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W.M.P.No.26796 of 2023

W.M.P.No.26796 of 2023
in
W.P.No.9651 of 2023

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

[Order of this Court was made by M.SUNDAR,J.,]

This order will now dispose of the captioned 'Writ Miscellaneous Petition' [hereinafter 'WMP' for the sake of convenience and clarity].

2. It was less than 48 hours ago i.e., on 12.09.2023 that we extended leave for a convict prisoner Thiru.N.S.Abdul Hakkim (Convict No.4662) son of Thiru.Syed Mohammed, who was detained in Central Prison, Coimbatore but Nature has overtaken all concerned before ink dried in our order.

3. Suffice to say that last Medical Certificate given in September 2023 which impelled us to extend the leave and relax certain conditions is as follows:



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Dr. R. SUBRAMANIAM, MDS, MCh, MRCRAN (FRCR)
DEPT. OF CLINICAL ONCOLOGY (MR)
CONSULTANT ONCOLOGIST ONCOLOGY

27 September 2023

To Whomsoever It May Concern

This is to inform you that Mr. N S Abdul Hakki, 44 year old gentleman, KMCH Reg. No.1887606 is a patient admitted in Kovai Medical Center And Hospital (KMCH) on 06/09/2023. He is known to us with a diagnosis of with Glioblastoma Multiforme of the brain for which he had surgery, radiation therapy and adjuvant Temozolomide chemotherapy. MRI scan done here shows further increase and recurrence of his brain cancer. He is presently immobile, confined to bed and he is also having right's side's numb feeling as he is unable to swallow. He also need urinary catheter for his urination. He is not able to speak anything because of brain cancer. The family fully understands the poor prognosis of his brain cancer and further plan is to give only palliative care to keep him comfortable.

With regards,

Yours sincerely,

Dr. R Subramaniam

R. SUBRAMANIAM
CONSULTANT ONCOLOGIST



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4. Today, at half past ten, Dr.S.Manoharan, learned counsel on record for petitioner (convict prisoner's wife) mentioned the matter saying that convict prisoner breathed his last this morning. This is the reason why, we opened with the observation that Nature has overtaken all concerned before the ink dried in the proceedings made in our earlier listing.

5. Be that as it may, as regards captioned WMP, prayer is to perform last rites and burial of convict prisoner without postmortem.

6. Learned counsel for petitioner submits that this request is being made on the basis of faith that burial of mortal remains should be without incisions. Captioned WMP was taken up and Mr.E.Raj Thilak, learned State Additional Public Prosecutor submitted on behalf of respondents, on instructions, that Rule 732 of 'the Tamil Nadu Prison Rules, 1983' [hereinafter 'said Rules' for the sake of convenience and clarity] captioned 'Procedure on death of a prisoner' is of relevance. To be noted, Rule 732(1) of said Rules reads as follows:

'732. Procedure on death of a prisoner.- (1) In the event of death of any prisoner, the Medical Officer shall see and, if necessary, examine the body of the deceased prisoner, so that he



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may, in every case, be in a position to certify to the fact and cause of death. When the Medical Officer is in any doubt as to the cause of death, and in every case in which death appears or is likely to have been the result of an offence punishable under the Indian Penal Code (Central Act XLV of 1860), he shall make a complete and regular postmortem examination of the body of the deceased. In the event of several deaths resulting from any prevailing epidemic, a postmortem examination shall be made in one or more cases to be selected by the Medical Officer.'

7. A careful perusal of aforementioned Rule 732(1) of said Rules makes it clear that postmortem is not imperative in all cases and it is only when the Medical Officer is in doubt with regard to the cause of death. In the case on hand, aforementioned Medical Certificate and extension of leave make it clear that convict prisoner was terminally ill and therefore, cause of death can hardly be an issue. In any event, learned counsel for writ petitioner submits, on instructions, that no issue will be raised either by writ petitioner or any other person concerned for late convict prisoner regarding postmortem not being conducted on the legalise of the matter. We find that said Rules are set of subordinate legislation made by the State Government in exercise of Rule making powers vide Section 59 of Prisons Act, 1894 and therefore, it can neither constrict nor curtail Constitutional powers of this



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Court. This takes us to the precedent. Learned counsel for writ petitioner placed before us order dated 19.08.2019 in H.C.P.No.1486 of 2019 and another order dated 23.10.2019 in Cont P.No.1853 of 2019 made by two different coordinate Division Benches both presided by Hon'ble Mr.Justice M.M.Sundresh as a Judge of this Court as his Lordship then was and paragraph Nos.3 and 4 of the aforementioned order dated 23.10.2019 in Cont P.No.1853 of 2019 order is of relevance and the same read as follows:

'3. We do find considerable force in the submission made by the learned counsel appearing for the petitioner. The order passed by us in the writ petition would certainly enure to the benefit of the deceased detenu. The period has expired. Therefore, the order has become final. As per the religious belief of the petitioner, the body will have to be buried without any mutilation. It is only a wish of the deceased. Thus, we do not want to stand on the technicalities especially in the light of the order passed which has attained finality.

4. In such view of the matter, we direct the respondents to permit the petitioner to take the body of the detenu so as to perform the last rites. We make it clear that the body of the detenu shall not be put into postmortem. The submission made by the learned counsel for the petitioner that in future the non-conduct of the postmortem will not be raised by him stands recorded.'



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8. Attention was drawn to Section 15 of Prisons Act, 1894 captioned 'Report on death of prisoner' but in the case on hand aforementioned Certificate is a matter of *res ipsa loquitur* and therefore Certificate of Death by a Medical Doctor that is issued for burial will suffice.

9. In the light of the narrative thus far, prayer in captioned WMP is answered in the affirmative i.e., acceded to and to add clarity, we say that convict prisoner Late Thiru.N.S.Abdul Hakkim, son of Thiru.Syed Mohammed shall now be laid to rest / buried without postmortem.

10. Captioned WMP is disposed of in the aforesaid manner.

11. All concerned to act on this order based on this order that is being uploaded in the official website without insisting on a certified copy of the order.

[M.S.,J.] [R.S.V.,J.]
14.09.2023

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Note: Upload forthwith



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