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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PIL-CJ-LD-VC- 29 OF 2020

Ketan Tirodkar

.. Petitioner

Vs.

State of Maharashtra & Anr.

.. Respondents

Ms. Aparna D. Vhatkar for Petitioner.

Mr. P. P. Kakade, Govt. Pleader a/w Ms. Nisha Mehra, AGP for State.

Mr. A. Y. Sakhare, Senior Advocate a/w Ms. Yamuna Parekh for MCGM.

CORAM: DIPANKAR DATTA, CJ. &
N. J. JAMADAR, J.

JULY 03, 2020

P.C.

1. The petitioner claims to be a social activist. From the cause title of the PIL Petition, it appears that he has been residing at Pune. In this proceeding, styled as 'Public Interest Litigation', he seeks to bring to judicial notice alleged negligence in management and disposal of dead bodies of COVID-19 victims by the staff of the Municipal Corporation of Greater Mumbai (hereafter "the Corporation"), more particularly in the crematoriums at Shivaji Park and Chandanwadi. The material paragraph from the PIL Petition, which forms its plinth, reads as follows :-

“3. It has been learnt that Shivaji Park funeral site for Hindus has been receiving bodies of COVID-19 casualties which are neither wrapped in the 'leak-proof' bags nor are they applied with 'hypochlorite'. A worker of Shivaji Park funeral site has been found infected with COVID-19 and presently there are only seven workers on duty performing the high-pressure task.

The smoke emanating from the process of electric funeral goes up around the area creating an eminent (sic, imminent) danger of the residents in the vicinity getting infected.

Huge number of bodies keep coming to various such funeral sites from civic & State hospitals without being wrapped and without being subjected to application of 'hypochlorite'.

Shivaji Park Crematorium in Dadar West and Chandanwadi crematorium in Charni Road have been receiving major workload as they are in the close vicinity of major State & Civil hospitals. Around 18 to 20 bodies are received every day by these two crematoriums. The staff is not given adequate medication and the protective overalls.

Moreover, there is eminent (sic, imminent) danger of the residents in the surrounding localities catching infection due to the smoke emitted by the chimneys.”

2. On the basis of such pleadings, it has been prayed in the PIL Petition as follows :-

(a) This Hon'ble Court may be pleased to direct the

Respondent to direct the respondent State to enforce the safety guidelines for applying 1% hypochlorite over the bodies.

(b) This Hon'ble Court may be pleased to direct the Respondent to ensure that the bodies of the COVID-19 patients are wrapped in the 'leak-proof' bags before sending them to the crematoriums, Muslim & Christian burial places.

(c) This Hon'ble Court may be pleased to direct the Respondent to provide adequate medication, protective overalls and sufficient material to maintain hygiene for the workers engaged at the funeral places.

3. The Corporation, by filing an affidavit-in-reply, has categorically denied the material allegations in the PIL Petition. Referring to the guidelines dated March 15, 2020 issued by the Ministry of Health and Family Welfare, Government of India on management of dead bodies and a circular dated June 4, 2020 issued by it laying down Standard Operating Procedures for handling of dead bodies, the Corporation has contended that the provisions of the guidelines are being strictly enforced so as to keep the spread of the virus within manageable limits. Relying on the decision of a coordinate Bench of this Court dated May 22, 2020 passed in LD-VC-46-2020 (Pradeep Gandhi & Ors. vs. State of Maharashtra & Ors.) and other connected matters, which dealt with the issue of decent burial of COVID victims, it has been

emphasized that things are moving in the right direction and that there is no case for judicial intervention.

4. A rejoinder affidavit has been filed by the petitioner. It has been vaguely alleged therein that the guidelines that are issued are not being strictly followed by the Corporation. Particulars of any specific incident are not provided. When questioned on the point of absence of particulars, Ms. Vhatkar, learned Advocate for the petitioner submits that since the petitioner during the period of lockdown is away in Pune, he has been disabled in furnishing particulars. This is apart from the fact that the rejoinder does not conform to Order VI Rule 15 of the Code of Civil Procedure.

5. We have heard Ms. Vhatkar and Mr. Sakhare, learned Senior Advocate for the Corporation at some length and perused the pleadings on record.

6. The allegations made by the petitioner do not as such appear to be based on his personal knowledge, though paragraphs 1 to 8 are verified as true to the best of his knowledge. Whatever he has learnt on reading certain newspaper reports has triggered the institution of this PIL Petition. In course of hearing, Ms. Vhatkar admits that newspaper reports are not admissible evidence. No material has been placed before us which could even

remotely support or validate the stand that the petitioner has taken in the PIL Petition. In the absence of the relevant data, we hold his fears and concerns to be misconceived. That the petitioner has been residing in Pune during the lockdown period and alleging mismanagement in Mumbai has also left us to wonder how he could have verified the pleadings in the PIL Petition as true to the best of his knowledge. That the petitioner has been residing in Pune, for which he could not provide relevant facts and figures for drawing up the PIL Petition in a more comprehensive manner, is also of little importance. Once it is admitted by Ms. Vhatkar that the petitioner did not have any first hand knowledge of whatever has been alleged in the PIL Petition, we are constrained to observe that verifying the contents of the PIL Petition as true to the best of the knowledge of the petitioner has not been a proper exercise.

7. Even if we keep aside these technicalities and proceed on the merits of the matter, we find on the one hand the emphatic stand of the Corporation that the guidelines dated March 15, 2020 and June 4, 2020 issued by the Ministry of Health and Family Welfare, Government of India as well as the Corporation itself, respectively, are being scrupulously followed and enforced in the matter of management and disposal of dead bodies of COVID victims. Not only has the Corporation pleaded that the polythene bags in which the cadavers are wrapped are of the requisite quality, it is also

pleaded that 'hypochlorite', to the extent necessary, is being administered on the cadaver so as to prevent the spread of the virus. Reference has also been made to other clauses of the guidelines which the Corporation has been adhering to, to ensure that the people residing in the vicinity of the crematoriums within the municipal limits are kept free from contracting any infection to the extent possible.

8. As referred to earlier, there are bare denials in the rejoinder affidavit and vague allegations that the guidelines have not been strictly followed. An action based on vague allegations does not deserve to be proceeded with. The other allegations of the petitioner in the rejoinder affidavit that the Corporation has not furnished full details of how many staff are on its rolls, how many of them are attending work, what steps are being taken against those guilty of absenteeism, etc. are not at all germane to the concerns that the petitioner has expressed in the PIL Petition.

9. The case run in paragraph 3 of the PIL Petition, the statements made in answer thereto by the Corporation in its reply affidavit and the absence of any particulars in the rejoinder affidavit as to any specific incident of mismanagement, apart from reference to unnecessary points, lead us to the unmistakable conclusion that no case for interference has been set up by the

petitioner. The PIL Petition stands dismissed, but without any order of costs.

10. We, however, hope and trust that the Corporation shall continue to earnestly adhere to and enforce the extant guidelines so that life of each and every citizen is preserved and that they are not put to unnecessary distress as a result of the contagion.

11. This order will be digitally signed by the Sr. Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

N. J. JAMADAR, J.

CHIEF JUSTICE