

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

{Through Virtual Mode}

**LPA No. 99/2022
CM No. 2983/2022
Caveat No. 921/2022**

Union Territory of JK & Ors.

... Appellant(s)

Through: -

Mr D. C. Raina, Advocate General with
Ms Asifa Padroo, AAG and Mr Sajad Ashraf Mir, Government Advocate.

V/s

Mohammad Latief Magrey & Anr.

... Respondent(s)

Through: -

Mr Tahir Majid Shamsi, ASGI for R-2; and
Ms Deepika Singh Rajawat, Advocate for R-1.

CORAM:

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge
Hon'ble Mr Justice Wasim Sadiq Nargal, Judge**

(ORDER)

03.06.2022

Impugned in this *intra* Court appeal is Judgment dated 27th of May, 2022 passed by the learned Single Judge in the Writ Petition [WP (C) No. 11/2022] filed by the Writ Petitioner/ Respondent No.1 herein, whereby the learned Single Judge, while disposing of the said Petition, has directed as under:

arrangement for transportation of the dead body to the village of the petitioner for according burial in his native graveyard in accordance with the traditions, religious obligations and religious faith which the deceased professed during his life time provided it is in deliverable state. The respondents are free to impose any reasonable terms and conditions in respect of exhumation, transportation and burial of the dead body of Amir Latief Magrey, the son of the petitioner. Since the dead body of the deceased must be in advance stage of putrefaction, as such, it would be desirable that the respondents act with promptitude and do not waste any further time. However, if the body is highly putrefied and is not in deliverable state or is likely to pose risk to public health and hygiene, the petitioner and his close relatives shall be allowed to perform last rites as per their tradition and religious belief in the Wadder Payeen graveyard itself. In that situation, the State shall pay to the petitioner a compensation of Rs. 5 lakhs for deprivation of his right to have the dead body of his son and give him decent burial as per family traditions, religious obligations and faith which the deceased professed when he was alive”

02. Mr D. C. Raina, the learned Advocate General, appearing on behalf of the Government of Union Territory of Jammu and Kashmir, submitted that the relief granted by the learned Single Judge could not have been granted in terms of the Medical Science Analysis of the dead body which envisages that the dead body gets putrefied only after a period of one month. It is further submitted that the Writ Petitioner/ Respondent No.1 herein had not prayed for the sort of relief granted by the Writ Court and, therefore, the relief is beyond the pleadings on record. The learned Advocate General, while inviting the attention of the Court to Paragraph No.19 of the impugned Judgment, submitted that the Judgment is self-contradictory inasmuch as the learned Single Judge, on the one hand, has referred to the putrefaction of the dead body in advanced stage and directed the Appellant-Government to act with promptitude without wasting any further time, but, at the same time, has taken a contrary view by directing

03. Ms Deepika Singh Rajawat, the learned Counsel for the Respondent No.1, who is on Caveat and is appearing through Virtual mode from Jammu, submitted that right to decent burial of the dead body as per the religious belief is a right guaranteed by the Constitution as held by Supreme Court in the case titled '**Ramsharan Autyanuprasi & Anr. V. Union of India & Ors., AIR 1989 SC 459**'. The leaned Counsel has, in this backdrop, opposed the grant of any interim relief in favour of the Appellant-Government.

04. Having heard the learned Counsel for the parties, perused the pleadings on record and after considering the matter, we feel that this matter requires a final decision from this Court after hearing all parties concerned. Accordingly, let notice be issued to the Respondents.

05. Notice accepted by Ms Deepika Singh Rajawat, learned Counsel on behalf of the Respondent No.1; and Mr Tahir Majid Shamsi, learned Assistant Solicitor General of India (ASGI) for Respondent No.2. Caveat No. 921/2022 stands **discharged** accordingly.

06. List for consideration on 28th of June, 2022.

07. Meanwhile, till the next date of hearing before the Bench, the operation of the impugned Judgment shall stay.