

K.C. Malhotra (Dr.) Vs Union of India (UOI) and Others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: March 24, 1994

Acts Referred: Constitution of India, 1950 " Article 226
Criminal Procedure Code, 1973 (CrPC) " Section 174

Citation: (1994) JLJ 556 : (1995) 40 MPLJ 349 : (1995) MPLJ 349

Hon'ble Judges: T.S. Doabia, J; S.K. Dubey, J

Bench: Division Bench

Advocate: H.D. Gupta, for the Appellant; K.B. Chaturvedi, G.A., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.S. Doabia, J.

This is a public interest litigation. The petitioner is a serving medical officer. He has shown concern for the dead in the same manner in which

medical profession cares for the living. Railway administration has been arrayed as one of the respondents. The question whether public interest

litigation can be resorted in such matters is not res integra. In Dr. P. Nalla Thampy Thera Vs. Union of India (UOI) and Others, Ranganath Misra,

J. (as his Lordship then was), took cognizance of a petition filed against the Railways claiming protection under Articles 19 and 21. After taking

note of the development of the Railways in this country right from British times, meaningful observations were made in paras 25 and 27 of the

report. These read as under :-

We have said earlier that the Railways are a public utility service run on monopoly basis. Since it is a public utility, there is no justification to run it

merely as a commercial venture with a view to making profits. We do not know - at any rate it does not fall for consideration here - if a monopoly

based public utility should ever be a commercial venture geared to support the general revenue of the State but there is not an iota of hesitation in

us to say that the common man's mode of transport closely connected with the free play of his fundamental right should not be. We agree that the

Union Government should be free to collect the entire operational cost which would include the interest on the capital outlay out of the national

exchequer. Small marginal profits cannot be ruled out. The massive operation will require a margin of adjustment and, therefore, marginal profits

should be admissible.

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We think it proper to conclude our decision by remembering the famous saying of Henry Peter Broughan with certain adaptations : It was the

boast of Augustus that he found Rome of Bricks and left it of marble. But how noble will be the boast of the citizens of free India of today when

they shall have it to say that they found law dear and left it cheaper; found it a sealed book and left it a living letter; found it the patrimony of the

rich and left it the inheritance of the poor; found it the two-edged sword of craft and oppression and left it the staff of honesty and the shield of

innocence.

The Bombay High Court in the case of Ramanathsekhar and Another Vs. Pandho Paddhaya and Others, directed the railway authorities to

provide toilet facilities at selected stations. Thus, resort to public interest litigation vis-a-vis to railways is an accepted norm.

Coming to the facts of this case :

On 24th November 1993, at 4 A.M. Malwa Express was on its way to Delhi. Near Birlanagar Railway Station, an unfortunate accident took

place. The above train was involved in a head on collision with a goods train. Sixty one persons were injured. Twelve were left dead.

In the petition, petitioner has referred to the fact that this accident could have been avoided had proper care and caution been exercised by the

railway department but looking at the prayer clause of the petition, it appears that his main grievance is that for five days dead bodies were kept in

the dead house and no effort was made to inform the relatives of the unfortunate victims. He has also taken exception to the factum of burying the

dead bodies. The petitioner contends that audio and visual media should have been approached so that the relatives could identify the dead bodies.

The railway administration has filed a return. Their stand is that accident did take place. The case further is that entire matter has been investigated.

A report has been given by the Commissioner for Railway Safety, Central Circle, Bombay. The responsibility of the persons who have committed

the lapses has been fixed. The report refers to the fact that 13 deaths took place in this accident, 9 on the spot and four later on. Sixty one persons

suffered injuries; 34 being cases of grievous injuries.

The report indicates that medical vans with a view to provide relief to the injured were ordered to reach the site with promptness. Medical vans

were ordered to move from Jhansi and Agra at 4.10 A.M. and 4.25 A.M., respectively. These medical vans left Jhansi and Agra at 4.42 A.M.

and 5 A.M. and arrived at the scene at 6.30 A.M. and 7.20 A.M., respectively. Medical relief was given immediately. Forty persons were

admitted in J.A. Group of Hospitals, Gwalior and seven were admitted in Military Hospital, three in Morar Civil Hospital and four in A.R.M.E.,

Jhansi.

We have perused the report given by the Commissioner, Railway Safety. We are of the view that all that was possible to be done in this case was

done by the railway administration.

This however, still leaves the main prayer of the petitioner to be dealt with. This is with regard to the scanty respect having been shown to the dead

and that the railway administration was remiss in not publishing the names and photographs of the victims in the newspapers.

It is the contention of the railway administration that speedy relief was provided. The injured were shifted to the hospitals referred to above. As

the maximum deaths occurred with regard to the passengers travelling in the unreserved compartments, it was difficult to immediately locate the

names and addresses of ill-fated passengers. Still, the list of injured and the deceased persons was prepared and all informations received from

time to time from J.A. Hospital and Military Hospital were followed up. Photographs were published in the newspaper ""Dainik Swadesh"" on 25th

of November 1993. It is further submitted that relatives of the deceased except two came to the scene of occurrence. The guidelines indicated in

the Accident Manual were kept in view. Wherever it was possible to find out the addresses, telegrams were issued. According to the railway

administration, claimants did come forward to claim the dead bodies. Only two bodies could not be identified and none came forward to claim

them. In the case of four dead bodies, even though these were identified, the relations did not take any step to take them into custody with a view

to perform the last rites. It is also the case of the railway administration that after the accident took place, the police administration was there and

the disposal of the bodies is as per the norms laid down by the civil administration.

Respondents Nos. 2 and 3 have filed their returns. They have taken the same stand as taken by the railway administration. The dead bodies were

identified and only two remained unidentified. Relations of six persons took the bodies in their custody and performed the last rites whereas four of

the bodies even though identified the relations refused to take them into custody and they were dealt with in accordance with the rules. Similar

approach was adopted qua dead bodies which could not be identified.

Regarding the care of dead bodies, the requisite provision has been made in Accident Manual. The 1984 edition deals with it at page 51.

Paragraph 5.23 reads as under :--

5.23 Care of dead bodies. - In the case of a serious accident, the senior most Railway Officer on the spot should discuss the question of disposal

of dead bodies with the seniormost Police Officer at the scene of the accident and they should jointly determine the place for keeping the dead

bodies under the control of a responsible officer. The Police have to take charge of the dead bodies and they should be given the requisite facilities

for their transport to well protected places where they could be kept pending completion of formalities or until claimed by the next of kin. It may be

stressed that respect for the dead should be the primary consideration and in any case, no dead body should be kept exposed to the weather.

A bare reading of the above provision makes it apparent that the railway administration and the police administration are mindful of the fact that

due respect has to be shown to the dead and this factor was kept in view. A grievance has been made by the petitioner that the dead bodies

should not have been buried. Under the Regulations framed under the Police Act, namely, M. P. Police Regulations, a provision has been made

with regard to the contingencies dealing with a situation where someone dies in an accident or at the public place. Paragraphs 405 and 406 deal

with the situation and are being reproduced below :-

Section I.-Aid to the sick, destitute and travellers.

Sick and destitute persons. - It is the duty of the police to render all possible assistance to any person found in any public place incapable, through

illness or otherwise, of taking care of himself. Sick and incapable persons having no friends to look after them and destitute persons found dying of

disease or starvation, should be taken to the nearest dispensary. If admittance should be refused, the police should adopt such treatment as is

possible in the circumstances and report the matter at once to the Collector for orders. Destitute sick Europeans should be forwarded to a

Government hospital. In the case of sick and incapable persons found travelling by railway, it is the duty of the district and railway police to

cooperate in carrying out the instructions contained in this.

406. Destitute travellers or strangers who die in hospital, in serais or by the wayside will be buried by the police, bills for the cost being sent to the

Collector.

Reliance has again been placed on the provision of Section 174 of the Code of Criminal Procedure, 1973. This provision may also be noticed :-

174. Police to enquire and report on suicide, etc. - (1) When the officer-in-charge of a police station or some other police officer specially

empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by

an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed

an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise

directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-Divisional Magistrate, shall

proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the

neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and

other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to

have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded

to the District Magistrate or the Sub-Divisional Magistrate.

(3) When-

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other

persons committed an offence in relation to such woman, or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman had made a request in this behalf, or

(iv) there is any doubt regarding the cause of death, or

(v) the police officer for any other reason considers it expedient so to do,

he shall subject to such rules as the State Government may prescribe in this behalf forward the body, with a view to its being examined, to the

nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and distance

admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-Divisional Magistrate and any other Executive

Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

The case of the administration is that in compliance with the aforementioned provisions, requisite steps were taken and the dead bodies which

remained unclaimed were buried.

As long as these regulations are there, no exception can be taken with the procedure adopted by the administration. The reason behind burying a

dead appears to be that the remains should remain available for further examination if need be. Even though it is desirable that the last rites should

be performed as per the religious leanings of the deceased, yet, in the presence of the regulations referred to above, no exception can be had to the

procedure adopted.

In view of the factual and legal position noticed above, we are fully satisfied that the administration was alive to the situation which arose out of the

unfortunate accident; prompt medical help was made available to the injured; every effort was made to reach the relative of the dead and within the

framework of the statutory provisions, the dead bodies were disposed of. 14. A reading of these regulations indicate that these regulations were

enacted in pre-independence era. This becomes apparent on reading Regulation No. 405 which speaks on giving different treatment to sick and

destitute Europeans. We are of the view that in spite of adopting certain western norms, a traditional Indian is still keeping himself intact with Indian

culture and traditions. We are still conservative in the manner of disposal of dead bodies. This fact would become apparent that in spite of the fact

that electric crematoriums have been provided at various places, yet traditional method of cremating dead bodies is resorted to by majority of us.

Regard has to be shown to the religious norms. Thus, keeping these factors in view, the administration may give a fresh look to the Regulations. On

this a policy decision be taken by the administration. Beyond this, we say nothing.

The petition is disposed of accordingly.