

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 34992 of 2010 (S)

PETITIONER(S) :-

SUO MOTU PROCEEDINGS INITIATED ON THE PETITIONS
RECEIVED FROM SRI.NVB.KURUP, THIRUVANANTHAPURAM
(2 Nos.) AND SRI.A.K.VELAPPAN, SECRETARY, AIKYA
VEDI, KOZHIKODE, REGARDING LACK OF CREMATORIUM
IN EACH PANCHAYAT IN THE STATE.

BY ADV.SRI.T.C.KRISHNA, AMICUS CURIAE

RESPONDENT(S) :-

1. THE PRINCIPAL SECRETARY,
LOCAL SELF GOVERNMENT (DB) DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.
2. THE SECRETARY,
THIRUVAMBADY GRAMA PANCHAYAT, KOZHIKODE.
3. SRI.N.V.B.KURUP (PETITIONER MADE AS RESPONDENT)
VISHAKOM, TC 6/472 (11) VARA - 118,
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.
4. SRI.A.K.VELAPPAN, (PETITIONER MADE AS RESPONDENT)
SECRETARY, COLONY AIKYA VEDI,
KOZHIKODE.

R3 BY ADV. SRI.S.PRASANTH

R2 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

R1 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.P.(C) No.34992 of 2010

Dated this the 4th day of August 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel appearing in this suo motu public interest litigation as well as the learned Special Government Pleader.

2. This suo motu public interest litigation has been initiated on the basis of two petitions received from Sri.N.V.B.Kurup highlighting the lack of public burial grounds in each panchayats in the State of Kerala and the hardship faced by the common people in disposing of the corpse and the inaction on the part of the State Government in establishing the same. Notices were issued in the writ petition and affidavits have been filed. This Court heard the writ petition on 28.10.2013 and issued directions to the Government to secure further details, especially, with regard to steps taken subsequent to the letter dated 28.5.2010 addressed to the Principal Secretary to the Government.

3. Counter affidavit dated 4.2.2014 has been filed on behalf of the first respondent, in which, it is clearly stated the

details of timely instructions issued by the Government providing financial resources and technical assistance to all Local Self Government Institutions. Sec.166 of the Kerala Panchayat Raj Act, 1994 provides powers, duties and functions of Village Panchayat. Sub-section (1) of Sec.166, which is relevant in the present case is extracted as below :-

“It shall be duty of the Village Panchayat to meet the requirements of the Village Panchayat area in respect of the matters enumerated in the Third Schedule :

Provided that it shall be the duty of the Village Panchayat to render services to the inhabitants of the Village Panchayat area in respect of the matters enumerated as mandatory functions in the Third Schedule.”

The Third Schedule to the Act enumerates the functions of the Village Panchayats. Under heading 'A', 'Mandatory Functions' are enumerated. Item '18' under the Mandatory Functions reads as follows :-

“18. Establishment and maintenance of burial and burning grounds.”

Item '18' of Third Schedule read with Sec.166(1) clearly provides that it is the mandatory duty of the Panchayat to render services to the inhabitants of the Village Panchayat in respect of the matters

enumerated as mandatory functions in the Third Schedule, which is statutory. Thus, the Statute clearly commands each Panchayat to extend services contained under the heading 'Mandatory Functions' under the Third Schedule. Similar provisions are also contained in the Kerala Municipalities Act, which need no mention in the present case.

4. In paragraph 18 of the counter affidavit filed on behalf of the first respondent, the details of budgetary allocation from the year 2010-'11 to 2013-'14 have been enumerated. In paragraph 20, it is stated that the Government has sanctioned financial assistance to selected Grama Panchayats at the rate of ₹10 lakh each. It is further stated in paragraph 22 that only 43 Grama Panchayats had constructed burial grounds for the period between 28.5.2010 and till then. It is also stated that still there are 471 Grama Panchayats, which do not have burning and burial grounds. It is stated that the Government is expecting much progress in the year 2014-'15. The Government has referred to further sanction of financial assistance for construction and modernisation of burning and burial grounds to 52 Grama Panchayats. With regard to municipalities, the details were given in paragraph 23. In this

context, it is useful to refer to paragraphs 22 to 26 of the counter affidavit, which are to the following effect :-

“22. Even after extending technical expertise, budgetary allocation and financial assistance, only 43 Grama Panchayats could construct burial grounds for the period between 28.5.2010 and today. Total number of Grama Panchayats which do not have burning and burial grounds is 471. But Government is expecting much progress in the matter this year as the number of Grama Panchayats who applied for financial assistance enhanced to 233 and Government have sanctioned assistance to 49 Grama Panchayat for construction and modernisation of burning and burial grounds and 3 Grama Panchayats for purchase of land. As the grants are available with the Panchayat Raj Institution it is expected that they would get the projects of burning and burial sanctioned and implemented.

23. In the case of Municipalities, the total number of Municipalities on 28.5.2010 was 53 and that of Municipal Corporation was 5. Out of total 58, 13 did not have burial grounds on 28.5.2010. Now there are 60 Municipalities and 5 Municipal Corporations. The number of Municipalities that do not have public burial grounds is 12. In the current financial year an amount of Rs.50 lakh has been provided for the construction of gas crematorium in Urban areas. Administrative sanction for the project has been accorded subject to certain conditions. Two Municipalities will be expected to be benefited by the Government Order. It is also expected

that the rest of Municipalities would take up burning/burial projects under plan grants.

24. Government have directed the Suchitwa Mission to prepare the estimate and timeline for a model Gas Crematorium. Accordingly, Suchitwa Mission has prepared the detailed estimate and plan for a model gas crematorium at an estimate cost of Rs.50 lakhs. The Local Self Government Institutions can make use of the model for setting up gas crematorium by using plan grants.

25. Government have sanctioned financial assistance, in addition to the budgetary allocation, to Local Self Governments in previous years, with an objective to get up burning/burial grounds in all Local Self Governments. However, it has been brought to the notice of Government that people are suffering due to the lack of public burial/burning grounds. Hence Government felt that Natural Gas/Liquified Petroleum Gas Crematoria with modern crematoria are inevitable to be established in each District. Ambulance service has also to be setup along with this Project. An amount of Rs.10.5 crores has been allocated in the Budget for the year 2013-14 for establishing such modern crematoria in each District.

26. Government also intend to implement a project of conversion of existing crematoria to modern gas crematoria with the participation of Local Self Government Institutions. As part of this, Government will enhance the financial assistance to each Panchayats to Rs.20,00,000/- (Rupees Twenty Lakh only). Moreover,

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Government will issue permission to utilise Rs.10,00,000/- (Rupees Ten Lakh only) for the purpose from the Kerala Local Government Service Delivery Project.”

5. As noted above, it being the statutory obligation of the Panchayats, Municipalities and Municipal Corporation to provide for mandatory services to the inhabitants, which includes providing burning/burial grounds, it is for the Panchayats, Municipalities and Municipal Corporation to take steps regarding fulfillment of the statutory obligation as provided under the Act. In view of the statements made in the counter affidavit, it is clear that the State has already taken appropriate steps in that regard. The Principal Secretary, Local Self Government Institutions has to monitor and ensure that all necessary assistance as permissible be provided to necessary Panchayats, Municipalities and Municipal Corporations in the above regard. In the above view of the matter, we dispose of the writ petition with following directions :-

- (i) The Panchayats, Municipal Boards and Corporations, which do not have the burning/burial grounds managed and controlled by the Panchayat, Municipal Boards and Corporations, should take steps for establishment of burning/burial grounds as per the relevant statutory provisions.

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- (ii) The State Government shall extend necessary financial assistance as per the budgetary provisions allocated to each Panchayats, Municipal Boards and Corporations, who satisfies necessary conditions therein.
- iii) The Principal Secretary, Local Self Government Institutions shall monitor and obtain periodical reports from the concerned Panchayats, Municipal Boards and Corporations regarding establishment and maintenance of burning/burial grounds.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE