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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: July 13, 2023*

+ LPA 584/2018

CHELAKARA RAMASWAMY Appellant

Through: Mr. N. Hariharan, Sr. Advocate,
Amicus Curiae) with Ms. Punya
Rekha Angara, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Anurag Ahluwalia, CGSC along
with Mr. Abhigyan Siddhant, GP for
R-1.

Mr. T. Singhdev, Mr. Tanishq
Srivastava, Mr. Abhijit Chakravarty,
Mr. Bhanu Gulati, Ms. Anum Hussain
and Mr. Abbaas Sukhramani,
Advocates
for NMC/R-5.

Mr. Akshay Ringe and Ms. Megha
Mukhejee, Advocates for R-3, R-6 &
R-8.

Mr. Anupam Sharrma, SPP for CBI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. Mr. Anurag Ahluwalia, the learned Central Government Standing Counsel for Union of India states upon instructions that Standard



Operating Procedure (SOP) for Transportation of Mortal Remains overseas of both Indian tourists and for Indian workers are in place.

2. In the case of Indian tourists, ordinarily all Indian Missions/Posts coordinate with the family of the deceased for transportation of the mortal remains. In exceptional circumstances of lack of resources, the Mission concerned and the Ministry of External Affairs (MEA) make appropriate arrangements often using the Indian Community Welfare Fund (ICWF) established by the Mission. The learned CGSC refers to MEA's "*Guidelines on Indian Community Welfare Fund established in Indian Missions/Posts abroad*" which reads as under:-

"1. Background

a. The 'Indian Community Welfare Fund (ICWF) was established in the Indian Missions of 17 Emigration Clearance Required (ECR) Countries and Maldives after due approval of the Cabinet, vide letter No. OI-11012/25/2007- US(EP-I) dated 12th October, 2009 of the Ministry to meet contingency expenditure incurred by them for carrying out various on-site welfare activities for Overseas Indian Citizens in distress.

b. Revised guidelines for utilization of ICWF were issued with the concurrence of IFD vide Dy. No. 4476/Dir(F)/12 dated 04.08.2012.

c. After due consultations with the Department of Expenditure, Ministry of Finance the following guidelines are being issued to enhance the utilization of the fund, expand the scope of activities and purposes for which the fund can be used, and enable activities for welfare of both distressed overseas Indians, and the Indian community.

2. Source of ICWF



2. i.a. Service Charges The Indian Community Welfare Fund (ICWF) set up in the Missions will have the following revised charges:

Funds raised by the Indian Missions by levying a service charge on Consular Services as under:

(i) For Visa, OCI/PIO Cards - US \$3/- per document rounded off in local currency to the next whole/round number

(ii) For Passport Services - US \$2/- per document rounded off in local currency to the next whole/round number

(iii) For attestation of employment document - US \$2/- per worker rounded off in local currency to the next whole/round number

(iv) Attestation of other documents and other miscellaneous consular services rendered by Mission (other than in death cases) - US \$2/- per worker rounded off in local currency to the next whole/round number

2.i.b. The charges so levied shall be in local currency rounded off to the next whole/round number. The official exchange rate prevalent at the time of such calculation shall be used, and shall not be changed thereafter during the Financial Year keeping in view that charges so levied are adequate to meet requirements of Missions/Posts and to build a suitable reserve to meet unforeseen contingencies. The service charge may be revised by this Ministry from time to time.

2.ii. Voluntary contributions by Indian community.

Missions/Posts may receive contributions into ICWF from local Indians or Indian community organizations and shall issue a receipt thereto indicating clearly the names and addresses of such contributors. Such receipts should be included in their monthly statement of ICWF accounts sent



to MEA and Pr.CCA.

2.iii. **Income from deposits and investments:** *If surplus ICWF funds are maintained in FDs, the interest accrued through the investment shall be deposited on yearly basis in the main ICWF corpus.*

2.iv. **Existing welfare Funds operating in Mission/Posts** *shall be merged with ICWF after performance audit of existing Fund by the O/o Principal Chief Controller of Accounts. A certificate in this regard will be furnished to MEA.*

2.v. **For Missions/Posts which have not set-up ICWF so far,** *Ministry of External Affairs would provide budgetary support for setting up the ICWF in the Indian Missions to the tune of Rs. Five lakh annually, for three(3) years or till the period the fund becomes self sustaining, whichever is earlier. The amount would be limited to meet the deficit in financial resources of Missions, with due regard to the utilization of the amount released during previous years.*

3. Criteria for Utilisation

3.i. *ICWF funds can be used to assist only Indian citizens residing in the host country or those in distress while visiting a foreign country. Persons of Indian Origin and Overseas Citizens of India Card Holders are not eligible for individual financial assistance from ICWF.*

3.ii. *ICWF can be utilized for the benefit of Indian nationals in distress on a means tested basis provided the officer approving ICWF expenditure has satisfied himself that the beneficiary deserves to be assisted.*

3.iii. *Ordinarily only such Indian National(s) who have entered the host country legally shall be eligible to receive benefits under this Fund. In cases where it is not so, assistance may be provided after HOM/HOP has recorded*



his satisfaction to the effect that the circumstances of the case necessitate providing assistance under ICWF.

4. Procedures for approval

4.i. Missions/Posts will consider requests from Indian nationals, written or verbal, for grant of assistance. All verbal requests shall be followed by written confirmation.

4.ii. Written proposals for expenditure from ICWF should originate from the Welfare officer/Consular officer/Community Affairs officer of the Mission/Post who will examine and submit them to the competent authority for approval with his/her recommendation, on a case-to-case basis. In Missions/Posts where such officers are not designated, the HoM/HoP may designate an appropriate level officer for proposing such assistance.

*4.iii Approval of expenditure from ICWF will be at the level of HoM/HoP subject to ceilings specified for various ICWF related items of expenditure in Sections A, B and C of the Guidelines respectively. **HoM/HoP should ensure that ICWF shall not be used for routine activities or expenses for which budget spending is available.***

*4.iv **HoM/HoP may formally authorize DCM/DHC/DCG** to approve requests for assistance from ICWF subject to an upper limit of*

US\$ 2000 per case in ECR Countries;

US\$ 1000 per case in Other Countries.

4.v Is HoMs/HoPs consider it necessary to deploy the Fund in most deserving cases, for services not indicated in these guidelines or if Mission/Posts' funds are not adequate to meet a contingency, they shall send a detailed self contained proposal, alongwith facts, justification etc. seeking prior approval of Ministry.

4.vi Proposals received from Missions/Posts will be



considered in the Ministry, by a Committee comprising of following members:

- (i) Joint Secretary, OIA Division, MEA (dealing with ICWF);*
- (it) Joint Secretary (CPV), MEA; and*
- (iii) Director (Finance) or DS (Finance), MEA.*

4.vii. The recommendation of the above Committee shall be submitted to Foreign Secretary. Proposals involving expenditure upto Rs. 25 lakhs can be approved by Foreign Secretary. Proposals involving expenditure beyond Rs. 25 lakhs shall be submitted to EAM for approval.

4.viii Requests for transfer of additional ICWF funds from other Missions/Posts (if there is shortage of funds in the ICWF account of the recipient Mission), to assist distressed overseas Indians during crisis/emergency situations, shall be submitted by HoM/HoP concerned, to the Ministry for approval of EAM.

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9. Transportation of Mortal Remains (TMR)

9.i. Expenditure on incidentals and airlifting mortal remains of deceased Indian national to India or local cremation/burial of deceased in such cases where the employer, sponsor or insurance company is unable or unwilling to do so as per the contract and the family is unable to meet the cost.

9. ii. Mission/Post may provide Free of Cost (FOC) letter to Air India/Indian Airlines or pay for the one way airfare for TMR from the concerned airport in the country of departure of remains to the nearest airport to the place of destination in India, in deserving cases on means tested basis. Wherever deemed necessary, the Mission/Post, with the approval of HOM/HOP, may also provide airfare by the



cheapest class for a relative/attendant to accompany the mortal remains by the same flight.

9. iii. Mission/Post can pay for cremation / burial of deceased Indian national in the host country subject to authorization of HoM /HOP and family members where the situation demands so.

9.iv. Before payment is released HOM/HOP may satisfy himself that related expenditure cannot be borne under contract of deceased (with the employer/sponsor) or the insurance policy of deceased.

9.v. Mission/Post may pay for expenditure on embalming charges, and services charges of the agency which facilitates transportation of remains to India. Mission/Post may constitute a panel of such agencies on an annual basis, with rates (as commensurate with prevailing local rates) specified for different services provided or actual costs, wherever local government agencies are handling such work.

9. vi. Belongings of deceased: In ECR countries and Malaysia, based on request from the family of the deceased, HOM/HOP may authorise in deserving cases, payment for transportation (preferably by sea cargo) of important personal belongings of the deceased Indian national to the nearest port/airport in India, upto a maximum of 100 kgs as per actuals and approved rates of concerned Mission/Post for its panel of packers/forwarding agents with an upper limit of US\$ 500 per case.”

3. In case of a worker, coordination is done between the nominated family members of the deceased, the insurance company and the employer, as may be relevant and the Indian Mission closely monitors the entire exercise. The SOP shown to the Court reads as under:-



“Standard Operating Procedure (SOP) for Transportation of mortal remains

A. *Transportation of mortal remains of Indians who die abroad, involves completion of certain formalities before the local authorities allow such body/bodies to be transported to India. There exists a singly window clearance in all Indian Missions/Posts for such cases. As soon as the information about the death of an Indian national comes to the knowledge of the concerned Indian Mission/Post abroad, they take proactive action by seeking a report from the local Foreign Office and other concerned authorities regarding the cause of the death of the Indian national. Our Missions/Posts abroad inform the next of kin of the deceased Indian national, and facilitate the transportation to India or local burial of mortal remains in accordance with the wishes of the family of the deceased.*

B. *Transportation of mortal remains of Indians involves the following steps-*

- i. The family to nominate a person on their behalf to carry out all the formalities in foreign country, if they are unable to come to the foreign country to take over the mortal remain.*
- ii. The Authorized person/ Employer/University Authority to inform the Insurance Company (if any).*
- iii. The Authorized person Employer/University Authority to nominate a Transporter (in consultation with Insurance Company, if any).*
- iv. To get the FIR copy from the Police authorities, if applicable*
- v. Transporter to complete the formalities of Embalming, Encoffining & Quarantine of the mortal remains as soon as possible*
- vi. The Authorized person/ Employer/University Authority/ Transporter to book an Air Ticket to India for transportation of mortal remains.*
- vii. The authorized person needs to obtain the documents*



(FIR, if any, Medical Certificate/ Death Certificate, Original Passport, Embalming Certificate, Encoffining Certificate, Quarantine Certificate, Authority Letter by the family, List of belongings, Air Way Bill (copy or detail information) and provide to Embassy/ Consulate for Cancellation of passport of the deceased and issue of "Death Certificate and NOC".

viii. *The family also needs to authorize a person to collect the mortal remains at the Indian Airport on their behalf, if required.*

C. *For transportation of mortal remains, Indian Missions/ Posts need liaising with different authorities in the foreign country, viz.*

- i. *Medical report/ death certificate issued from the hospital concerned;*
- ii. *Police report (with English translation, if report is in some other language), in case of accidental or unnatural death;*
- iii. *Consent letter from next of kin of the deceased for local cremation / burial / transportation of mortal remains;*
- iv. *Issuing of No Objection Certificate (NOC) by the Mission/Post for transportation or local cremation/burial as required;*
- v. *Clearance and arrangements for embalming of mortal remains from the authorities concerned in the foreign country;*
- vi. *Clearance from local immigration/ customs department.*

D. *These procedures differ from country to country depending on the regulations in the specific country. Therefore, there is no fixed time frame for eventual transportation. Generally, the transportation of mortal remains is quicker in cases of natural deaths in comparison to the cases of unnatural deaths.*

E. *In normal circumstances, such cases are invariably processed between 3 to 14 days in cases of natural deaths.*



Generally, delays occur in cases of unnatural deaths where legal and police investigations have to be completed by local authorities. Delays also occur in cases where the nationality or identity of the deceased needs to be established. In some cases, DNA profiling has also been undertaken to confirm the identity of the deceased. In very few cases, the family of deceased is untraceable or unwilling to provide consent for transportation of mortal remains or local burial /cremation leading to delays.”

4. The court is of the view that the aforesaid Standard Operating Procedures (SOP) and the ‘Guidelines on Indian Community Welfare Fund established in Indian Missions/Posts Abroad’ should be accessible and widely circulated in the public domain. Therefore, the MEA is directed to prominently post and make accessible the said SOP and Guidelines on its website, if not already available, within one week from the date of receipt of copy of this order.
5. All airlines operating from India too may consider hosting the SOP on their respective websites since it is a guidance for Indians flying overseas.
6. Assistance of Mr. N. Hariharan, the learned Senior Advocate (Amicus Curiae) and the learned counsel for the parties is acknowledged with gratitude.
7. The appeal is disposed-off in terms of the above.

NAJMI WAZIRI, J

DR. SUDHIR KUMAR JAIN, J

JULY 13, 2023/lj/sd