

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN
MONDAY, THE 10TH DAY OF APRIL 2023 / 20TH CHAITHRA, 1945
WP(C) NO. 7458 OF 2021

PETITIONER:

DHISHA,
(REG. NO.MPM/CA/.294/2015),
SOUPARNIKA, GRHS ROAD, KOTTAKKAL,
MALAPPURAM-676503,
REPRESENTED BY ITS PRESIDENT
DINU K., AGED 25 YEARS, S/O. DASAN K.,
RESIDING AT DIVYA NIVAS,
FAROOK COLLEGE P.O., MALAPPURAM-673632.

BY ADVS.
P.K.SANTHAMMA
SMT.DHANUJA M.S

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION,
PALAKKAD-678001.
- 3 PUTHUR GRAMA PANCHAYATH,
REPRESENTED BY SECRETARY,
PALAKKAD-675851.
- 4 PRESIDENT,
PUTHUR GRAMA PANCHAYATH,
PALAKKAD-675851.
- 5 DIRECTOR GENERAL OF POLICE,
OFFICE OF DGP, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695010.

- 6 SUPERINTENDENT OF POLICE,
SP OFFICE, SEKHARIPURAM, KALPATHI,
PALAKKAD-678 010.
- 7 THE STATION HOUSE OFFICER,
AGALI, PALAKKAD-678 581.
- 8 THE VILLAGE OFFICER,
PUTHUR, PALAKKAD-678 005.
- 9 STATE COMMISSION FOR SC/ST.
AYYANKALI BHAVAN, KANAKA NAGAR,
VELLAYAMBALAM,
THIRUVANANTHAPURAM-695033.

BY ADVS.
SRI. K.P HARISH, SR.GOVERNMENT PLEADER
SMT. MARY BENJEMIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.04.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

“C.R.”**J U D G M E N T**Dated this the 13th day of April, 2023**S. Manikumar, CJ**

The petitioner, a Non Governmental Organisation, registered under the Societies Registration Act, 1860, approached this Court seeking for the following reliefs:

- “(i) Issue a writ of Mandamus, commanding the 7th respondent to take all the necessary measures to keep a law and order situation at Puthur in the place where the burial ground is situated.
- (ii) Issue a direction to the 2nd, 3rd, 4th, 6th, 7th and 8th respondents to take strict measures to permit the burial of dead ones of the Chakkiliyan community in the Public burial ground of the Puthur Panchayat peacefully.
- (iii) Issue a direction to the 5th respondent to direct his officers below to take the cases of atrocities being committed against the SC/ST community seriously and direct them to take cognizance against the offenders strictly under social boycotting under Sections 3(1) z a(A) of SC/ST (POA) Act 1989, amended in 2016.”

2. Short facts leading to filing of the writ petition are as under:

2.1. The petitioner organisation, in the instant writ petition, is espousing the cause and concerns of the

Chakkiliyan Community of Puthur Grama Panchayat of Palakkad District, where marginalised communities were denied access to cremation in a Public graveyard. It is submitted that during the on reach programs, the volunteers of the petitioner organisation interacts with various communities throughout the length and breadth of the State. While, so the volunteers came to know about the shocking incident of untouchability that prevailed in Puthur Grama Panchayat of Palakkad district wherein, access to a public crematorium was denied and there was an express refusal to bury the dead body of a Schedule Caste woman, belonging to Chakkiliyan Community and perform the funeral rites.

2.2. It is stated that the members of the Schedule Caste Chakkiliyan community were prevented from entering the crematorium premises and burying the body of the said woman died there. The members of the dominant castes allegedly threatened and wrongfully restrained the family members of the deceased. The members of the Chakkiliyan community have cited it as an instance of the continuing caste based discrimination in the Village. Following the same,

volunteers of the organisation had spent two weeks and conducted an In-depth study for understanding the prevailing issue.

2.3. Petitioner has further stated that Chakkiliyan is a backward community (vulnerable community) among the Scheduled Caste communities in the State. This community has been historically subjected to various forms of oppression and marginalisation.

2.4. Petitioner has further stated that Chakkiliyan community was allotted a burial ground, near river but, other people objected it, since it was an open space on rock and the remains of the body made the river bank and water unhygienic, with so many health problems. The Chakkiliyan community, due to the fear of the forward castes, chose the far away forest land for the burial. Now, the forest land also closed for the burial of their dead ones. Again after 3 years, the same problem has arisen on the issue of burial of a woman from Chakkiliyan caste named Sakunthala and the Scheduled Caste community members approached the police authorities.

2.5. The 8th respondent – Village Officer, Puthur, made a report to the Tahsildar, on this aspect that, each community is claiming a separate burial ground. Exhibit P1 is the copy of the report dated 28.07.2020. The Village Officer has also reported that the plots 1 to 3 are earmarked for 3 separate communities. The sketch to this effect prepared by the Village Officer is produced herewith and marked as Exhibit P2.

2.6. Respondent Panchayat had earmarked Rs.12,00,000/- during the plan period of 2019-2020 vide project No.54 for constructing a compound wall for the cremation ground.

2.7. Petitioner has further contended that during further enquiry, it was revealed that though there was a public burial ground, Scheduled Caste people were not allowed to bury their dead ones. The members of Chakkiliyan community have been facing a very bad situation of burial of their dead ones as they do want only to bury the body and not to cremate the body. In this regard, they sent a representation dated 11.1.2021 to the Hon'ble Chief Minister of Kerala, with copies to the District Collector, DGP and the State

Commission for SC/ST, Thiruvananthapuram/respondent Nos. 2, 5 and 9 and the Hon'ble Minister for SC/ST, narrating their difficulties. When the 9th respondent Commission visited the place, members of Chakkiliyan Community handed over a complaint dated 4.2.2021 to the Chairman of the Commission. In spite of all these, no action has been taken by the respondents. Hence, this writ petition.

3. Aggrieved by the inaction on the part of the respondents, instant writ petition is filed, *inter alia*, on the following grounds:

- A. Petitioner is espousing the cause of the poor Scheduled Caste members in the State as the members themselves due to their backwardness are unable to represent themselves before this Court. Petitioner, therefore, has the necessary locus standi to file this writ petition, *inter alia*, challenging the practice of Untouchability.
- B. Article 15 of the Constitution prohibits any discrimination on grounds of religion, race, caste, sex or place of birth. Further Article 15(2)(b) reads as follows: "No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to the use of wells, tanks, bathing ghats, roads and places of

public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.”

- C. It is evident from Exhibit P3 that the state fund has been used to construct the walls of the cremation ground whereby the same is maintainable as a public place. Denying Chakkliyan community, the access to the public crematorium is a blatant violation of Article 15 of Constitution.
- D. Article 17 of Indian Constitution abolishes the practice of Untouchability. Constitution clearly states that practice of untouchability in any form is forbidden. Further it underline that the enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law. In the instant case, there is a express denial of the cremation ground to Scheduled Caste community, where members of other upper castes are allowed to bury; prima facie a practice of Untouchability.
- E. The denial of cremation ground is also a violation of Article 21. The right to life enshrined in Article 21 of the Constitution of India includes the right to life with dignity. It is now well settled that the Right of Life also includes the right to life with dignity. It is now well settled that the Right to Life also includes the right of the deceased. The right to dignity and fair treatment under Article 21 of the Constitution is not only available to a living person but also to his mortal remains after his demise. In **Pt.**

Paramanand Katara, Advocate -vs- Union of India & another: reported in **(1995) 3 SCC 248**, it was held by the Hon'ble Supreme Court that right to dignity is available not only to a living man but also to his body after his death.

- F. Also in **Ramji Singh @ Mujeeb Bhai v. State of U.P & others**, reported in **2009 SCC Online All 310**, a Hon'ble Division Bench of the Allahabad High Court held that the word and expression 'person' in Article 21 of the Constitution includes a dead person in a limited sense and right to life with dignity should be extended in such a manner that his dead body is given respect, which he would have deserved, had he been alive, subject to his tradition, culture and the religion which he professed. The judgment underlined that there should not be any disgrace to the deceased.

Protection of Civil Rights Act, 1955 is the enactment with pursuance of the above constitution provision. Section 4 of the Act clearly mentions that denial of access to any cremation ground is a offence. Section 15A of the Act casts certain duties on Central and State Governments to ensure effective implementation of the Act.

- G. Article 46 of the Constitution of India underlines that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes and

shall protect them from social injustice and all forms of exploitation.

- H. In terms of Article 243G read with 11th Schedule and Article 243 W read with the 12th Schedule of the Constitution of India, public health, sanitation conservancy, burial grounds, cremations, cremation grounds and electric crematoriums are matter that fall within the domain of Self Government Institutions, be it a Municipality or Panchayat. Being the custodian of the public land the authorities have themselves not acted so far against the untouchability being practiced at the Burial ground.
- I. The denial of burial place to SC/ST community is a social boycott and it is an atrocity under S.3(1) za (A) of SC/ST Prevention of Atrocities Act 1989 amended in 2016.”

4. Refuting the averments made in the writ petition and opposing the reliefs sought for, the District Collector, Palakkad/2nd respondent has filed a counter affidavit, wherein it is stated thus:

“3. On 27.4.2020 one of the resident of Ummathampadi of SC colony named Smt. Sakunthala, W/o.Kamaraj, died at Perinthalmanna Hospital. On 30.04.2020 after conducting COVID-19 test, the body was taken to the public burial ground at Alamaram. But on the same day, the Secretary of the above public burial ground along with the others objected to burial of

the body by threatening and violating the Covid -19 protocol and also attempted to humiliate them by calling their caste name and abused by using filthy words etc.

4. On receiving the copy of Writ Petition (Civil) No.7458/2021 filed by the petitioners to my office, I conducted an enquiry with regard to the above matter by The District Police Chief, Palakkad, The Sub Collector, Ottapalam and the Secretary, Puthur Grama Panchayat. On detailed enquiry, it is revealed the following facts.

5. The public burial ground located at Alamaram was used to bury the dead bodies of peoples belonging to Hindu Religion. During the year 2017, the dead body of Sri. Raman S/o. Nanjan Thazhe Ummatharpady belonging to Chakkiliyan Community (SC) was buried on the same public ground. But later on, the same burial ground was purchased by the local residents and it was named as Sivasakthimaya. For burying the dead bodies of people belonging to SC community separate burial ground was available at Nerinjikandyedu.

6. But on 30.04.2020, when the body of Smt. Sakunthala was brought for burying, due to the fear of COVID-19 pandemic, the local residents objected to bury the body in the above Sivasakthimaya burial ground. Subsequently, the problem was solved by finding an uninhabited place near Ummatharpadi Homoeo Dispensary area and buried the body.

7. Even though, the old public burial ground has now became private, the authorities concerned have no objection in burying the bodies of people belonging to all communities of Hindu religion.

8. The incidents regarding obstructing burying the body of Sakunthala occurred on 30.04.2020 was merely due to the fear of COVID-19 Pandemic only.

9. The report of the Sub Collector, Ottapalam is produced herewith and marked as Exhibit R2(a)

10. None of the grounds urged by petitioner are legally sustainable and the petitioner is not entitled to get relief sought for in this writ petition. In the above circumstances, since the writ petition is devoid of any merits, it is humbly prayed that this Hon'ble Court may be pleased to dismiss the above writ petition with costs."

5. On. 30.01.2021, we passed the following order:

"On this day, when the matter came up for hearing, referring to the averments made in the counter affidavit of the District Collector, Palakkad - respondent No.2, Mr. K. P. Harish, learned Senior Government Pleader, submitted that on 27.4.2020, one resident of Ummathampadi of SC colony, named Smt. Sankunthala W/o. Kamaraj died at Perinthalmanna Hospital. On 30.4.2020, after conducting Covid-19 test, the body was taken to the public burial ground at Alamaram. But, on the same day, the Secretary of the above public burial ground along with others, objected to the burial of the body by threatening and violating the Covid-19 protocol and also attempted to humiliate them, by calling their caste name and abused by using filthy words.

2. Learned Senior Government Pleader also submitted that on receipt of a copy of the W.P.(C) No.7458/2021, the District Collector, Palakkad directed to conduct an enquiry. An enquiry was also conducted by the District Police Chief,

Palakkad; the Sub Collector, Ottappalam; and the Secretary, Puthur Grama Panchayat, and found the following:

“5. The public burial ground located at Alamaram was used to bury the dead bodies of peoples belonging to Hindu Religion. During the year 2017, the dead body of Sri. Raman S/o. Nanjan, Thazhe Ummathampady belonging to Chakkiliya Community (SC) was buried on the same public ground. But later on the same burial ground was purchased by the local residents and it was named as Sivasakthimaya. For burying the dead bodies of people belonging to SC community separate burial ground was available at Nerinjikandymedu.

6. But on 30.04.2020, when the body of Smt. Sakunthala was brought for burying, due to the fear of COVID-19 pandemic, the local residents objected to bury the body in the above Sivasakthimaya burial ground. Subsequently, the problem was solved by finding an uninhabited place near Ummathampadi Homoeo Dispensary area and buried the body.

7. Even though, the old public burial ground has now became private, the authorities concerned have no objection in burying the bodies of people belonging to all communities of Hindu religion.

8. The incidents regarding obstructing burying the body of Sakunthala occurred on 30.04.2020 was merely due to the fear of Covid-19 pandemic only.”

3. Report of the Sub Collector, Ottapalam dated 23.06.2022

is reproduced hereunder:

“A1-6330/21

Sub Collector's Office, Ottapalam,

Date: 23/06/2022

Phone: 0466 2244323

From

Nodal Officer, Attappady &
Sub Collector, Ottapalam.

To District Collector, Palakkad.

Subject:- WP(C) No.7458/2021 - Aalamaram crematorium -
Report submitting - reg.

Reference: 1. Your letter of DCPKD /1708/2018-D1 dated
22/06/2022.

2. Hon'ble Kerala SC/ST Commission order no:366/B1/2021/PKD/KSCSC&ST dated 14/12/2021.

3. This office report number A1-09/20(1) dated 20/02/2021.

Your kind attention is invited to the subject and references cited above. Sri.Raman, S/o.Rangaswamy, lower Ummathampadi, Puthur had filed a complaint before Hon'ble SC/ST Commission stating that funeral of Smt.Shakuntala, belonging to Chakkiliya Community (SC) was stopped by a mob in Aalamaram crematorium and they were forced to cremate the body in a public place to avoid further conflicts.

Hon'ble commission had called for report from this office and the same was submitted as per reference 3 cited. In the report it was stated that body of Badhwadan (late) belonging to Chakkiliya community (SC) who died on 02/03/2017 had been cremated in the same crematorium despite the objection of a section of people. It was also reported that the using the fund of Puthur Grama Panchayat for the year 2019/2020 compound wall of crematorium was constructed and majority of the land of crematorium was seen "puramboke". Also people belonging to different communities have contributed land for the crematorium.

An order was issued by the Hon'ble Commission as per reference cited 2 and a copy was also received in this office. In the order District Collector was directed to take necessary steps to ensure cremation of the bodies of all communities without any caste/tribe discrimination in the said crematorium. As soon as the copy of order received in this office it was forwarded to Project Officer, ITDP, ST Development Officer, Palakkad, Secretary Puthur Grama Panchayat and Tahsildar, Attappadi for necessary actions.

As per your oral direction relating to the WP(C)No.7458/2021 the Sub Collector had also visited the crematorium and found that no discrimination was found against any community during time of visit. Moreover presently no complaints in this regard have been received in this office. The above information is reported for necessary action.

Yours faithfully,

Sub Collector, Ottapalam."

4. Learned Senior Government Pleader further submitted that the provisions of Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998 do not prohibit establishment of separate burial ground for separate communities.

5. Rule 3 of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998, dealing with providing burial and burning grounds by Panchayat, is extracted below for ready reference:

“3. Providing burial and burning grounds by Panchayat.--(1) Any Panchayat shall, if no sufficient provision exists, with the previous sanction of the District Collector, provide land to be used as burial or burning grounds or cemeteries by meeting the expenditure from the Panchayat fund and may charge rents and fees as the Panchayat may decide, for the use thereof.

(2) The request of a Panchayat for previous sanction to provide land under sub-rule (1) shall be submitted to the District Collector with the remarks of the District Medical Officer and the District Collector shall, before giving sanction, give due consideration to the remarks of the District Medical Officer regarding the suitability of the land selected as burial ground, giving priority to public health.

(3) The Panchayat may lease out the collection of rent and fees under sub-rule (1) to any private person or institution, for any period not exceeding three years at a time on such terms and conditions as it may think fit.”

6. That apart, Rule 4 of the Rules, 1998 reads thus:

“4. Certain cemeteries to be deemed registered and to undertake and register or close ownerless cemeteries.-- (1) The cemeteries existing at the commencement of these rules and registered or deemed to have been registered under the Kerala Panchayat (Burial and Burning Grounds) Rules, 1967 shall be deemed to have been registered under these rules.

(2) If any dispute arises as to whether a cemetery is in existence at the commencement of these rules and deemed to have been registered under the Kerala Panchayat (burial and Burning Grounds) Rules, 1967, the same shall be subject to the decision of the concerned District Collector and the decision thereon shall be final.

(3) where it appears to the Panchayat that there is no owner or person having control of any existing place used for burial, or otherwise disposing of the dead, the Panchayat

shall assume such control and register such place, or may, with the sanction of the District Collector, close down it.”

7. Rule 5 of the Rules, 1998 reads thus:

“5. No burial and burning ground to be located within the limit of 50 metres of a dwelling house. - (I) No new burial and burning ground shall be provided within the limit of 50 metres of dwelling houses: Provided that in the cast of concrete vaults and electric crematorium the distance shall be a minimum of 25 metres from dwelling houses.

(2) Whether there is any burial and burning place or not within the specified limit from the dwelling house is to be determined by considering the circumstance on the date of application for licence.”

8. Rule 6 of the Rules, 1998 reads thus:

“6. Issue of licence to burial or burning grounds. — (1) No new burial or burning ground, whether public or private, shall be opened, constructed or used without a licence from the concerned District Collector.

(2) In the case of increasing or expanding the area of an existing cemetery ground the same shall be considered as opening of a new cemetery and these rules shall be applicable to such burial grounds.

(3) Application for licence shall be submitted to the concerned Secretary in Form No. I.

(4) Application for licence shall be accompanied by a plan of the ground to be registered showing the location, boundary, extent etc., the name of the owner or person or community interested therein, the system of management and such other particulars as the District Collector may require.

(5) In the case of private cemetery the Panchayat shall consider the application within thirty days from the date of receipt of the application and forward the same with its recommendations to the concerned District Collector through the District Medical Officer.

(6) The District Medical Officer shall conduct such enquiries as he may deem necessary on the application received from the Panchayats and shall forward the

application with his specific recommendations to the District Collector within thirty days of its receipt.

(7) The District Collector, shall, on receipt of the application, publish the same in a daily newspaper in the regional language of the locality having wide circulation, in the notice board of the Panchayat, notice board of village and other public places specified by the Government. a notice inviting objections. complaints or suggestion, if any, with regard to the issue of licence. in writing within thirty days at the cost of the applicant.

(8) The District Collector after considering the objections, complaints or suggestions received if any in pursuance of the notice under sub-rule (7) and after conducting such enquiries, as may be deemed necessary, may. —

(a) grant licence in Form No. II; or

(b) refuse to grant licence; or

(c) postpone the grant of a licence until objections regarding the ground have been removed or any particulars called for by him have been furnished.

(9) The District Collector shall pass an order under sub-rule (8) within six months from the date of receipt of the application and shall inform the same to the concerned Panchayat.

(10) Any person aggrieved by the order of the District Collector under sub-rule (8) may, within thirty days from the date of order may file an appeal before the Government.

Explanation. — In computing the above said thirty (30) days the time required for obtaining copies of major records connected with the order appealed against shall be excluded.

(11) The Government may pass such orders on the appeal as they think fit, after conducting such enquiries as they deem necessary.”

9. Rule 7 of the Rules, 1998 reads thus:

“7. Registration of cemeteries.— (1) A register shall be maintained at the Panchayat Office, in which grounds registered, deemed to be registered, licenced or provided under Rules 3, 4 and 6 and all such grounds registered, licenced or provided before the commencement of these rules shall be recorded and the plans of such grounds shall be filed in such office.

(2) A notice in the regional language, Malayalam and English to the effect that such place has been registered,

licenced or provided under sub-rule (1), shall be affixed at some conspicuous part at or near the entrance of such place.

(3) The register referred to in sub-rule (I) shall be inspected periodically by the Officer authorised by the Government in this behalf.”

10. Rule 8 of the Rules, 1998 reads thus:

“8. Prohibition of use of ground not registered, licenced or provided to dispose of the corpse. — No person shall bury, burn or otherwise dispose of any corpse other than in any ground, which has been registered or has been deemed to be registered or for which licence has been given or provided under these rules:

Provided that in each particular case, any corpse can be buried, burned or otherwise disposed or under customary rite in private ground without being injurious to public health.”

11. Rule 9 of the Rules, 1998 reads thus:

“9. Registers regarding burial and burning to be maintained. — (1) A register in Form No. III for recording the details regarding burial, burning or otherwise disposing of the corpse, shall be maintained by the Secretary or the Officer authorised by him in the case of public cemeteries and by the Secretary or other responsible Officer of the organisation. association or institution having control of such places in the case of private cemeteries and in each case of burial, burning or otherwise disposing of the corpse details regarding it shall be recorded in the register.

(2) Registers maintained by the Secretary or other responsible officer of the organisation, association or institution having control of the private cemeteries may be inspected by the Secretary of the Panchayat or the officer authorised by him in this behalf.”

12. Respondent No.1 - State of Kerala, represented by Chief Secretary to the Government, is directed to file a detailed counter affidavit, as regards the prayer No.(1) i.e., to take all the necessary measures to keep a law and order situation at Puthur, in the place where the burial ground is situated. Respondent No.1 - Chief Secretary to the Government is also directed to furnish the details of private burial grounds/

cemeteries for various communities and religions in the State of Kerala.

Post after three weeks.”

6. Pursuant to the directions issued on 30.01.2023, on behalf of the 1st respondent – State of Kerala represented by Chief Secretary to the Government, Govt. Secretariat, Thiruvananthapuram, a statement has been filed by learned Senior Government Pleader, which reads as under:

Statement filed by 1st Respondent before the Hon'ble High Court of Kerala in Order dated 30/01/2023 in W.P(C) No.7458/2021 filed by DHISHA

The Hon. High court in its order dated 30/01/2023 in W.P(C) No.7458/2021 filed by DHISHA represented by Dinu.K directed the Chief Secretary to furnish the details of private burial grounds/cemeteries for various communities and religions in the state of Kerala. The details of the Private Burial Grounds/cemeteries in the state is as follows:"

No. of Private Crematoriums Burial Grounds present in the LSGI's for various communities and religions - 5715.

Community/Religion	Total Nos.
SC/ST	385
Brahmins	16
Others	443
Christian	2982
Muslim	1889

7. Section 3(1)(za)A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads thus:

“3. Punishments for offences of atrocities- (1)
Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to-

(A) using common property resources of an area, or burial on cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage”

8. The question as to why, the body of Mrs. Sakunthala, W/o. Kamaraj, was not allowed to be buried in the Alamaram, now renamed as Sivasakthimaya burial ground, has been explained. Considering the gravity and mortality prevailing at that point of time, the apprehension expressed by others could not be ignored. For the solitary incident reported, this Court cannot hold that there was discrimination. However, in any public burial ground, mortal remains of all persons, irrespective of their communities, should be allowed to be buried, without any discrimination.

9. The statutory provisions extracted above, indicate that Government itself can permit burial grounds on the basis of communities or has permitted the same, apart from the public burial or burning grounds, and thus, licence issued. Details of the burial grounds/ cemeteries for various communities and religions are extracted hereunder:

“No. of Private Crematoriums/Burial Grounds present in the LSGL’s for various communities and religions - 5715

Community/Religion	Total Nos.
SC/ST	385
Brahmins	16
Others	443
Christian	2982
Muslim	1889

10. In **Parmanand Katara v. Union of India (UOI) and Ors.** reported in (1995) 3 SCC 248, the Hon’ble Supreme Court held as under:

“5. We agree with the Petitioner that right to dignity and fair treatment Under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death.”

11. In **Ramji Singh @ Mujeeb Bhai v. State of U.P & others**, reported in **2009 SCC Online All. 310**, a Hon’ble

Division Bench of the Allahabad High Court held that the word and expression 'person' in Article 21 of the Constitution includes a dead person in a limited sense and right to life with dignity should be extended in such a manner that his dead body is given respect, which he would have deserved, had he been alive, subject to his tradition, culture and the religion which he professed.

12. A Hon'ble Division Bench of the Madras High Court in the judgment in W.P.(MD) No.8723 of 2015 dated 16.06.2015 [**P. Joseph Raj v. The District Collector and Others**], in which, one of us (Hon'ble Mr. Justice S. Manikumar) is a party, while considering the denial of burial ground to a particular faction of the Christian religion, despite the existence of various burial grounds, for different communities in a village, observed as under:

“13. Kith and kin of the bereaved family would wish R.I.P., meaning “Rest in Peace”. Those who miss their beloved may even wish R.I.P., to be read as “Return if possible”. But the Great Poet Thiruvalluvar says:

XXXXXXXXXXXXXXXXXXXXX

The English meaning of the above said Thirukural by Rev.G.U.Pose is extracted here under:

“Existing yesterday, to-day to nothing

burled!- Such greatness owns this transitory world”.

Graveyard is a place to rest. We wish the dead, R.I.P., but on the facts and circumstances of this case, we could see that there is no peace for the living. When there is a casteless society in many countries, is there any cure for this chronic disease, caste? On the facts, the bereaved have no place to bury the dead body.

14.The Great Poet Thiruvalluvar further says:

XXXXXXXXXXXXXXXXXX

The English meaning of the above said Thirukural by Rev.G.U.Pose is extracted here under:

“Lowest and meanest lore, that bids men trust secure, In things that pass away, as things that shall endure”

15. After going through the materials, we express our displeasure on the attitude of the villagers, who have separate burial grounds, depending upon their castes. A reminder of a native American Proverb “When you were born, you cried and the world rejoiced. Live your life in a manner so that when you die, the world cries and you rejoice”. Even after death, caste and factionalism, have given rise to law and order situation. Christianity has no caste system. What is prevalent and practiced in Hinduism appears to have been percolated into the above said religion. Whether “Holy Bible” allows this practice! It is left to the conscience of the practitioners, who seek pride in having their caste tags. Even for a decent burial, one has to fight for a place, officials have to visit the place, Peace Committee to be conducted and ultimately to litigate. During lifetime, people fight for rights, customary, personal or property, etc. We are pained to see that even after death, the fight continues for burial. Religious belief and

customs may vary in the matter of disposal of dead bodies. The place of burial is visited by family members and friends, as a mark of respect and to pay tributes. At this juncture, we deem it fit to extract a passage from a Judgment of our Brother Hon'ble Mr.Justice K.Chandru, in W.P(MD)No.3855 of 2005:

“The petitioner must be reminded of an yester year popular cinema song which beautifully summarised the burning ghat as the only place where total equality between communities exist. It may be quoted verbatim for the benefit of the petitioner and his community so that they may give up a separate enclosures within the public grave yard/cremation ground.”

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“A place where equality thrives in life.

Every men, irrespective of upper caste or lower caste, are all unified at the end in the burial ground.

A place where one would get peaceful sleep in the entire life is here, where equality thrives (burial ground).

Where is the King? Where is the Subject?

Where is the Scholar? Where is the stupid?

Everybody after the soul departs, gather here in the burial ground.

Therefore, burial ground is the place where there is equality which we fail to see anywhere in this life....”

(Translated by this Court)

In the above writ petition, the petitioner therein was a President and Nattanmai of Arya Vaisya Community in Madurai. He challenged an order passed by the Commissioner of Police,

Madurai, cancelling an agreement entered into between the said community and the Corporation, in allotting a separate cremation yard, for the purpose of burning the dead bodies, belonging to the members of the petitioner's community. While dismissing the writ petition, the learned Judge has made the said observation.

16. We may add one more lyric:

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“The entire life ends after a distance
At the end what remains is six feet of land.”

(translated by this Court)

17. In metropolis, even the place is not available. In metropolis, where there is no space, burial grounds are converted into electric crematoriums. Perhaps in this village, as plenty of space is available, each section of the society, has a separate burial ground.

18. We may also add paragraphs 9 and 10 from the Judgment in W.P(MD) No.10782 of 2006 dated 14.08.2012 (Paul Thankom vs. Secretary to Government Home Department, State of Tamil Nadu, Fort St. George, Chennai and six others):

"9. Nobody shuns a doctor, or staff or even an employee, who cleans up a patient, in a hospital, on the grounds of caste, creed or religion. Differences though exist, nobody would ever think of it. Blood transfused in a hospital is not segregated on the basis of caste, creed or religion. Nor the person who requires blood, would ever demand blood only from a person belonging to his caste, community, creed or religion. If for his survival and existence a person can consciously believe and accept that all are equal, irrespective of caste, creed, community or religion, then why this hatred and division. Organs are transplanted. Blood and body have no religion or caste. When the

blood and organs of a Hindu can save a Muslim or vice versa or even a christian then why this intolerance. Is there not a similarity in 'Om', "Amen and "Ameen?". All religions aim at the same destination. Forms and practices may differ. One should not forget that our glorious constitution enshrines, secularism, fraternity and equality. Unity in diversity is our strength. 10. Before parting with the case, this Court wishes to reproduce the words of the Hon'ble Apex Court. "Our tradition teaches tolerance; Our philosophy preaches tolerance; Our Constitution practices tolerance; Let us not dilute it"."

13. Without going deeper into the provisions, which permits that licenses can be given to communities, to have separate burial or burning grounds, when the State of Kerala is stated to be God's own Country, this Court can only observe as to whether, what is enshrined in the Constitution of India and the decisions cited supra, are being followed in letter and spirit or not. Let the Legislature and the Executive, maintain right to dignity and fair treatment under Article 21 of the Constitution of India, not only to a living person, but also to the mortal remains of a person.

14. In the light of what is discussed above, Legislature has to consider whether, there is any need to continue granting separate licenses for burial or burning grounds, on

the basis of communities, and whether such action violates Articles 14 and 21 of the Constitution of India?

With the above observation and directions, writ petition is disposed of.

Sd/-
S. Manikumar
Chief Justice

Sd/-
Murali Purushothaman
Judge

APPENDIX OF WP(C) 7458/2021

PETITIONER EXHIBITS

- EXHIBIT P8 THE COPY OF THE REPORT DATED 03/02/2021 ALONG WITH THE ENGLISH TRANSLATION
- EXHIBIT P2 THE SKETCH OF THE BURIAL GROUND EFFECT PREPARED BY R8.
- EXHIBIT P1 THE COPY OF THE REPORT DATED 28/07/2021 BY R8 TO TAHSILDAR WITH TRANSLATION.
- EXHIBIT P3 COPY OF THE EXTRACT OF THE RELEVANT PAGE 13 TH FIVE YEAR PLAN SCHEME 2019-2020 WITH SL. NO.32 PROPOSAL NO.54 REGARDING CONSTRUCTION OF COMPOUND WALL AROUND BURIAL GROUND ALAMARAM WITH TRANSLATION.
- EXHIBIT P4 COPY OF THE REPRESENTATION DATED 11/11/2021 BY THE RESIDENTS IN THE COLONY TO HON'BLE CHIEF MINISTER WITH TRANSLATION.
- EXHIBIT P5 COPY OF THE COMPLAINT DATED 04/02/2021 BY R. RAMAN TO CHAIRMAN SC/ST COMMISSION, WITH TRANSLATION.
- EXHIBIT P6 COPY OF THE REPRESENTATION 01/03/2021 SENT BY PETITIONER TO R7.
- EXHIBIT P7 COPY OF TH NEWS PAPER MATHRUBHUMI DAILY DATED 12/01/2020.
- EXHIBIT P8 TRUE COPY OF REPORT DATED 3.2.2021 ALONG WITH ENGLISH TRANSLATION
- EXHIBIT P9 THE CD IN WHICH STATEMENT OF SOME PEOPLE IN THE PANCHAYAT DECLARING THAT THEY WILL ALLOW ONLY HIDUS TO USE THE BURIAL GROUND IS RECORDED

RESPONDENTS' EXHIBITS

EXHIBIT R2(A)

REPORT OF THE SUB COLLECTOR, OTTAPALAM