village Arracote belong to the tribal community and are with their orthodox belief. He submits that as per his information, if the petitioner is permitted to bury the dead body in the village, even if on his own land it will cause serious issue of law and order. There is specific graveyard of the Christian community in the nearby village Korkapal which is about 15 kms. from the place of resident of petitioner where petitioner can bury the dead body of his mother according to the custom and respect to the departed





soul. He further submits that in the case of **Sartik Korram** (supra) there was no alternate graveyard for burial of dead body of Christian community and in that circumstances the Co-ordinate Bench has passed such order.

4. Counsel for petitioner submits that in case of **Sartik Korram** (supra) also similar advise was given to petitioner therein for burying the dead body at Korkapal.
5. I have heard learned counsel for the parties.
6. It is not in dispute that the petitioner is a permanent resident of village Arracote, District Bastar. As per the pleadings made and the instructions sought by the learned State counsel, though there is graveyard in the village, however, that was being used by other sect of the community and not the Christian community and therefore there was objection of the villagers. Petitioner, before this Court, has made specific averment that petitioner being resident of village Arracote is having other immovable agricultural land of his ancestors and he is having separate private place which can be used for burying the dead body of his deceased mother at his native place and the place of resident.
7. The Hon'ble Supreme Court in the matter of **Mohammad Latief Magrey** (supra) while ascertaining that the right to have a decent burial is enshrined under Article 21 of the Constitution of India held as under:

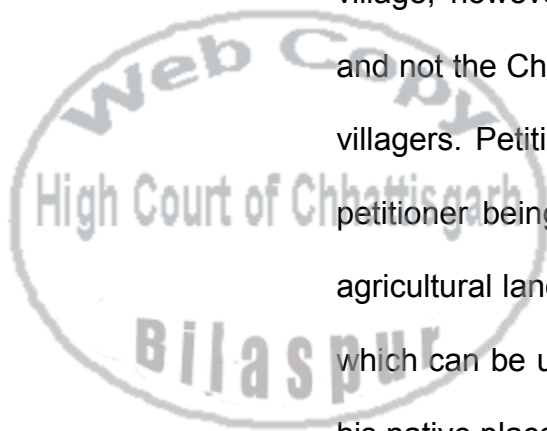
Right to have a decent burial as enshrined under Article 21 of the Constitution

36. In Pt. Parmanand Katara (supra), this Court observed that:

“3.right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death.....”

37. In Ashray Adhikar (supra), this Court held that:

“1.On the basis of that letter, an important question as to the right of homeless deceased, to have a decent burial, as per their religious belief and the corresponding obligation of the





State towards such people having arisen, the letter was treated as a writ petition and was listed for hearing. The letter prayed for an intervention by this Court and to issue necessary directions to all those concerned, so that a person dying on the road, can at least claim for a decent burial or cremation as a person belonging to the society. On the basis of that letter, notices have been issued. The Deputy Commissioner of Police (Headquarters) has filed a counter affidavit, indicating the role of the police in such matters. On behalf of Municipal Corporation of Delhi, Dr Satpal, Deputy Municipal Health Officer has filed an affidavit, indicating therein that when a person dies on the streets and the dead body remains unclaimed, it is handed over to MCD by the Delhi Police and thereafter the dead body is cremated at electric crematorium, Bela Road by the Health Department of MCD, free of cost. In case the dead body is that of a Muslim, then the same is buried in a burial ground near Delhi Gate by the Waqf Board and Municipal Corporation of Delhi bears the expenses. On behalf of the Ashray Adhikar Abhiyan, a rejoinder affidavit was filed. In course of hearing, the Court wanted from the petitioner, as to what guidelines the petitioner wants from the Court and pursuant to the same, the proposed guidelines were submitted by the petitioner. On going through those guidelines, we find that apart from claiming a decent burial, the proposed guidelines cover a vast field, which we apprehend, would not come within the purview of the original prayer....”

38. In *Ram Sharan Autyanuprasi* (supra), this Court opined that:

13.It is true that life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the compass of an expanded concept of Article 21 of the Constitution. Yet, when one seeks relief for breach of Article 21, one must confine oneself to some direct, overt and tangible act which threatens the fullness of his life or the lives of others in the community.

39. In *Vineet Ruia* (supra), the Calcutta High Court held that: “20. By and large, whether it is for a theist or atheist, freedom of conscience and free profession and practice of religion is protected under Clause (1) of Article 25 of the Constitution. The term “religion” in that Clause need not necessarily be linked to any particular religion as is understood as a religious denomination. It is a matter of faith and of one's own conscience which could trigger the profession and practice of what may be religion in the larger sense to a particular





individual. With this concept in mind, it needs to be delineated that it is not the religious practices of the different religious denominations which matter in such instances. It is a matter of connectivity with the person who has died and the near relatives may be in whatever degree of relationship. Fundamentally, human relationship between the parent and child, husband and wife, grandparent and grandchild, etc. is not based on any religious tenet. It is a matter of faith and conscience of every individual. If such a person is to take recourse to any practice and free profession on the foundation of freedom of conscience in terms of Clause (1) of Article 25 of the Constitution of India, it could get abridged only by the reciprocal covenant that such activity should be subject to public order, morality and health and to other provisions of Part III of the Constitution. This is the inbuilt mode of controlling such activities even in terms of Clause (1) of Article 25. The eligibility of a person to perform the funeral rites, be it connected to cremation or burial, may be sometimes guided by factors which may be akin to accepted practice even in religious denominations. If we were to look at the varied practices among the Hindus as a whole or different denominations of Hindus, one thing is clearly certain; the facility to provide ritualistic offerings by way of water, lowers or even certain grains are quite often seen as fundamentally for the satisfaction of the person making such offer to the dead before burial/cremation, as the case may be. Post cremation rites including, receiving the mortal remains in the form of ashes and bones which are treated as sacred to the near relatives of the departed and further handling of those materials in accordance with faith and belief also stands accepted in such communities (profitable reading in this regard can be had from Garuda Purana, Vishnu Purana and other ancient Hindu texts and scriptures). In so far as Christians are concerned, if one were to look at different denominations, it can be seen that there are practices, which may with slight variations, generally provide for prayers before the dead bodies are disposed of by burial and by offering prayers even after disposal on different dates and times depending upon the faith, belief and practice in different Churches. A perusal of canons would show that different ritualistic processes are delineated for such matters. We have mentioned it only to indicate that there are different practices available. In so far as the Muslims are concerned, whatever be the difference in beliefs and practices among the Hanais, who are treated as a majority group of Sunnis in India, on one hand, and the Shias on the other hand, one clear thread of connectivity is the faith and belief that the disposal of human remains is a must as well as post Kabar (Burial) rituals (Certain passages from AlBahrurRaiq will buttress





this aspect). The family also intends to have its own practices carried forward to the extent it relates to their faith and belief. We refer to all these only to demonstrate that by and large the Indian community always has the desire for intricate practices in the form of rituals with the participation of near relatives of a deceased, following what could be permissible under given circumstances.....

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23.the right of the family of a Covid19 victim to perform the last rites before the cremation/burial of the deceased person is a right akin to Fundamental Right within the meaning of Article 21 of the Constitution of India. While exercising their power to impose restrictions on citizens in their way of life in the wake of outbreak of an endemic like Covid19, a fine balance must be struck by the State and the local self government institutions so that the aforesaid right of a citizen to perform the obsequies of his near and dear ones does not stand abridged or abrogated excepting for very compelling reasons.....”

[Emphasis supplied]

40. In Anandhi Simon v. State of Tamil Nadu, Represented by Chief Secretary to Government and Others, (2021) 3 Mad LJ 479, the Madras High Court held that: “16. The protection of life and personal liberty which is guaranteed under Article 21 of the Constitution of India has been interpreted by the Hon'ble Supreme Court in many cases. There are lot of rights which are included in Article 21 such as right to privacy, right against solitary confinement, right to legal aid, right to speedy trial etc. The Hon'ble Supreme Court in many cases has also observed and interpreted that right to have a decent burial is also included in Article 21 of the Constitution of India. The right to human dignity is not restricted to living human being but is available even after the death also.....”

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34. Insofar as the exhumation for the purpose of enabling the family members of the deceased to perform their religious ceremonies and to bury the dead body at an appropriate place of their choice is concerned, there is a legislative vacuum. Even though under Section 176 Cr.P.C. and Section 174(1) Cr.P.C, the Magistrate and the Officerincharge of the Police Station are having the powers to order for exhumation, those cases do not deal with the case on hand, where the buried person or his family members are not involved in any criminal offence.

35.(d) In Common Cause v. Union of India reported in (2008) 5 SCC 511, the Hon'ble Supreme Court observed that if there is a buffer zone unoccupied by the legislature or executive





which is detrimental to the public interest, judiciary must occupy the field to sub serve public interest.

36. The case on hand also falls under the aforementioned category where there is a legislative vacuum. There is no legislation in India dealing with cases where family members seek for exhumation of the dead body for the purpose of burying the same and for performing the ceremonies in the place meant for their religious faith.” [Emphasis supplied]

41. In Pradeep Gandhi (supra), the Bombay High Court held that:

“38.In the system of governance prevailing in our country, it is highly unlikely that a Governmental decision would please each and every citizen. While dissent on valid grounds could contribute to newer developments in the matter of framing of policies, resentment of the nature put forth by the Petitioners in WPI leaves a bad taste in the mouth. We have found the petitioners to be rather insensitive to others' feelings. The founding fathers of the Constitution felt that the people of India would strive to secure to all its citizens FRATERNITY, assuring the dignity of an individual. That is the preambular promise..... we ind little reason to deprive the dead of the last right, i.e., a decent burial according to his/her religious rites.....”

42. In S. Sethu Raja (supra), the Madras High Court held that:

“18. The fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution has been given an expanded meaning by Judicial pronouncements. The right to life has been held to include the right to live with human dignity. By our tradition and culture, the same human dignity (if not more), with which a living human being is expected to be treated, should also be extended to a person who is dead. The right to accord a decent burial or cremation to the dead body of a person, should be taken to be part of the right to such human dignity...”

43. In Vikash Chandra @ Guddu Baba v. The Union of India & Ors., 2008 SCC OnLine Pat 905 : (2008) 2 PLJR 127, the Patna High Court held that:

“5.It is expected that Patna Medical College & Hospital Oicials or the State Oicials will see to it that the disposal of unclaimed and unidentified dead bodies are done in accordance with law with utmost respect to the dead and in case it is veriable the last rites may be in accordance with known faith of the deceased.”

44. In Ramji Singh @ Mujeeb Bhai v. State of U.P. & Ors., (2009) 5 All LJ 376, the Allahabad High Court held that:





“17. 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 disposal in accordance with human dignity.”

8. It is already a well-settled principle of law that Article 21 of The Constitution of India includes the right of a person to have a decent burial. Right to life implies a meaningful life with human dignity, not just an animal life and this right also extends to a person who is dead. This right exists until the death of a person which covers the right to a decent life up to death, including a decent death procedure.

8. Now coming to the facts of the present case, in light of the judgment passed by the Hon'ble Supreme Court in the matter of **Mohammed Latief Magrey** (supra), the petitioner has the right to bury the dead body of his mother at his birthplace i.e. Village Arracote. The authorities of the Govt. Medical College, Jagdalpur are directed to hand over the dead body of the deceased, namely, Smt. Pando Kashyap to the petitioner and the petitioner, in turn, is permitted to bury the dead body of his mother at Village Arracote on his own land. In order to avoid any law and order situation within the village, the Superintendent of Police, Bastar is also directed to provide appropriate police protection to the petitioner till the dead body is buried decently by the petitioner and his family members. The petitioner is permitted to bury the dead body of his mother by **tomorrow i.e. on 02.07.2024.**

9. Mr. Praveen Das, Deputy Advocate General appearing on behalf of the State is hereby directed to communicate this order to The Govt. Medical



College, Jagdalpur, Superintendent of Police, Bastar as well as S.H.O.,
Police Station - Parpa, District - Bastar today itself.

Certified Copy today.

Sd/-
(Parth Prateem Sahu)
Judge

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