

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

Suo motu W.P.No.7492 of 2020
& W.M.P.No.11622 of 2020

- 1.The State of Tamil Nadu,
Rep. by the Chief Secretary to Government,
Secretariat,
Chennai - 600 009.
- 2.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Home Department,
Secretariat, Chennai - 600 009.
- 3.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.
- 4.The Commissioner,
Greater Chennai Corporation,
Chennai - 600 003.
- 5.The Director General of Police,
Santhome, Mylapore,
Chennai - 600 004.
- 6.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
- 7.Anandhi Simon
(Impleaded as per order of this Court
dt.20.07.2020 by MMSJ & RHJ)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Mandamus directing the respondents to follow the guidelines issued by the Union Ministry for Health and Family Welfare dealing with Social

Stigma Associated with COVID-19 in Source No.1 and Source No.91 to create awareness to the general public also by implementing the appropriate guidelines to ensure a person right to have decent burial and further directing the respondents to take penal actions against the persons creating the law and order regarding the cremation / burial death person due to COVID - 19.

For Respondents : Mr.V.Jayaprakash Narayanan
Government Pleader for R1 to R3, R5
& R6
: Ms.Karthika Ashok for R4

For Petitioner : Mr.Ravi Kumar Paul,
Senior Counsel
for M/s.Paul & Paul Associates,

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

This is a suo motu writ petition taken up by this Court to see to it that the guidelines issued by the Central Government with respect to the burial of the COVID-19 positive patients, who died are lifted out of the hospital, as there was certain objection and obstruction from certain quarters, leading to protest, followed by registration of cases.

2. In the status report filed by the third respondent, the following statements have been made in paragraph Nos. 3 to 6:

" 3. It is humbly submitted that based on the Guidelines issued by the Government of India on Dead Body Management of COVID-19, the State Government have issued Guidelines on Dead Body Management for disposal of dead bodies of the persons who are affected by COVID-19 vide G.O(Ms) No.178, Health and Family Welfare (Pl) Department, dated 08.04.2020.

4. It is humbly submitted that an ordinance was promulgated by the State Government amending Section 74 of the Tamil Nadu Public Health Act, 1939 (Tamil Nadu Act III of 1939). Section 74 of the Tamil Nadu Act deals with the disposal of bodies of persons dying while suffering from notified disease. After sub-section (5) of Section 74 of the said Act, sub-section (6) has been added vide Tamil Nadu Ordinance No.1 of 2020, sub-section (6) provided as follows :-

" Any person who, either by himself or as a

member of a group, obstructs or prevents or attempts to obstruct or prevent the cremation or burial of the body of any person who has died while suffering from a notified disease shall be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine."

5. It is further submitted that based on the Government of India clarification, necessary instructions have also been issued to the concerned Heads of the Department in Health and Family Welfare Department that the dead bodies of suspected COVID-19 cases should be handed over to their relatives immediately and laboratory confirmation of COVID-19 should not be awaited and that these bodies can as a matter of abundant precaution be disposed as per the Guidelines on Dead Body Management. If such death cases test positive eventually, then the requisite action for contact listing, tracking etc., should be carried out subsequently.

6. Hence, it is submitted that much greater attention are being bestowed and vigorous check mechanism is being made by the Government to ensure proper implementation of Dead Body Management."

3. The learned Special Government Pleader appearing for the State submits that the annexure to the Government Order passed in G.O.(Ms) No.178, Health and Family Welfare (P1) Department, dated 08.04.2020, will be followed scrupulously.

4. Learned Senior Counsel appearing for the impleading respondent submitted that while the guidelines issued by the Central Government resulting in the Government Order along with the annexure are necessarily to be followed, the religious sentiments of the relatives of the deceased will have to be taken into consideration.

5. We have perused the Government Order passed along with the letter dated 23.06.2020. Taking note of the same and the status report filed, we direct the respondents to make sure that they are complied with in letter and spirit, in particular, we would like to make sure that the religious sentiments of the relatives of the deceased are not affected, without compromising on the instructions given, which are mandatorily to be followed as mentioned in the annexure to the Government Order passed in

G.O.(Ms) No.178, Health and Family Welfare (P1) Department, dated 08.04.2020. Therefore, while cremating the body of the deceased, who dies of COVID-19 positive, no one shall be permitted to touch and indulge in any other action which will lead to spread. All other ceremonies may be permitted, so long as they come within the purview of the guidelines aforesaid. Taking note of the possible objections from any third parties, as and when a person dies of COVID-19 positive, the local authorities are expected to give due intimation to the local police station within whose jurisdiction the body is likely to be taken and buried or cremated as it would prevent any untoward incident that may happen. As and when such intimation is given to the local police, the Station House Officer is expected to send one or two police personnel as escorts to the burial ground, so that, there will not be any untoward incident as happened earlier.

6. Considering the concern expressed, we make it clear that the respondents may give sufficient time to the dear ones of the deceased to perform their last rites instead of acting in haste. With respect to the issue pertains to the individual case, we do not express anything as we are dealing with the public interest litigation.

7. With the above directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Raa

To

1.The Chief Secretary to Government,
State of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Principal Secretary,
State of Tamil Nadu,
Home Department,
Secretariat,
Chennai - 600 009.

3.The Principal Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.

4.The Commissioner,
Greater Chennai Corporation, Chennai - 600 003.

5.The Director General of Police,
Santhome, Mylapore, Chennai - 600 004.

6.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.

+1cc to the Government Pleader, S.R.No. 24981

W.P.No.7492 of 2020

SSV(CO)
GN(07/08/2020)



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