

HIGH COURT OF MADHYA PRADESH, JABALPUR

WRIT PETITION NO. 3945/2019

Petitioners ... Shashimani Mishra & Another

Versus

Respondents ... State of Madhya Pradesh & Another

Mr. Ajay Mishra. Ld. Sr. Advocate with Mr. Amrit Mishra Ld. Advocate for the Petitioners.

Mr. Praveen Dubey, Ld. Deputy Advocate General for the Respondent State.

Mr. V.S. Shroti, Ld. Sr. Advocate with Mr. Saurabh Soni, Ld. Advocate for the Respondent No.2

Reserved on: 11/04/19

Delivered on: 17/06/19

Mr. Justice Atul Sreedharan

ORDER

“The only way to deal with an unfree world is to become so absolutely free that your very existence is an act of rebellion”.

These words of Albert Camus, a French Philosopher, Author, and a Nobel Laureate in Literature, rings true in the facts of this case. The State Human Rights Commission, the Respondent No.2 herein, has impliedly alleged rebellion on the part of the Petitioner for not conforming to the social mores of the community by refusing to subject the mortal remains of his father to final rites and for not allowing the police and other authorities of the State to enter his residential premises in order to ascertain whether the father of the Petitioner No.2 is dead or alive. The Petitioner on the other hand has questioned the impugned order passed by the Respondent No.2 on the ground that, the

Respondent No.2 has attempted to impinge upon the Petitioner's freedom to act as he wishes and seeks to curtail the Petitioner's free will by insisting that the Petitioner allow free ingress to the police into his residential premises to ascertain the truth relating to the Petitioner's father. The Petitioner insists that his father is alive and well and is under treatment at his residence. He does not wish the authorities of the State to intrude upon his privacy by entering his house to ascertain whether the father of the Petitioner is dead or alive.

2. The present case seeks an answer to the question as to what is the meaning of legal/lawful and whether, the impugned order passed by the Respondent No.2 violates the right to privacy of the Petitioner. The Petitioner No.1 is Mrs. Shashimani Mishra, W/o. Mr. Kulamani Mishra. The Petitioner No.2 is Dr. Rajendra Kumar Mishra. The Petitioner No.2 is the son of the Petitioner No.1. The Petitioner No.2 is an officer serving in the Indian Police Service and is presently posted as Additional Director General of Police (Recruitment). Both the Petitioners are resident of D-7, 74 - Bungalows, Bhopal. The Petitioners are aggrieved by the letter dated 14/02/19 issued by the State Human Rights Commission, the Respondent No.2 herein, addressed to the Director General of Police, Madhya Pradesh (hereinafter referred to as "DGP"). Also aggrieved are the Petitioners, by the letter dated 20/02/19 addressed by the DGP to the Respondent No.2.
3. The case arises from a report in the newspaper "Hari Bhoomi" dated 14/02/19 in which one of the head line story was "बदबू से बीमार जवानों

ने बताया मृत पिता को जीवित करने झाड़ फूँक, एडीजी बोलेउनमे तो 14 जनवरी को ही प्राण लौट आए थे". The report disclosed that the father of the Petitioner No.2 passed away after treatment on 14/02/19 and thereafter, the Petitioners have been keeping the lifeless body of Mr. Kulamani Mishra at their residence on account of which two of the guards on duty fell ill allegedly due to the stench emanating from the decomposing body.

4. On the basis of the newspaper report, The Respondent No.2 noted on the copy of the report *"Call for the report from (1) DGP Bhopal – whether it is a natural death of unnatural ? – whether dead body has been cremated or not? – what scientific measures have been adopted to preserve the dead body and to stop the bad smell? Within three days"*. The Registrar (Law), on the afore stated directions of the Respondent No.2, addressed the letter dated 14/02/19 to the DGP seeking answers to the queries raised by the Respondent No.2 as already mentioned hereinabove.
5. In response to the said letter, the Police Head Quarters (hereinafter referred to as "PHQ") vide letter dated 18/02/19 replied that Mr. Kulamani Mishra was admitted at Bansal Hospital on 13/01/19 with a serious respiratory condition and that he passed away at 4.30 pm on 14/01/19. The death was natural on account of the illness and the death certificate was enclosed. The letter further revealed that the last rites have not been performed. It also informed the Respondent No.2 that the Station House Officer of Police Station TT Nagar went to the residence of the Petitioners in order to enquire about the death of Mr. Kulamani Mishra. Respondent No.2 was also informed that the Petitioner No.2

did not give a clear answer to the SHO and neither did he permit the officer to enter the Petitioners residence. Lastly, it informed the Respondent No.2 that it was not possible for the police to give information regarding the scientific measures adopted by the Petitioners in order to prevent the decomposition of the corpse.

6. Upon receiving the letter dated 18/02/19 from the PHQ, the Respondent No. 2, vide letter dated 19/02/19 issued certain directions to the DGP. These directions were to depute a Senior Police Officer, not below the rank of s Superintendent of Police who was to contact the Dean of the Gandhi Medical College, Bhopal or the Chief Medical and Health Officer, Bhopal to constitute a committee of three Medical Specialists, belonging to the Allopathic System of medical science. He was also to contact the officer concerned of the Department of Ayurvedic Medicine to constitute a committee of three Government Ayurvedic Doctors/Specialists. These Committees, assisted with a police force, headed by a Superintendent of Police, were to visit the residence of the Petitioners at 74 Bungalow and respectfully enter the premises after informing the Petitioners the purpose of their visit and after obtaining permission. Lastly, this letter directed, that if the Petitioners resist the team members or interfere with the inquiry as directed by the Respondent No.2, the police officers and the team members are authorised under section 13(3) of the Protection of Human Rights Act, 1993 and under Regulation 12 of the Regulations to take necessary action.

7. Thereafter, the Petitioners have filed the Writ Petition on 22/02/19. The pleadings are complete and with the consent of parties, the petition was heard on 11/04/19 and reserved for orders.
8. Mr. Ajay Mishra, Ld. Sr. Counsel appearing for the Petitioners has submitted with much vehemence, that the husband of the Petitioner No.1 and the father of the Petitioner No.2 is still alive and that he is undergoing treatment under the Ayurvedic System of medicine and that Mr. Kulamani Mishra is not dead. The Ld. Counsel has conceded to the fact that Mr. Kulamani Mishra was admitted to Bansal Hospital on 13/01/19 with respiratory distress. He however does not agree with the death certificate issued by Bansal Hospital which declared Mr. Kulamani Mishra dead on 14/01/19. According to the Ld. Counsel for the Petitioners, signs of life existed, though feeble, in Mr. Kulamani Mishra and that he was being treated at the residence of the Petitioners by a Vaid named Radheshyam Shukla. Ld. Counsel for the Petitioners drew the attention of this Court to documents filed along with I.A No. 3127/19 which is an application for taking additional documents on record. For the reasons stated therein, I.A No. 3127/19 is allowed and the documents filed therewith are taken on record and considered by this Court. Annexure P/6 is a certificate issued by Vaid Radheshyam Shukla dated 05/03/19 according to which, the Vaid is treating Mr. Kulamani Mishra regularly from 15/01/19. Annexure P/7 is record of the treatment being given to Mr. Kulamani Mishra, by the Vaid since 15/01/19.
9. It has further been submitted by the Ld. Sr. Counsel for the Petitioners that their privacy is being targeted by the Respondent No.2 on the basis

of baseless newspaper reports. He has drawn the attention of this Court to the reportage in the newspaper Hari Bhoomi dated 14/01/19, on the basis of which the Respondent No.2 took *suo motu* cognizance of the case. He has questioned the very basis on which the newspaper report is based, which is the alleged information given by two of the guards posted at the house of the Petitioners who reportedly fell ill on account of the foul smell emanating from corpse. He states that it is undisputed that statements of the two guards have never been recorded by anyone. It is also undisputed that the identity of the said guards is not known. He has further submitted that if Mr. Kulamani Mishra actually died on 14/01/19, then nothing could have prevented the decomposition of the body and the stench of death would have permeated all over the immediate neighbourhood. He has also stated at bar that the immediate neighbours of the Petitioners are Senior Bureaucrats of the rank of Principal Secretaries to the Government of Madhya Pradesh and such persons would have been the first ones to complain about foul smell if indeed Mr. Kulamani Mishra was dead and the body was decomposing. However, there has not been a single complaint from any of the neighbours of the Petitioners to the police or any other authority to that effect. Thus, the case of the Petitioners is that Mr. Kulamani Mishra is very much alive and is undergoing Ayurvedic treatment for his illness and that he is not dead, as claimed by the Respondent No.2, Ld. Sr. Counsel has also referred to certain articles from the Universal Declaration of Human Rights which emphasise on the right to privacy of an individual. They shall be dealt with by this Court in due course.

10. Mr. V.K. Shroti, Ld. Sr. Counsel appearing on behalf of the Respondent No.2 has proceeded on the premise that Mr. Kulamani Mishra is dead

and his corpse is being kept in the residence of the Petitioners unlawfully. He further states that the decomposing body of Mr. Kulamani Mishra poses a health hazard to people in vicinity and that the remains of Mr. Kulamani Mishra should be subjected to last rites as per the rites and rituals of the Petitioners and that would be the way in which a dignified quietus is given to the entire episode. The letters written by the Respondent No.2 to the DGP indicates that to begin with, the Respondent No.2 believes that Mr. Kulamani Mishra is no longer alive. However, the letter dated 19/02/19 written by the Respondent No.2 to the DGP giving directions to constitute two committees of doctors, one each of Allopathic and Ayurvedic systems of medicine, reveals a lingering doubt in the mind of the Respondent No.2 with regard to the actual status relating to the life of Mr. Kulamani Mishra. The Ld. Sr. Counsel for the Respondent No.2 has referred to the judgment of the Supreme Court in **Pt. Parmanand Katara Vs. UOI – (1995) 3 SCC 248**, and also a judgement of Madras High Court in **S. Sethuraja Vs. The Chief Secretary, Government of Tamil Nadu and Ors – W.P (MD) No. 3888 of 2007**. The Judgement of the Madras High Court dealt with an instance where an Indian national had died abroad and his next of kin wanted his body to be brought to India for last rites. In that case, the relatives of the deceased themselves were interested in performing the last rites in accordance with Hindu rituals and therefore approached the High Court to issue directions to the Central Government to assist the Petitioner in that case to bring the human remains to India. The main thrust of the Ld. Sr. Counsel's argument is that the body of Mr. Kulamani Mishra deserves a dignified disposal in accordance with the rites and rituals of the Petitioners community and that the retention of the remains by the Petitioners

violates the human rights of Mr. Kulamani Mishra, which continues even after his demise till the dignified disposal of the body.

11. Heard the Ld. Counsels for the parties, perused the pleadings and the documents filed therewith. In this case, the stand taken by the parties are conflicting. The Petitioners state that Mr. Kulamani Mishra is alive and undergoing treatment and that they don't want to allow any kind of inquiry that would challenge their right to privacy and so, they would not allow any investigative team, free ingress into their residence in order to ascertain whether Mr. Kulamani Mishra is alive or dead. If the contention of the Respondent No.2 is correct, then the natural fallout of death would have been the decomposition of the body, in which case, the stench would have been so overpowering that it would be impossible for any neighbour in a radius of fifty-metre from the residence of the Petitioners, to have been unaffected. On the contrary, it is undisputed that there have been no complaints from any of the neighbours. Besides, the Petitioners are living in the same house in which the corpse (as per the Respondent No.2) of Mr. Kulamani Mishra is kept. On the other hand, even if it is assumed that Mr. Kulamani Mishra is no more, there is a possibility of the body having undergone a process of natural mummification which though rare, is not unknown and therefore, decomposition of the body may have been halted. The Ld. Sr. Counsel for the Petitioners has also stated that the Petitioners have not committed any offence or any illegality, that there have been no complaints by any of the neighbours to any authority relating to any stench of decomposition emanating from the house of the Petitioners. The Ld. Sr. Counsel has also submitted that the Respondent No.2 has ironically acted in violation of Article 12 of the Universal Declaration

of Human Rights which provides for the protection of an individuals right to privacy as human right. Article 12 read as follows; **“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”**. The Ld. Sr. Counsel for the Petitioners has argued that the impugned order of the Respondent No.2 arbitrarily interferes with the right to privacy without there being any rational or legal basis for the same.

12. In order to ascertain the legality of the Petitioners act or the lack of it, this Court proceeds to examine the issue from the standpoint of the Respondent No.2 that Mr. Kulamani Mishra is dead. According to the Ld. Sr. Advocate appearing on behalf of the Respondent No.2, even a corpse has the right to a respectable disposal in accordance with the rites and rituals of the religion or community from which the person hailed. The Respondent No.2's basic argument is based upon the judgement of the Supreme Court in Parmanand Katara's case *supra*. In that case, the Supreme Court held that post execution, there was no requirement to keep the body of a condemned prisoner hanging even after the doctor has declared him dead.
13. The question here is if the act of the Petitioners in retaining the body of the deceased and not subjecting it to last rites is unlawful or illegal? It goes without saying that where a body retained in a residential premises by the inmates in a similar situation, starts putrefying, the health-related hazard to the public at large would make the continued retention of the cadaver unlawful and illegal, the same being an offence

u/s. 268 (public nuisance) and 278 (fouling the air) of the Indian Penal Code, and in such a situation, the State would be empowered, if need be, to forcefully enter such a premise to remove the body in the interest of public health and wellbeing. However, the facts in this case do not disclose either public nuisance or fouling of the air. At the risk of repetition, admittedly, there are no complaints. No one who has come forward before any authority, empowered to take cognisance, that the stench of death emanates from the residence of the Petitioners. In such a situation, assuming *arguendo* that Mr. Kulamani Mishra is no more and the Petitioners are retaining his lifeless body instead of disposing it with dignity, would that be an unlawful or an illegal act on the part of the Petitioners? If yes, then the State would be authorised to use such necessary force to remove the body in question and if no, then the right to privacy of the Petitioners cannot be interfered with under the guise of wanting to unravel the truth.

14. The Court proceeds to examine as to what makes an act lawful or legal? and in the converse, what is unlawful or illegal? Where the law permits a certain act, there is no doubt that doing of that act would be legal. Similarly, where the law prohibits a particular act, the doing of that act would be illegal. However, where the law does not explicitly permit an act and neither prohibit it, or in other words, where the law of the land is completely silent about the legality or illegality of the act, would the doing of that act be unlawful, only because it is at conflict with the contemporary mores of the society and an overwhelmingly preponderant public perception of what is right? The liberty of an individual to act in any manner where such act is not prohibited under the law, is unfettered and unquestionable.

15. The law dictionary defines “Lawful” as “Not contrary to law; permitted or recognised by law”¹. A “Legal Act” is defined as “1. Any act not condemned as illegal”². Thus, it is not sufficient that an act must be right or wrong applying the standards of contemporary social morality. The act must be wrong in the eyes of law. “A legal wrong is an act which is legally wrong, being contrary to the rule of legal justice and a violation of the law. It is an act which is authoritatively determined to be wrong by a rule of law, and is therefore treated as a wrong in and for the purpose of the administration of justice by the state. It may or may not be a moral wrong, and conversely a moral wrong may or may not be a wrong in law”³.
16. Perhaps the most succinct and precise definition to the term “Illegal” and “Legally bound to do” is give in section 43 of the Indian Penal Code;

43. “Illegal”, “Legally bound to do”.—The word “illegal” is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be “legally bound to do” whatever it is illegal in him to omit.

Thus, an illegal act is one which is an offence or prohibited by law and gives rise to a cause for civil action. A man is also legally bound to do an act, the non-performance of which, would be illegal.

1 Black’s Law Dictionary – 10th Edition.

2 Black’s Law Dictionary – 10th Edition.

3 Salmond on Jurisprudence – Eleventh Edition by Glanville Williams – Chapter 10, Page 259.

17. The Ld. Counsel for the Respondent No.2 has argued that, dealing with human remains in a manner contrary to social norms is violative of the human rights of the deceased. The reliance by the Ld. Counsel for the Respondent No.2 on Parmanand Katara's case *supra* is misplaced in the facts and circumstances of the case. As already discussed, the Supreme Court in Parmanand Katara's case was dealing with the necessity to keep the body of an executed prisoner hanging for thirty minutes even after the doctor had declared the convict dead. In that context, the Supreme Court held that fair treatment under Article 21 was not restricted to the living alone but the right to dignity and fair treatment extends to the human remains of the condemned convict.
18. Societal norms cannot compel individual behaviour to be in consonance with social expectations unless, the same is mandated through the *jus scriptum*. It may be the norm to consign human remains to the corresponding last rites of the deceased. However, it cannot be held, as is submitted by the Ld. Counsel for the Respondent No.2, that failure to consign the human remains to last rites would result in the violation of the law laid down in Parmanand Katara's case and thus, violate the human rights of the deceased. If the said contention is taken to be correct, what happens in the cases of organ donation? Or, in such cases were the body of the deceased is donated to Medical Colleges for the purpose of introducing fledgling medical students to the subject of Human Anatomy? In the first instance, the human remains are subjected to partial mutilation to remove

such vital organs that may give a new lease of life to the ailing after which the remains may be subjected to final rites. In the second instance, there is complete mutilation of the cadaver in the process of teaching medical students. As far as the society is concerned, both these instances are not in consonance with the preponderant public opinion on how human remains may be disposed of but the importance of both these instances to the society cannot be underscored enough.

19. Next, this Court examines the issue whether the Petitioner's right to privacy extends to preventing the authority of the State from entering his residential premises in order to ascertain the truth about his father's condition. A man's home is his castle and within its precincts, he is the undisputed master of his will. What he does within is beyond the scrutiny of the State unless, there is reasonable cause to believe that the residential premise is a scene of crime or of unlawful activity whereby the law of the land empowers the relevant functionaries of the State to compel the occupier to give ingress to them.
20. The preamble of our Constitution has at its focal point, the liberty of the individual. In this regard, it would be relevant to briefly refer to the judgment of the Supreme Court in what is popularly known as the "Right to Privacy" case where the Supreme Court held **"..... The individual lies at the core of constitutional focus and the ideals of justice, liberty, equality and fraternity animate the vision of securing a dignified existence to the individual. The Preamble envisions a social**

ordering in which fundamental constitutional values are regarded as indispensable to the pursuit of happiness. Such fundamental values have also found reflection in the foundational document of totalitarian regimes in other parts of the world. What distinguishes India is the adoption of a democratic way of life, founded on the Rule of Law. **Democracy accepts differences of perception, acknowledges divergence in ways of life, and respects dissent**⁴ (Emphasis by the Court). The Judgement of the Constitution Bench of the Supreme Court makes it clear that in a democracy like ours there is no expectation from the citizens to act and behave like clones having the same perception and way of life. On the contrary, the Supreme Court has held that a democratic way of life accepts and respects dissent and allows the individual to think and act in a manner that may be at complete divergence with the thoughts and expectations of the society.

21. The Conduct of the Petitioners may be at divergence from the established social norm. It may be based upon a perception which may not find the approval of many yet, the Petitioners have the right to be different in thought, perception and action. Keeping the dead body of Mr. Kulamani Mishra (as is perceived and so stated on behalf of the Respondent No.2) at their residence may be revolting and abhorrent, bringing the bile to the mouth of many, viewed as bohemian by those who are conventional and conformist and yet, under no circumstances can the State intervene and disturb the right to privacy of the

⁴ Justice K.S. Puttaswamy (Retd) and Anr Vs. Union of India and Others – (2017) 10 SCC 1, paragraph 107 at page 402 to 403.

Petitioners if the said act does not come within the ambit and scope of an offence or an illegality. Morality may be a source of law, but it is not law and neither does it have the force of law. Today's morality may become law tomorrow either by way of legislation or common law pronouncement but till then, moral indignation of the society or the State, acting at behest of the society, cannot curtail the actions and thoughts of an individual as long as such action is not violative of any existing law.

22. Thus, the act of the Petitioner No.2, even assuming *arguendo* that his father is no more and he has kept the human remains in his residential premises, by itself does not become an illegality warranting intrusive action by the State. **“A regime, which forbids everything save only those things that are expressly allowed, would be regarded as a bullying power-structure, while a regime which permits everything save only those things that are expressly forbidden, would be counted liberal by contrast”**⁵. India falls in the latter category being a liberal democracy where a man is permitted to act in any manner he pleases, where such act is not prohibited under the law, irrespective of the fact that his act might be seen as galling by the majority. In view of what has been observed and held by this Court hereinabove, the queries raised by this Court in paragraph 13 and 14 of this judgement stands answered accordingly.
23. Thus, the Petition succeeds, the impugned direction given by the Respondent No.2 to the State is held to be violative of the right to privacy of the Petitioners and thereby violative of the

fundamental right to life of the Petitioner as enshrined under Article 21 of the Constitution. Therefore, the same is quashed.

(Atul Sreedharan)
Judge