

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.12514 of 2015
Date of Decision: 16.09.2015**

Paras Health Care Private Limited and another
... .Petitioners

Versus

Union of India and others
... . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Harsh Aggarwal, Advocate,
for the petitioners.

Mr.Chetan Mittal, Assistant Solicitor General of India
with Mr.Varun Issar, Advocate, for respondent No.1.

Mr.Udit Garg, Advocate, for respondent No.2.

Mr.Rajesh Kumar Sheoran, Addl. A.G. Haryana.

Mr.Deepak Balyan, Advocate, for respondent No.5.

RAKESH KUMAR JAIN, J. (ORAL)

Petitioner No.1 runs petitioner No.2-hospital at Gurgaon. One Emeka Godwin (since deceased) [hereinafter referred to as 'Mr.X'], a Nigerian citizen, was admitted in a critical condition in the hospital (petitioner No.2) on 7.3.2015 at about 4:54 PM on account of chronic kidney disease with breathing problem, by his friend/attendant called Mr.Godwin having mobile No.09958578045. Although, the friend of Mr.X failed to produce the earlier treatment history, relevant documents and passport of Mr.X, yet the petitioners gave treatment to Mr.X to the best of their ability but despite that Mr.X breathed his last on 31.3.2015 at about 12:30 PM. Mr.X was on medical visa in India, issued on 21.11.2013, and the arrival report on Form 'C' of 'Foreigner in

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Hospital' was submitted to the authorities by the hospital/petitioner No.2. After the demise of Mr.X, petitioner No.2/hospital tried its level best to contact the friend/attendant of Mr.X from whom they could get the contact numbers of the family member of Mr.X, which are +234-80350-64462 (Stella), +234-81469-4017 (Abbro) and +91-89708-81427 (Gladima at Bangalore), but none of them came forward either to claim the dead body of Mr.X or to pay the charges of the hospital. Accordingly, the unclaimed body of Mr.X was shifted to mortuary where it is lying since then. The petitioners made a representation to the Health Attache of Nigerian High Commission on 7.4.2015 and 9.4.2015 for taking custody of the dead body of Mr.X, which has been lying in the hospital from many days and also made a representation to the local Police Station on 24.4.2015 but no action was taken by anyone. The petitioners also made a representation to respondent No.2 on 23.5.2015, who informed the petitioners that they had no concern in the said matter. Again the petitioners contacted the Nigerian High Commission through email for taking timely action as much time had passed after the death of Mr.X. Thus, finding no way out, the petitioners have knocked the doors of this Court, seeking a direction by way of a writ in the nature of mandamus, to the respondents to remove the unclaimed dead body of Mr.X from the mortuary of the petitioners for its disposal, in accordance with law.

It is alleged in the petition that the Municipal Corporation (respondent No.5) is otherwise liable for disposal of

the dead body under the Haryana Municipal Corporation Act, 1994 [for short 'the Act'] and also the State of Haryana as per the Punjab Police Rules, 1934 [for short 'Rules, 1934'].

After notice was issued, separate replies have been filed on behalf of respondents No.1, 2, 3 & 6.

It is averred by respondent No.1 in its reply that the Nigerian High Commission has followed up with the family of Mr.X to obtain formal consent for his burial locally as it would be more cumbersome and expensive to have the body repatriated at this juncture. It is further averred that on 14.7.2015, the Nigerian High Commission had conveyed that an application was submitted to them by the next of kin of Mr.X for issuance of no objection for the burial of dead body locally. The person representing the family, however, has been advised to obtain the requisite waiver from the Ministry of Health in Nigeria (this is stipulated post Ebola outbreak) and a police report. It is further averred that the Nigerian High Commission stated that it will issue the No Objection Certificate on receipt of these documents and then they can proceed for the burial of the body in India itself.

In reply filed by respondent No.2, it is averred that as per the available records in respect of Passport No.A04582930 of Mr.X, it reveals that one Nigerian namely, Emeka Godwin Uzuegbu (Sex: Male, DOB: 03/01/1976) S/o Uzuegbu Godwin r/o Asokoro Abuja was holding the said Passport, which was issued on 14.5.2013 at Owerri and is valid upto 13.5.2018. Mr.X arrived in India on 23.6.2015 by Flight No.KQ-220 through IPC

Delhi. He was holding the Medical Visa No.V14500979 issued on 18.6.2013 which was valid upto 16.8.2013. He was registered with the office vide registration No.B001/RCF/NGA/8391/2013 dated 8.7.2013. Thereafter an application for extension of visa bearing ID No.1008137LMWTJ (with appointment date as 13.8.2013) was received from him. Accordingly, his medical visa was extended vide extension No.DL02/VEF/NGA/9266/13 dated 13.8.2013 and he was permitted to stay upto 15.11.2013. The purpose of his visit with the available records has been mentioned as medical treatment at Artemis Hospital, Gurgaon. He was accompanied by one medical attendant, namely, Nneka Chioma Uzuegbu (DOB: 18.05.1979, Sex: Female, Nationality: Nigeria & holder of Passport No.A04583785). Dr. Manju Aggarwal, Director Nephrology & Kidney Transplantation, Artemis Health Institute, Sector 51, Gurgaon had issued a certificate dated 4.7.2013 that he is undergoing nephrology treatment and is accompanied by Mrs. Nneka Chioma Uzuegbu. She was also registered with the office of respondent No.2 by registration No.B001/RCF/NGA/8396/2013 on 8.7.2013, on Medical Attendant Visa bearing No.V14500980 issued on 18.6.2013 which was valid upto 16.8.2013. Her visa was also extended vide extension No.DL02/VEF/NGA/9267/13 dated 13.8.2013 and she was permitted to stay upto 15.11.2013. Mr.X departed from India on 4.10.2013 by Flight No.EK-511 through IPC Delhi and again arrived in India on 28.11.2013 by Flight No.EK-510 through IPC Delhi but no departure record has been found thereafter in respect of said foreign national. As per the computer record, this time Mr.X was holding the passport

No.A04582930 and got himself registered with FRO, Gurgaon vide application ID No.HR1100715013 dated 10.12.2013 and service was provided to him from 10.12.2013 to 20.1.2014. It is alleged that as such it appears from the records that this time Mr.X arrived in India on 28.11.2013 on the strength of Medical Visa bearing No.V19688348 issued at Nigeria on 21.11.2013 which was valid upto 20.1.2014 and got himself registered with FRO, Gurgaon vide application ID No.HR1100715013 dated 10.12.2013. There is also an entry in the records that he arrived at Paras Hospitals/petitioner No.2 on 7.3.2015 at 12:19 hrs. It is also alleged that in respect of the email/letter dated 23.5.2015 addressed to In-charge Foreigners Registration Branch, FRRO, Delhi by the petitioner-hospital, they were informed that the matter does not fall under their jurisdiction and delegated powers and intimated the petitioners that generally disposal of dead body of a foreigner in India is to be handled in coordination with the concerned Embassy & Ministry of External Affairs.

As regards, reply filed by respondent No.3 is concerned, it has been averred that the petitioners only sent a communication to the Station House Officer, P.S. Sushant Lok in regard to the death of Mr.X.

Respondent No.6, in its reply, has averred that there has been no communication with the Civil Hospital, Gurgaon before the death of Mr.X.

During the pendency of the writ petition, a statement was made by counsel appearing on behalf of respondent No.1 on 27.7.2015 that the process of seeking No Objection Certificate for

local burial, from the family, after getting consent of the Ministry of Health in Nigeria is under progress and the Nigerian High Commission has stated that the No Objection Certificate will be issued on receipt of the requisite documents for the burial of the body of Mr.X in India itself.

On the adjourned date i.e. 13.8.2015, this Court had recorded in its order while referring to an affidavit of Rakesh Aggarwal, Regional Passport Officer, Chandigarh, in which it is averred that the Nigerian High Commission has conveyed to the next of kin of Mr.X for issuance of No Objection Certificate for the burial of the body locally but the person, who was representing the family has been advised to obtain the requisite waiver from the Ministry of Health in Nigeria and a police report. It is also averred that the Nigerian High Commission has stated that it will issue the No Objection Certificate on receipt of these documents and they can proceed for the burial of the body in India itself.

On 25.8.2015, this Court had recorded the following order: -

“Learned counsel appearing for UOI has handed over a letter dated 19.08.2015, written by the High Commission of Federal Republic of Nigeria to the Ministry of External Affairs, Government of India, West Africa Division, New Delhi in which it is averred that the arrangements for the repatriation of the remains of Late Mr. Emeka Godwin Uzuegbu has been made on the basis of a waiver by Nigeira's Federal Ministry of Health because the deceased did not die from Ebola Virus Disease and in

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that regard, Messrs Morgan (Undertaker and Embalmers) located at Plot No. 360, Street No. 1, Strl. Havdeva, Nirankari Colony, Delhi, India has been given approval to prepare the body for repatriation.

On 25.08.2015, the Ministry of External Affairs also wrote a letter to the High Commission of the Federal Republic of Nigeria, informing them that the concerned Division of the Ministry of External Affairs had spoken to the Undertaker and Embalmers, Mr. Juliet of M/s. Morgan, who has informed that as per their assessment, the body is decomposing and not in a position to be repatriated. The Ministry of External Affairs has thus, requested the High Commission to urgently get in touch with the next of kin of Late Mr. Godwin and convey to it as to how the body is to be cremated.

It is submitted by counsel for UOI that since the letter was written by the Ministry of External Affairs to the High Commission of the Federal Republic of Nigeria on 25.08.2015, they require some time to await their reaction.

Adjourned to 7.09.2015.”

Thereafter, on 10.9.2015, the following order was recorded: -

“Learned counsel for UOI has informed the Court that he has been informed by the Ministry of External Affairs, that despite reminders, the Nigerian High Commission is not reacting and he has been advised by the Ministry of External Affairs to directly

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Speak to Mr. Mohammed Bello, Minister (Consular), & HOC, Nigerian High Commission. It is submitted that he has also been provided the mobile number of the said authority.

Learned counsel prays for a short adjournment in order to talk to Mr. Mohammed Bello for the purpose of disposing of the body of the Nigerian citizen which is lying in the mortuary of the private hospital at Gurgaon.

Adjourned to 16.9.2015.”

Learned senior counsel appearing on behalf of respondent No.1 has submitted that twice the message by SMS was sent to Mr.Mohammed Bello, Minister (Consular) & HOC, Nigerian High Commission with whom the Ministry of External Affairs of India had asked him to talk to but there was no response from Mr.Mohammed Bello.

In view of the aforesaid facts and circumstances of the case, the question thus arises as to how the mortal remains of Mr.X should be given a dignified burial?

It is not disputed that Mr.X has not expired because of Ebola virus. He is a Nigerian citizen and was on medical visa to this country for his treatment and was admitted in the hospital of the petitioners. Although, it was a moral duty on the part of the attendant, who got Mr.X admitted in the hospital when he was critically ill, to look after him during his treatment and also to take the custody of his dead body but unfortunately it could not happen as the attendant/friend of Mr.X suddenly eloped. All the authorities, involved in this case, tried their level best to find out

the contacts of Mr.X but failed. The Indian Government also remained in touch continuously with the Nigerian High Commission in order to repatriate the remains of Mr.X to Nigeria or for burial of his body locally but in both the circumstances there was lack of co-operation and finally, the Ministry of External Affairs had asked/advised the counsel appearing for it in this case, to himself talk directly to Mr.Mohammed Bello, Minister (Consular) & HOC, Nigerian High Commission and provided him with his mobile number. The office of the counsel for respondent No.1 sent two messages to Mr.Mohammed Bello by SMS on the said mobile number, as alleged, but there was no response. Perhaps, the counsel could not dare to talk to Mr.Mohammed Bello directly on his mobile phone and therefore, the best possible way chosen by him was to send a message introducing himself so that he could attend his phone but to no avail.

The entire exercise, that has been carried out by the Court, has come to square one and the dead body of Mr.X, lying in the mortuary since 31.3.2015, is decomposing day-by-day, which is even evident from the fact that the embalmers designated by the Nigerian High Commission had informed, after their decision, that the body of Mr.X had decomposed and is not in a position to be repatriated to Nigeria.

It would also be pertinent to add here that as per the information gathered by respondent No.1, from the records of the Ministry of External Affairs, Mr.X was a 'Protestant Christian'. Thus, accepting the prayer made by the petitioners in this case

and the fact that the mortal remains of Mr.X cannot be kept in mortuary forever, the Commissioner, Municipal Corporation, Gurgaon, as suggested by learned Additional Advocate General, Haryana, is directed to take custody of mortal remains of Mr.X forthwith and perform requisite rituals of his burial in a Christian Cemetery in Gurgaon or nearby with the assistance of Red Cross Society, which shall be monitored by the Deputy Commissioner, Gurgaon. Needless to mention that a suitable epitaph shall also be erected on the grave of Mr.X inscribing his name, date of birth etc. so that he can be identified in future by his family members.

A copy of this order be given to learned counsel for the parties under the signature of Special Secretary of this Court for the immediate compliance of the order.

Registry is also directed to send a copy of this order to the Ministry of External Affairs (West Africa)/respondent No.1 for further communication to the High Commissioner of Federal Republic of Nigeria.

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JUDGE**