

Court No. - 40

Case :- WRIT - C No. - 8314 of 2023

Petitioner :- Rajendra Kumar Bajpai

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sanjay Kumar Nigam

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Sri Sanjay Kumar Nigam, learned counsel for the petitioner and Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Devesh Vikram, learned Additional Chief Standing Counsel (ACSC) for the State-respondents.

2. Considering the shabby and dilapidated conditions of crematorium/cremation sites across the State, which are lacking basic amenities and infrastructure, we have passed the detailed order on 20.11.2023 by which the Secretary, Nagar Vikas Government of U.P. was directed to file response in the matter indicating therein as to whether the State Government has any concrete policy, which may address the issue. For ready reference, the operative portion of the order dated 20.11.2023 is quoted as under:-

".....6. In response to the aforesaid orders, the District Magistrate, Kanpur Nagar had filed the affidavit on 6.8.2023, which is already on record. On the basis of said instructions, Shri Devesh Vikram, learned Addl. Chief Standing Counsel has stated that the Sub-Divisional Magistrate, Sadar, District- Kanpur Nagar had made a spot inspection on 18.07.2023 and submitted that various amenities had been provided at the site in question. Learned Addl. Chief Standing Counsel has also placed reliance upon the Government Order dated 02.09.2014, wherein the State Government has already directed the authorities concerned to maintain proper cremation sites. He has also placed reliance upon Section 114 (20) of the U.P. Municipal Corporation Act, 1959, which gives ample power to Municipal Corporations for providing and maintaining crematorium/cremation sites. In view of the Act- 1959, the duty is cast upon local Municipal Corporation to provide all basic amenities at the funeral sites. It is also informed that for the financial year 2018-19, the State Government has also provided budgetary allocation of Rs. 42.62 lakhs per funeral site to every Nagar Palika Parishad and Rs.28.79 lakhs per funeral site to the Nagar Panchayat for construction and providing basic amenities.

7. Be that as it may, most of the crematoriums/cremation sites amongst the State of Uttar Pradesh are in a very shabby and in dilapidated conditions and even most of them are also lacking basic facilities/infrastructure. It has been held by the Apex Court that the departed soul should get a decent cremation. Therefore, the basic amenities should be provided for performing last rituals of the dead persons at the cremation centre/Crematorial which may have all basic amenities i.e. water, electricity, parking, shed, hearse, electric crematorial/gas based crematorial etc. at a nominal price.

8. Before proceeding further in the matter, let the Secretary, Nagar Vikas, Government of U.P. file response in the matter indicating as to whether the State Government has any concrete policy which may address the issue in hand.

9. Put up this matter again as fresh on 18th December, 2023."

3. In response to said order dated 20.11.2023, Sri Devesh Vikram, learned ACSC has filed the detailed affidavit of Secretary, Nagar Vikas, Government of U.P., which is taken on record. We have occasion to peruse the said affidavit and asked Sri M.C. Chaturvedi, learned Additional Advocate General to assist the Court. From perusal of the affidavit, we find that in guarded language an objection has been taken that the Urban Local Body i.e. Municipalities/ Municipal Corporations are autonomous bodies. It is the duty of the Urban Local Bodies to ensure the proper maintenance and development of the cremation sites located in the urban areas. Reliance in this regard has also been placed on Section 114 (xx) of U.P. Municipal Corporation Act, 1959, which for ready reference is quoted as under:-

"(xx) the maintenance, fixing and regulation of places for the disposal of the dead and the provision of new places for the said purpose and disposing of unclaimed dead bodies or aiding within its means any arrangement made with the same objects by any other institution."

4. In the said affidavit, an objection is also taken that for maintenance and development work of Cremation Center/ Crematorium in the rural areas, the competent authority is Panchayati Raj Department, Government of U.P. Therefore, Urban Development Department is not empowered to take any action in respect of maintenance or to regulate such sites across the State in Gram Panchayats.

5. Considering the said affidavit, let the Addl. Chief Secretary, Panchayati Raj, Government of U.P. as well as the Addl. Chief Secretary, Urban Development, Government of U.P. be impleaded as party respondent forthwith.

6. We have come across the horrific situation during the peak of Covid-19 pandemic, when we were unable to carry out proper cremation of the bodies of departed souls due to serious lack of infrastructure at cremation centres. The population is increasing day by day but the infrastructure at the cremation sites are being developed at snail's pace. It is very unfortunate that the common people struggle their whole life for getting proper amenities and even after their last breath they are deprived of from getting proper cremation facilities. At this stage, we are striving to achieve one trillion economy but still unable to give proper facilities at the cremation centres. The State Government should take concrete steps in this regard. We accordingly request Shri M.C. Chaturvedi, learned Addl. Advocate General to communicate this order to the aforesaid officers and if required the matter may also be placed before the Chief Secretary of the State so that proper solution of this problem may be evolved benefitting the public at large.

7. On the request of Shri M.C. Chaturvedi, learned Addl. Advocate General, put up this matter as fresh on 18.01.2024 at 2.00 P.M. for further hearing.

Order Date :- 18.12.2023

S.P.