

2022 LiveLaw (SC) 149

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Dr. Dhananjaya Y. Chandrachud; Surya Kant, JJ.

February 4, 2022

Civil Appeal No 1067 of 2022

(Arising out of SLP (C) No 17130 of 2021)

**The Surat Parsi Panchayat Board and Another
Versus
Union of India and Others**

Performance of Dokhmenashini or funeral rights in the Dokhmas belonging to the Parsi Zoroastrian community - Agreed Protocol & Standard Operating Procedure For Handling Dead Bodies Of Parsi Zoroastrian Covid-19 Victims - Protocol and the Standard Operating Procedure comports with the tenets of the Zoroastrian faith, while according with the need expressed by the Union government for the maintenance of safety and hygiene in the context of the Covid-19 pandemic.

Constitution of India, 1950 - Article 32, 226 - Judicial Review - The dialogic process of judicial review can provide effective solutions which provide acceptable outcomes which promote harmony. (Para 9)

For Petitioner(s) Mr. Fali S. Nariman, Sr. Adv. Mr. Subhash Sharma, Adv. Mr. Devmalya Banerjee, Adv. Mr. Zerick Dastur, Adv. Mr. Rohan Sharma, Adv. Mr. Kartik Bhatnagar, Adv. Mr. Nicholas Choudhury, Adv. Mr. Anmol, Adv. Ms. Palak Agrawal, Adv. Ms. Smriti Singh, Adv. M/s. Karanjawala & Co.

For Respondent(s) Mr. Tushar Mehta, SG Mr. Gurmeet Singh Makker, Adv. Mr. Rajat Nair, Adv. Mr. Divyansh H. Rathi, Adv. Mr. Ketan Paul, Adv. Mr. Bhuvan Kapoor, Adv. For R-2-4 Ms. Deepanwita Priyanka, AOR For R-3 Mr. Tejas Patel, Adv. Ms. Meera Kaura, Adv.

ORDER

- 1. Leave granted.**
- 2. This appeal arises from a judgment and order dated 23 July 2021 of a Division Bench of the High Court of Gujarat.**
- 3. A petition under Article 226 of the Constitution was instituted before the High Court by the Surat Parsi Panchayat Board seeking, among other things, directions to allow the performance of Dokhmenashini or funeral rights in the Dokhmas belonging to the Parsi Zoroastrian community. The basis of the grievance was that the protocols which were notified on 15 March 2020 by the Union Government during the onset of the Covid-19 pandemic setting out modalities for the disposal of dead bodies do not comport with the tenets of the Zoroastrian faith. The High Court dismissed the petition.**

4. Notice was issued on 6 December 2021 after hearing Mr Fali S Nariman, learned senior counsel for the appellants. The next order of this Court dated 10 January 2022, is extracted below:

"1 Mr Fali S Nariman, learned Senior Counsel appearing on behalf of the petitioners, has submitted a written note indicating the manner in which the funeral rites of Parsi Zoroastrians who have died due to Covid-19 would be carried out at the Towers of Silence. Learned Senior Counsel submits that the proposed guidelines meet the concerns of the Union Government over public health and safety while preserving the sanctity of the Zoroastrian faith. The guidelines which have been issued by the Union Government in the Ministry of Health and Family Welfare (Annexure P-1) do not take into account the concerns of the Zoroastrian community in regard to the modalities ordained for funeral rites.

2. We have requested Mr Tushar Mehta, learned Solicitor General to render assistance.
3. Ms Deepanwita Priyanka, learned counsel, appears on behalf of the State of Gujarat.
4. On the request of the learned Solicitor General, list the Special Leave Petition on 17 January 2022."

5. During the course of the ensuing hearings, an effort was made to reach an acceptable resolution of the issues raised. There is on the one hand the fundamental right founded on Article 25 of the Constitution. On the other hand there are concerns based on the need to preserve public health during the time of the pandemic. The Solicitor General fairly agreed to intervene.

6. An agreed protocol has been placed before the Court which meets both the concerns reflected above. The protocol reads thus:

"AGREED PROTOCOL & STANDARD OPERATING PROCEDURE FOR HANDLING DEAD BODIES OF PARSI ZOROASTRIAN COVID-19 VICTIMS - AS AGREED BETWEEN THE PETITIONERS ON THE ONE HAND AND THE UNION OF INDIA – REPRESENTED BY THE LEARNED SOLICITOR GENERAL OF INDIA ON THE OTHER HAND.

Under normal circumstances in the Zoroastrian religion, the management of dead bodies strictly adheres to specific rules that aim in separating the corpse from living persons while ensuring the dignity and respect of the dead as well as for their living relatives. Even during normal times, Zoroastrian ritual tradition already conforms to the basic rule required to be implemented during times of COVID of separating the dead from the living, the family have no physical contact with the dead member. Since for Parsi Zoroastrians, the disposal of the dead in the Tower of Silence (wherever located) is a religiously mandated obligation and duty. The nature and scale of the corona virus (COVID-19) pandemic, has created challenges, and the Parsi community and their High Priests have in consultation, worked out a standard Procedure which they are willing to undertake to continue keeping in mind the restrictions and regulations imposed by the Government of India on all communities pertaining to those who have died due to a COVID-19 infection during the pandemic.

1A. Dead bodies of the Parsi Zoroastrians who die of Covid 19 will be brought to the funeral parlour in the Tower of Silence complex and will only be handled by the Nassasalars- (professional

Corpse bearers who have been professionally employed by the Panchayats). The corpse bearers are and will continue to be fully vaccinated and their temperatures duly recorded before every funeral and carrying out procedures of handling dead bodies as per existing COVID guidelines.

- 1B. Neither relatives nor friends are permitted nor will be permitted to touch the dead body and it will be ensured that they will always remain beyond 10 feet from the dead body.
2. The Nassasalars, at all times, while handling the dead body of the Parsi Zoroastrian COVID-19 victim will wear the PPE kit, gloves, face shield and N – 95 mask and the Govt of India regulations pertaining to dead bodies of COVID – 19 victims having been read and explained to them and they will be cautioned to follow the directives of the Govt. of India.
3. The body of the COVID-19 Parsi victim will be brought by the Nassasalars to the Tower of Silence Complex from mortuary or home in a body bag which will not be opened, but as per existing Guidelines, the face of the deceased will be allowed to be seen from a distance of at least 10 feet by the family only by unzipping the face – covering of the body bag.
4. The final funeral prayers i.e. the “GehSarna” (or Paidast) ceremony (which is the recitation of the first Gatha handed down by the Prophet Zarathushtra) over the dead body, is and will be by two Parsi Zoroastrian Priests wearing N-95 masks and gloves, who will stand at a distance of 10 feet from the dead body. The final prayers (which last about 1 hour) will be completed and upon its completion, the Nassasalars will carry the body to the Dokhma (Tower of Silence) where no one except the professionally employed corpse bearers can enter. As per Parsi religious traditions, no relative can touch, or much less kiss the body and every person at the funeral will perform hand hygiene after the funeral ceremony – a distance of at least 10 feet from the body will always be maintained. The individuals who will transport the dead body are the Parsi Nassasalars (the professional pallbearers) and no one else. Normally two Nassasalars will carry the body (in the body bag) to the Tower of Silence (Dokhma No.3) in a bier.
5. Relatives attending the Gehsarna (Paidast) ceremony will wear face masks and follow other guidelines as prescribed by the Government of India and will sit 10 feet away from the dead body and only such number of family members will be permitted to attend the funeral as per the applicable guidelines.
6. One Dokhma No.3 has been set aside for Covid victims alone and used for performing religious ceremonies for dead bodies of Parsis COVID-19 victims. This Dokhma No. 3 will not be used for non-Covid-19 dead bodies.
7. Only Dokhma No.3 (in the Tower of Silence) will be used for dead bodies of Parsi Covid victims. And non-Covid victims' bodies will be placed in other Dokhmas i.e Dokhma No.1 and Dokhma No.2. Since the principal mode of disposal at the Tower of Silence is through strong and powerful rays of the Sun, and hence to deal with the problem of birds of prey, the Petitioner undertakes to install as soon as possible, a metallic bird net over Dokhma-No 3 – which is exclusively reserved for the dead Parsi COVID-19 victims; this will eliminate contact with birds and animals and will avoid any intrusion by vultures. Hence, there will be no exposure of the body to birds etc. once the metallic net gets installed over Dokhma-No 3.
8. Religious rituals such as reading from religious scripts, sprinkling holy water and any other last rites that does not require touching of the body are allowed.

9. After each ceremony, the entire funeral area/parlour will be washed, sprayed and disinfected. All PPE suits, masks and face shields will be disposed off and a new set will be used for each COVID-19 victim's funeral ceremony. It is requested that a final Order in invitum be passed in the above SLP No: 17130/2021 and in Writ Petition No:7585 of 2021 before the High Court of Gujarat in the above terms."

7. A request has been jointly made on behalf of the appellants as well as the respondents that a final order in invitum be passed both in the appeal and consequently, in the writ proceedings which became the subject matter of the judgment of the High Court.

8. The dispute has been amicably settled. The Court has been assured that the protocol and the Standard Operating Procedure comports with the tenets of the Zoroastrian faith, while according with the need expressed by the Union government for the maintenance of safety and hygiene in the context of the Covid-19 pandemic.

9. We appreciate the fair stand which has been adopted by both the sides in ensuring that the issues which have been raised before the Gujarat High Court and, in continuation, in the proceedings before this Court have been amicably resolved. The dialogic process of judicial review can, as this case reflects, provide effective solutions which provide acceptable outcomes which promote harmony. The protocol and the Standard Operating Procedure are accepted and an order is passed in terms of the statement which has been jointly placed on the record of these proceedings.

10. The judgment of the Division Bench of the High Court of Gujarat dated 23 July 2021 shall stand set aside. The writ petition shall be governed by the agreed statement which has been placed on the record in these proceedings.

11. The appeal is disposed of in the above terms.

12. Pending applications, if any, stand disposed of.

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