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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**LD-VC-46 OF 2020**

Pradeep Gandhi & Ors. .. Petitioners  
Vs.  
State of Maharashtra & Ors. .. Respondents

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Mr. Amogh Singh i/b Mr. D. P. Singh for Petitioners.

Ms. Geeta Shastri, Addl. G.P. a/w. Mr. Kedar Dighe, AGP for the Respondent - State.

Mr. Anil Sakhare, Sr. Counsel a/w. Mr. Rohan Mirpuray a/w Yamuna Parekh and Mrinalini Mone for the Respondent - Corporation.

Mr. Mohiuddin Vaid a/w Vidya Sheth i/b Vaid & Associates for Applicant/Intervenor (IA-1/2020)

Mr. Dharam Jumani a/w Pratap Nimbalkar for Applicant/Intervenor (IA -2/2020)

Mr. Afroz Siddiqui for Applicant/Intervenor (IA No.3/2020)

Mr. Shabbir Shora for Applicant/Intervenor (IA No.4/2020)

**WITH  
PIL (L) NO. 23 OF 2020**

Shamsher Ahmed Shaikh .. Petitioner  
Vs.  
Municipal Corporation of Gr. Mumbai .. Respondent

Mr. Altaf Khan for Petitioner.

Ms. Geeta Shastri, Addl.G.P. with Milind More Addl.G.P. for State

Mr. Anil Sakhare, Sr. Counsel a/w. Mr. Rohan Mirpury a/w. Ms Yamuna Parekh & Mrunalini Mone for the Respondent - Corporation.

**WITH  
WRIT PETITION (L) NO. 931 OF 2020**

Riyaz Ahmed Mohd. Ayub Khan & Ors. .. Petitioners

Vs.

State of Maharashtra & Ors. .. Respondents

Mr. V. Shukla i/b V.Shukla & Associates for the Petitioners.

Ms. Geeta Shastri, Addl.G.P. with Mr. Abhay Patki, Addl. G.P. for the Respondent – State.

Mr. Anil Sakhare, Sr. Counsel a/w. Mr. Rohan Mirpury a/w. Ms Yamuna Parekh & Mrunalini Mone for the Respondent - Corporation.

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**CORAM: DIPANKAR DATTA, CJ. &  
S. S. SHINDE, J.**

**DATE OF RESERVING JUDGMENT: MAY 20, 2020.**

**DATE OF PRONOUNCING JUDGMENT: MAY 22, 2020.**

**JUDGMENT [PER DIPANKAR DATTA, C.J.]:**

“Death must be so beautiful. To lie in the soft brown earth, with the grasses waving above one's head, and listen to silence. To have no yesterday, and no tomorrow. To forget time, to forget life, to be at peace.”

- Oscar Wilde

We are sure, while preparing to embrace the painful truth, i.e., death, one would like to depart from life, the beautiful lie, with these soothing thoughts in mind. However, in the recent past, the situation in Mumbai posed uncertainties for quite a few. The havoc wreaked by the Corona Virus (hereafter “COVID-19”) was enough to cause disarray in their lives. To top it, burials of the unfortunate who died of COVID-19 infection became a subject of controversy. This Court is now tasked to put such controversy at rest.

2. The outbreak of COVID-19 prompted the Government of Maharashtra in its Public Health Department to decide on implementation of all emergency measures to control the communicable disease in the State of Maharashtra. Accordingly, by Notification dated March 13, 2020, invocation of the powers

under Sections 2, 3 and 4 of the Epidemic Diseases Act, 1897 was notified. On the very next date, i.e., March 14, 2020, the Maharashtra COVID-19 Regulations 2020 (hereafter “the said Regulations”) came to be notified. Regulation 10 of the said Regulations provided that in the event of COVID-19 being reported “from a defined geographic area such as village, town, ward, colony, settlement, the Collector of the concerned District/Municipal Commissioner of the concerned Municipal Corporation shall be competent to implement following containment measures, but not limited to these, in order to prevent spread of the disease.

- i. Sealing of the geographical area.
- ii. Barring entry and exit of population from the containment area.
- iii. Restricting Vehicular Movement in the area.
- iv. Closure of schools, offices, cinema halls, swimming pools, gyms, etc. and banning mass congregations, functions as may be deemed necessary.
- v. Initiating active and passive surveillance Of COVID-19 cases.
- vi. Hospital isolation of all suspected cases and their contacts.
- vii. Designating any Government or Private Building as a quarantine facility.

- viii. Any other measure as directed by Public Health Department of Government of Maharashtra.

Staff of all Government Departments and Organisations of the concerned area will be at the disposal of Collector/ Municipal Commissioner for discharging the duty of containment measures. If required, Collector / Municipal Commissioner may requisition the services of any other person also.”

3. It was in purported exercise of the powers conferred by Regulation 10 of the said Regulations that the Municipal Commissioner of the Municipal Corporation for Greater Mumbai (hereafter “the Corporation”) made an order on March 30, 2020, which was notified for general information vide circular no.MGC/A/2942 (hereafter the “original circular”). It is reproduced in its entirety below:

**“MUNICIPAL CORPORATION OF GREATER MUMBAI  
NO. MGC/A/2942 DATED 30.03.2020**

**Disposal of dead bodies of Covid-19.**

Whereas the Government of Maharashtra, in exercise of the powers conferred under Section 2, 3 & 4 of the Epidemic Disease Act, 1897 has framed Regulations for prevention and containment of COVID-19 under No.Corona 2020/CR/58/Aarogya-5 DATED 13.3.2020.

Whereas Municipal Commissioner of Municipal Corporation of Greater Mumbai has been declared as "Empowered Officer and is empowered to take such measures as are necessary to prevent the outbreak of COVID-19 or spread thereof within his respective jurisdiction.

I, Praveen Pardeshi, in exercise of the powers conferred upon me under Rule 10 of the said Regulations which permits to implement measures of containment to prevent spread of the diseases, hereby direct to implement the following containment measures in City of Mumbai.

All the dead bodies of COVID-19 patients should be cremated at the nearest crematorium irrespective of religion. The rituals involving touching the body should be avoided. This is done in respect of Community leader who have brought to my notice that existing burial grounds are in highly dense locality with high chances of contamination of dense community / residential areas nearby. Further procedure of packaging the body in plastic bag and burying same prevents early decomposition and risk continuing the virus for future spread. Hence, all the COVID-19 dead bodies should be cremated to avoid transmission chances in the community. Burial should not be allowed. It should be communicated to local leaders by Asst. Commissioners. The funeral should not involve more than 5 people.

The hospital authority should inform to the local police station and then hand over the body after confirmation of the above.

The Cemetery staff should cremate these bodies using protective equipments for e.g. Masks, Gloves, etc.

However, if someone insists to bury dead body, he will be permitted only if the dead body is taken out of Mumbai City's jurisdiction in a burial ground and transport and other arrangements are made by the concerned on their own following all the guidelines and precautions as given for disposal of dead bodies of Covid-19. Copy of the guidelines will be issued to the concerned in such case for which they will be solely and fully responsible.

The empowered officer may initiate action under the Section 188 of Indian Penal Code (48 of 1860) against the person who refuses to comply with above directives in toto..”

4. On March 30, 2020 itself, the original circular was amended. A further circular bearing the same number as the one reproduced above was issued by the Municipal Commissioner (hereafter the “amended circular”). Only the penultimate paragraph of the original circular was amended, reading as follows:

“However, if someone insists to bury dead body, he will be permitted if the burial grounds are large enough so as not to create possibility of spread of virus in the neighbouring area and other arrangements are made by the concerned on their own following all the guidelines and precautions as given for disposal of dead bodies of Covid-19. Copy of the guidelines will be issued to the concerned in such case for which they will be solely and fully responsible”.

5. The amended circular was followed by another circular dated April 9, 2020 issued by the Municipal Commissioner, which was issued in continuation thereof. While specifying 20 (twenty) kabrasthans/cemeteries for burial, it was notified for general information as follows:

**“MUNICIPAL CORPORATION OF GREATER MUMBAI  
NO. AMC/WS/5921/VIP dated 09.04.2020**

**Respectful Disposal of dead bodies of COVID-19**

Ref: Circular No. MGC/A/2942 of 30.03.2020

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In continuation of circular as referred above, the following directions are issued.

1. Whenever there is suspected COVID death/COVID death of Muslim patient, all Hospital In/Charge are directed to inform following three co-ordinators from Raza Academy, in addition to local Police Station and local Medical Officer of Health (MOH).

1. Shri.Shoeb Khatib (Mob.9833708378/  
9833423342),
2. Shri. Sabir Nirban (Mob. 9821030829)
3. Shri. Irfan Shaikh (Mob. 9892272585)

2. Task Force Team from Raza Academy will facilitate for burial of Muslim dead bodies.

3. In case of any dispute, MCGM decision will be final.



List of Cemeteries where space for burial is available is attached for ready reference.

Above directives shall be followed scrupulously along with the circular under reference.”

6. On April 13, 2020, Writ Petition No. LD-VC-46 of 2020 (Pradeep Gandhi & Ors. Vs. State of Maharashtra & Ors.) (hereafter “WP-I”) was presented before this Court by 4 (four) Petitioners. They happen to be residents of Bandra (West). The list of kabrasthans appended to the circular dated April 9, 2020 included 3 (three) kabrasthans, viz. (a) Konkani Muslim Kabrastan Navapada for Shia; (b) Khoja Sunnat Jamat Kabrastan, Bandra; and (c) Khoja Isna Ashari Jammatt Kabrastan, Bandra West (hereafter “the relevant burial grounds”), which are close to the Petitioners' residences. According to them, burial of the cadaver of a COVID-19 infected individual in a kabrasthan in the vicinity of their residences is likely to endanger their lives as well as others residing nearby and accordingly, they prayed therein that the Respondents (State of Maharashtra and the Corporation) may be restrained from allowing burial of the cadaver of any COVID-19 infected individual in the relevant burial grounds. A direction was also prayed so that the Corporation deletes the

kabrasthans at Serial Nos. 9, 10 and 11 of the list appended to the circular dated April 9, 2020.

Interim relief was claimed in the following terms:

“(c) Pending the hearing and final disposal of this petition this Hon’ble Court be pleased to direct the Respondents to restrain from burial of dead bodies of deceased who are infected with Covid-19 in Muslim Cemetery situated at H/W Ward Konkani Muslim Cemetery No.80, Khoja Sunnat Jamat Kabrastan Bandra West and Khojalsna Ashari jammata Kabrastan Bandra West.”

7. WP-I was moved before this Court on April 13, 2020. The learned Judge who had the occasion to consider the Writ Petition declined interim relief. At the same time, His Lordship directed the Corporation to permit burials at the relevant burial grounds and to allow the bereaved family members of the deceased to carry out last rites thereat, if necessary, by breaking open the locks with police assistance.

8. The order of the learned Judge dated April 27, 2020 declining interim relief was carried in appeal by the petitioners before the Hon’ble Supreme Court. Their Special Leave Petition was disposed of on May 4, 2020. The impugned order was not interfered with, but it was observed

that the “Motion itself should be taken up and disposed of at the earliest, preferably within two weeks”.

9. WP-I has been contested by the State of Maharashtra and the Corporation. While the Corporation has filed reply affidavit, written submissions were submitted on behalf of the State for our consideration. Several applications were filed by individuals/institutions, not parties to WP-I, seeking leave to intervene.

10. Apart from such applications for intervention, two petitions were presented before this Court prior to presentation of WP-I. The first is Writ Petition (L) No.931 of 2020 (Riyaz Ahmed Mohammed Ayub Khan & Ors. vs. MCGM & Ors.) (hereafter “WP-II”) and the other is PIL(L) No.23 of 2020 (Shamsher Ahmed Shaikh & Ors. vs. Municipal Corporation of Greater Mumbai & Ors.) (hereafter “the PIL”), presented on April 3, 2020 and April 8, 2020, respectively. The relief prayed for in WP-II and the PIL is common. The respective Petitioners have prayed for quashing of the original circular and the amended circular and for direction on

the State of Maharashtra and the Corporation to permit burials in all the kabrasthans/cemeteries notified by the Municipal Commissioner by the circular dated April 9, 2020.

11. Since the causes of action of both WP-I and WP-II as well as the PIL have a common origin, i.e., the amended circular, we decided to hear the same one after the other. The Intervenors were heard. The other parties were also heard finally and while reserving judgment, we allowed the prayers of the Intervenors to intervene.

12. Mr. Singh, learned Advocate appearing in support of WP-I contended that the decision taken by the Municipal Commissioner of not permitting burials to prevent further spread of COVID-19 infection is pragmatic and, therefore, the same should be adhered to in letter and spirit. It has been the endeavour of Mr. Singh to impress us that Sri Lanka has prevented the burials of cadavers of COVID-19 infected individuals and that the State and the Corporation should follow such action. Our attention has further been drawn by Mr. Singh to an article authored by Dr. Angela N. Baldwin

dated April 17, 2020 wherein a view has been expressed that it is technically possible to catch COVID-19 from the dead. According to Mr. Singh, the petitioners in WP-I are not against burial of the cadaver of any suspected/confirmed COVID-19 infected individual as such, but that the density of population around various kabrasthans as well as human settlements even within the relevant burial grounds would, in public interest, warrant enforcement of the earlier decision of the Municipal Corporation not to permit such burials. Reliance has been placed by Mr. Singh on the decisions of the Supreme Court in Gulam Abbas vs. State of Uttar Pradesh, reported in (1984) 1 SCC 81, and Mohd. Hamid vs. Badi Masjid Trust, reported in (2011) 13 SCC 61, the Division Bench decision of the Allahabad High Court in Mohammad Ali Khan vs. The Special Land Acquisition Collector, Lucknow Nagar Mahapalika, Lucknow & Ors., reported in AIR 1978 ALL 280, and an unreported Division Bench order dated April 17, 2020 of the Jharkhand High Court in W.P. (PIL) No. 1304 of 2020 (Gulab Chandra Prajapati vs. Chief Secretary, State of Jharkhand & Ors.), in support of his contention that while others seek enforcement of their rights, the Petitioners' right

to life under Article 21 of the Constitution of India should also be protected in these trying times by identifying kabrasthans far away from populated localities.

13. From the aforesaid narrative of facts and recording of submissions advanced by Mr. Singh, it would be clear that the amended circular, to the extent it insists on cremation of dead bodies of COVID-19 infected individuals irrespective of religion and observes that burial should not be allowed, forms the plinth of the petitioners' case in WP-I. The Municipal Commissioner having prohibited burials and such Commissioner having formed an opinion that the burial of the cadaver of any COVID-19 affected individual would not be in public interest, prayers have been made for enforcement of the terms of such amended circular to the extent it prohibits burials.

14. The authority of the Municipal Commissioner to issue the amended circular and its legality and propriety are questioned by the Intervenors as well as the Petitioners in WP-II and the PIL. Learned counsel appearing for the

respective parties have, in one voice, criticized the amended circular as one which is arbitrary, unreasonable, issued in colourable exercise of power and bereft of any scientific basis. Our attention has been drawn to a document titled “Infection Prevention and Control for the safe management of a dead body in the context of COVID-19” dated March 24, 2020, containing interim guidance issued by the World Health Organization (hereafter the “WHO”) as well as the guidelines dated March 15, 2020 of the Government of India, Ministry of Health & Family Welfare (hereafter “the GoI guidelines”), to contend that COVID-19 infection is not an airborne disease and that upon a proper management of the cadaver of any suspected/confirmed COVID-19 infected individual, either cremation or burial can be resorted to without there being any possibility of spread of infection through the virus. It has further been demonstrated before us that the plea raised in WP-I is not founded on any scientific data/material and even though the petitioners are aware of the amended circular having no existence in the eye of law in view of the circular dated April 9, 2020 of the Municipal Commissioner, such subsequent circular is not under challenge. It has, thus, been

urged that without laying any such challenge, the petitioners are not entitled to any relief. While the Intervenors have prayed for dismissal of WP-I, learned Advocates for the Petitioners in WP-II and the PIL have prayed for quashing of the amended circular. Mr. Shukla, learned Advocate for the Petitioners in WP-II has even gone to the extent of urging that directions should be given by us to the Corporation to include other kabrasthans in and around Mumbai to the list already notified by the circular dated April 9, 2020.

15. Appearing on behalf of the Corporation, Mr. Sakhare, learned senior Advocate contended that a plain reading of the amended circular would clearly reveal that burials were never prohibited; however, certain conditions had been imposed and by the subsequent circular dated April 9, 2020, the Municipal Commissioner had specified kabrasthans/ cemeteries, which could be used for burials of the cadaver of any suspected/confirmed COVID-19 infected individual subject to adherence to the norms and guidelines in vogue. Referring to the list appended to the circular dated April 9, 2020, Mr. Sakhare contended that the Municipal



Commissioner had made provisions not only keeping in mind the interest of the Muslim community but also catered to the interest of the members of the Christian, Jewish and Chinese communities in Mumbai. Mr. Sakhare further contended that precautionary measures had to be put in place by the Corporation and adherence to such measures by all concerned is absolutely necessary for contributing to prevention of spread of the infection caused by COVID-19. Our attention was drawn to Section 61(e) and Section 434 of the Mumbai Municipal Corporation Act, 1888 (hereafter the "1888 Act") to contend that it is the duty of the Corporation to provide facilities for disposal of dead bodies including those dying of COVID-19 infection and that adequate measures, consistent with the prevailing situation, having been prescribed by the Municipal Commissioner while acting in terms of Regulation 10 of the said Regulations as well as the powers conferred by the 1888 Act, the Municipal Commissioner neither acted without authority nor in an arbitrary and unreasonable manner as alleged by some of the Petitioners. It has been the contention of Mr. Sakhare that the troubled times notwithstanding, the officers and the staff of

the Corporation together with assistance provided by the local police administration have been tirelessly working to prevent the spread of COVID-19 infection.

16. Referring to the human settlements within certain burial grounds, to which the petitioners in WP-I have referred, Mr. Sakhare invited our attention to paragraph 16 of the reply affidavit to contend that the structures put up thereat were unauthorised and hence demolished in 2017 after following due process of law but the occupants once again returned to raise unauthorised structures which would again be demolished after the lockdown is lifted and normalcy is restored.

17. Insofar as WP-II and the PIL are concerned, Mr. Sakhare contended that the circular dated April 9, 2020 is the one governing the field and if at all it is considered expedient in future to allow burials in kabrasthans/cemeteries other than those listed, the Municipal Commissioner may proceed to notify the same for burial by the family members of the deceased.

18. While concluding his submission, Mr. Sakhare submitted that no case for interference had been set up in WP-I and, consequently, it should be dismissed.

19. Mr. Dighe, learned Assistant Government Pleader representing the State of Maharashtra referred to the written submissions made available to us and relied on paragraph 3 onwards thereof to persuade us not to disturb the present arrangement.

20. Since, in effect, one set of petitioners seeks part implementation of the amended circular issued by the Municipal Commissioner and the other set has prayed for its quashing in the entirety, we consider it proper to examine the question of legality and/or propriety of the amended circular first. As of necessity, we would be tasked in course of such examination to ascertain what exactly the “interim guidance” of the WHO and the Gol guidelines provide on the question of management of cadavers of suspected/confirmed COVID-19 infected individuals.

21. Let us look in to the contents of the “interim guidance” dated March 24, 2020 issued by the WHO. The relevant part thereof reads as under:

### **“Background**

- This interim guidance is for all those, including managers of health care facilities and mortuaries, religious and public health authorities, and families, who tend to the bodies of persons who have died of suspected or confirmed COVID-19.
- These recommendations are subject to revision as new evidence becomes available. Please refer to the WHO website for updates ...

### **Key considerations**

- COVID-19 is an acute respiratory illness caused by COVID-19 virus that predominantly affects the lungs;
- Based on current evidence, the COVID-19 virus is transmitted between people through droplets, fomites and close contact, with possible spread through faeces. It is not airborne. As this is a new virus whose source and disease progression are not yet entirely clear, more precautions may be used until further information becomes available;
- Except in cases of hemorrhagic fevers (such as Ebola, Marburg) and cholera, dead bodies are generally not infectious. Only the lungs of patients with pandemic influenza, if handled improperly during an autopsy, can be infectious. Otherwise, cadavers do not transmit disease. It is a common myth that persons who have died of a communicable disease should be cremated, but this

is not true. Cremation is a matter of cultural choice and available resources;

- To date there is no evidence of persons having become infected from exposure to the bodies of persons who died from COVID-19;
- The safety and well-being of everyone who tends to bodies should be the first priority. Before attending to a body, people should ensure that the necessary hand hygiene and personal protective equipment (PPE) supplies are available (see Annex I);
- The dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout;
- Hasty disposal of a dead from COVID-19 should be avoided;
- Authorities should manage each situation on a case-by-case basis, balancing the rights of the family, the need to investigate the cause of death, and the risks of exposure to infection.

### **Funeral home/mortuary care**

- Health care workers or mortuary staff preparing the body (e.g.washing the body, tidying hair, trimming nails, or shaving) should wear appropriate PPE according to standard precautions (gloves, impermeable disposable gown [or disposable gown with impermeable apron], medical mask, eye protection);
- If the family wishes only to view the body and not touch it, they may do so, using standard precautions at all times including hand hygiene. Give the family clear instructions not to touch or kiss the body;

## **Burial**

- People who have died from COVID-19 can be buried or cremated.
- Confirm national and local requirements that may dictate the handling and disposition of the remains.
- Family and friends may view the body after it has been prepared for burial, in accordance with customs. They should not touch or kiss the body and should wash hands thoroughly with soap and water after the viewing;
- Those tasked with placing the body in the grave, on the funeral pyre, etc., should wear gloves and wash hands with soap and water after removal of the gloves once the burial is complete.

## **Burial by family members or for deaths at home**

- In contexts where mortuary services are not standard or reliably available, or where it is usual for ill people to die at home, families and traditional burial attendants can be equipped and educated to bury people under supervision.
- Family and friends may view the body after it has been prepared for burial, in accordance with customs. They should not touch or kiss the body and should wash their hands thoroughly with soap and water following the viewing; physical distancing measures should be strictly applied (at least 1 m between people).
- People with respiratory symptoms should not participate in the viewing or at least wear a medical mask to prevent contamination of the place and further transmission of the disease to others;

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22. Now, it would be worthwhile to read the relevant part of the GoI guidelines. These read as under:

**“COVID-19:  
GUIDELINES ON DEAD BODY MANAGEMENT”**

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**2. Key Facts**

- The main driver of transmission of COVID-19 is through droplets. There is unlikely to be an increased risk of COVID infection from a dead body to health workers or family members who follow standard precautions while handling body.
- Only the lungs of dead COVID patients, if handled during an autopsy, can be infectious.

**3. Standard Precautions to be followed by health care workers while handling dead bodies of COVID.**

Standard infection prevention control practices should be followed at all times.

These include:

1. Hand hygiene.
2. Use of personal protective equipment (e.g., water resistant apron, gloves, masks, eye-wear).
3. Safe handling of sharps.
4. Disinfect bag housing dead body; instruments and devices used on the patient.

5. Disinfect linen. Clean and disinfect environmental surfaces.

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## **7. Handling of dead body in Mortuary**

- Mortuary staff handling COVID dead body should observe standard precautions.
- Dead bodies should be restored in cold chambers maintained at approximately 4°C.
- The mortuary must be kept clean. Environmental surfaces, instruments and transport trolleys should be properly disinfected with 1% Hypochlorite solution.
- After removing the body, the chamber door, handles and floor should be cleaned with sodium hypochlorite 1% solution.

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## **10. Transportation**

- The body, secured in a body bag, exterior of which is decontaminated poses no additional risk to the staff transporting the dead body.
- The personnel handling the body may follow standard precautions (surgical mask, gloves).
- The vehicle, after the transfer of the body to cremation/burial staff, will be decontaminated with 1% Sodium Hypochlorite.

## **11. At the crematorium/Burial Ground**

- The Crematorium/Burial Ground staff should be sensitized that COVID 19 does not pose additional risk.



- The staff will practice standard precautions of hand hygiene, use of masks and gloves.
- Viewing of the dead body by unzipping the face end of the body bag (by the staff using standard precautions) may be allowed, for the relatives to see the body for one last time.
- Religious rituals such as reading from religious scripts, sprinkling holy water and any other last rites that does not require touching of the body can be allowed.
- Bathing, kissing, hugging, etc. of the dead body should not be allowed.
- The funeral / burial staff and family members should perform hand hygiene after cremation/burial.
- The ash does not pose any risk and can be collected to perform the last rites.
- Large gathering at the crematorium/burial ground should be avoided as a social distancing measure as it is possible that close family contacts may be symptomatic and/or shedding the virus”.

23. The recommendations of the WHO contained in the “interim guidance” are dated March 24, 2020. Although such recommendations were subject to revision as and when new evidence becomes available, we have not been shown any revised recommendations by Mr. Singh. It would, therefore, be safe to proceed on the premise that such recommendations still stand, not having been altered subsequently.

24. Analysing the said recommendations, it becomes clear that even according to the WHO, there is no evidence of persons having developed infection of COVID-19 from exposure to the cadaver of a suspected/confirmed COVID-19 individual. That apart, the recommendations of the WHO are further clear on the point that people who have died because of COVID-19 infection can either be buried or cremated. Such recommendations also throw light on the procedure to be observed at the time of burial of the deceased. Those who handle the cadaver have to adopt precautionary measures. Those are intended to protect them from being infected. A detailed procedure to be observed at the time of burial is also laid down. Observance of such detailed procedure at the time of burial is, in our view, sufficient safeguard from exposing the near and dear ones of the deceased who would choose to assemble at the kabrasthan/cemetery for having a last look at the deceased and to bid him a final good-bye.

25. Turning our attention to the Gol guidelines dated March 15, 2020, the first bullet point under Key Facts clears the position that transmission of COVID-19 is through droplets

and that an increased risk of COVID infection from a dead body to health workers or family members who follow the standard precautions while handling such body is unlikely. If indeed risk from a dead body would endanger the lives of human beings, the risk involved in treating COVID-19 infected patients by the medical and the para-medical staff, who are the frontline workers to combat the virus, would be much greater. Are such staff shying away from treating COVID-19 patients? The answer must be an emphatic 'no'. It all boils down to the nature of precautions taken while one handles the dead body and also at the time of its burial. Paragraph 11 of the GoI guidelines, extracted supra, is a positive indicator that even burial of the cadaver of any suspected/confirmed COVID-19 infected individual is not prohibited. Precautionary measures have been suggested which, if adhered to, would minimise any additional risk that could be posed by asymptomatic members of the family of the deceased and their close contacts while they gather at the burial ground.

26. We are not too sure as to whether the incumbent Municipal Commissioner while directing that burial should not

be allowed for containing the spread of Covid-19 and that the dead bodies of COVID-19 patients should be cremated at the nearest crematorium, irrespective of religion, was aware of the recommendations of the WHO and the GoI guidelines. At least, there is no material on record to suggest that he was so aware. We are, thus, pained to observe that the order passed by him to the aforesaid effect is in outrageous defiance of the protocols traceable in the recommendations and the guidelines, referred to above. Although the penultimate paragraph of the amended circular did leave a small window open, if someone insisted upon burial of a dead body, the order of the Municipal Commissioner rather than being founded on scientific data or material appears to have been dictated by considerations which are extraneous. The order refers to a community leader and to what was brought by him to the notice of the incumbent Municipal Commissioner. We have no hesitation in our mind that such incumbent, instead of referring to what the community leader had brought to his notice, would have been well advised to proceed for a scientific management of disposal of cadavers of suspected/confirmed COVID-19 infected individuals in

accordance with the recommendations of the WHO and the GoI guidelines.

27. Even otherwise, invocation of Regulation 10 of the said Regulations by the Municipal Commissioner does not appear to be legal. Regulation 10 specifies 8 (eight) activities which could be resorted to as a measure for containing the spread of COVID-19. Prevention of burial of someone dying of COVID-19 infection is not one of those specified measures. However, implementation of the containment measures is not limited to such specified measures only. The Municipal Commissioner could be justified in evolving and implementing any containment measure not forming part of the specified measures, provided such a measure had the sanction of the existing protocols for management of COVID-19 or was such a pivotal measure, otherwise widely acknowledged, which was not included in the GoI guidelines. That prevention of burial of someone dying of Covid-19 infection is a containment measure for which the power under Regulation 10 of the said Regulations could be invoked by the Municipal Commissioner has not been shown to us by Mr. Singh. On the contrary, that

such prevention could indeed be a containment measure, is belied by the recommendations of the WHO and the guidelines issued by the GoI. We, thus, hold the action of the Municipal Commissioner in preventing burials to be illegal and unauthorized and hence, the amended circular cannot be operated to the detriment of the members of the community for whom burial of the dead is part of the religion they profess, practice or propagate.

28. The statutory provisions brought to our notice have been noted. The Municipal Commissioner, being a creature of the 1888 Act, is bound by its terms and a decision has since been taken which conforms to such provisions read with the GoI guidelines. It is indeed a matter of policy whether to close down a place for disposal of the dead. Unless any decision shocks the conscience of the judicial review Court, it ought to stay at a distance.

29. We record our satisfaction, having noted the contents of the circular dated April 9, 2020, that things are moving in the right direction. The amended circular was drastic in its

operation but without any scientific basis for it to rest on and since it did not have statutory sanction, the circular dated April 9, 2020 notifying 20 (twenty) out of several kabrasthans/ cemeteries for burials was a timely move to restore sanity. To err is human but taking lessons from mistakes and rectifying the situation was the call of the moment. Proper management of disposal of dead bodies ought to have been worked out consistent with the recommendations of the WHO and the Gol guidelines as well as the sentiments of the members of the communities for whom burial of a dead member of such community is an integral part of their religious belief and faith. Though such management was initially lacking, but ultimately better sense must have prevailed upon the incumbent Municipal Commissioner who left no stone unturned to remedy the situation.

30. Having perused the pleadings in WP-I in between the lines, we are inclined to the view that it is at the instance of misguided Petitioners. It is pleaded by them that they were shocked to find the Municipal Commissioner disregarding the amended circular and issuing the subsequent circular dated

April 9, 2020 notifying the names of kabrasthans/cemeteries where burial would be permitted. It seems that the petitioners laboured under a mistaken impression that the Municipal Commissioner had no authority to re-visit his earlier order. It is not that the subsequent circular dated April 9, 2020 was by way of a review of the amended circular but in appears to be in continuation thereof. We see no reason to hold the subsequent circular to suffer from any legal infirmity.

31. By filing a further affidavit dated May 5, 2020, the Petitioners in WP-I have sought to rely upon a newspaper report to the effect that Sri Lanka has banned burial of the cadaver of any COVID-19 affected individual. Paragraph 7 of the further affidavit reveals the perception of the Petitioners that COVID-19 infection can even spread from dead bodies is now a proved fact. In this regard, the report dated April 17, 2020 of Dr. Angela N. Baldwin has been relied on.

32. Even if it is assumed to be correct that Sri Lanka has banned burial of the cadaver of any Covid-19 affected individual, that hardly provides a ground for India to follow



such course of action. The reasons are manifold, which we need not discuss here. That apart, as has rightly been pointed out by Mr. Jumani, learned Advocate for one of the Intervenors, the report of Dr. Angela N. Baldwin is in respect of a deceased individual who was a Forensic Medical Professional in Thailand. According to him, it could be so that such professional may not have taken sufficient precautionary measure while handling a dead body but his death, by itself, is not sufficient to prove that one may contract COVID-19 from a dead person. We accept Mr. Jumani's contention and reject the Petitioners' plea based on the report dated April 17, 2020.

33. The decisions cited by Mr. Singh have been considered.

34. The decision in Gulam Abbas (*supra*) arose out of a dispute inter se between the members of Shia and Sunni sects of Muslims of Varanasi, pertaining to the performance of religious rites, practices and observances by members of Shia sect on certain plots and properties. Evidently, the decision was rendered on such dispute and we have not been

able to trace any observation made in the passing by the Court which would enure to the benefit of the Petitioners in WP-I.

35. Mohd. Hamid (*supra*) arose from the decision of the Nagpur Bench of this Court. The impugned order directed exhumation of the body of a saint with full respect to him and to arrange for his appropriate honourable burial in accordance with law. Paragraphs 12 to 16 of the decision have been relied upon by Mr. Singh. We again record our inability to comprehend the materiality of the decision in Mohd. Hamid (*supra*) for deciding the issue that has emerged before us.

36. In Mohd. Ali Khan (*supra*), the question that arose for decision before the Allahabad High Court was whether Wakf property could form the subject matter of an acquisition in view of Articles 25 and 26 of the Constitution. We have found observations in the said decision which do more harm than good to the cause of the petitioners.

37. Finally, we hold that the decision of the Jharkhand High Court in *Gulab Chandra Prajapati (supra)* does not decide any point of law and, therefore, has no precedential value.

38. Before concluding our discussion in relation to WP-I, a parting remark is considered necessary. 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 WP-I 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. In *Parmanand Katara (Pt) vs. Union of India & Ors.*, reported in (1995) 3 SCC 248, it has been held that right to dignity and fair treatment under Article 21 of the Constitution is not only available to a living man but also to his body after his death. Right to a decent burial, commensurate with the

dignity of the individual, is recognized as a facet of the right to life guaranteed by Article 21 of the Constitution. There is, thus, no reason as to why an individual who dies during this period of crisis because of suspected/confirmed COVID-19 infection would not be entitled to the facilities he/she would have otherwise been entitled to but for the crisis. Should the extant guidelines for disposal of the cadaver of an individual infected by COVID-19 be adhered to and the cadaver properly handled and placed in special covers to contain any kind of spread, we find little reason to deprive the dead of the last right, i.e., a decent burial according to his/her religious rites. On the face of there being no evidence, at least at this stage, that COVID-19 infection may spread to living human beings from the cadaver of any suspected/confirmed COVID-19 infected individual, the attempt on the part of the Petitioners in WP-I to question the decision of the Municipal Commissioner to allow burials, without even challenging it, is misconceived and misdirected and does not persuade us to grant any of the reliefs claimed by them.

39. We would have been justified in dismissing WP-I with exemplary costs but refrain from imposing it, for, we are also of the view that the Petitioners may have been driven to invoke the writ jurisdiction more out of panic rather than any genuine belief that they had a strong case to espouse.

40. WP-I, accordingly, stands **dismissed** without any order for costs.

41. WP-II and the PIL, as we have noted above, were presented prior to the issuance of the circular dated April 9, 2020. The purpose for which WP-II and the PIL were presented has been served and since the circular dated April 9, 2020 has permitted burials in the listed kabrastans/cemeteries, we do not find any issue surviving for our decision thereon except the submission of Mr. Shukla, learned Advocate for the petitioners in WP-II that more kabrasthans should be opened up for burial. According to us, it is for the Corporation to arrive at an appropriate decision considering the pros and cons as to whether the list appended to the circular dated April 9, 2020 requires alteration by way of addition/deletion.

We leave the option open for the Corporation to exercise depending upon the circumstances and in accordance with law.

42. WP-II and the PIL are, accordingly, **disposed** of with direction upon the State as well as the Corporation to ensure that all protective measures envisaged in the GoI guidelines are strictly complied with not only by the members of the family of the deceased at the time of burial but also by those second-line workers who would, as part of their duty, deal with the cadaver of any suspected/confirmed COVID-19 infected individual immediately after death. It is only in public interest that the GoI guidelines have been issued and such guidelines shall not be allowed to be observed in the breach by anyone.

**S.S. SHINDE, J.**

**CHIEF JUSTICE**