IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

DATE OF DECISION : 5.7.2017

1. L.P.A. No.2043 of 2014 (O&M)

   Dalip Kumar Jha v. State of Punjab and others.

2. L.P.A. No.2044 of 2014 (O&M)

   Divya Jyoti Sansthan v. State of Punjab and others.

3. L.P.A. No.2052 of 2014 (O&M)

   State of Punjab and others v. Dalip Kumar Jha.

4. L.P.A. No.224 of 2015 (O&M)

   S**adhvi Tapeshwari Bharti & others v. State of Punjab & others.**

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present:- Shri S.P.Soi and Shri Sonal Soi, Advocates for the appellants (in LPA No.2043 of 2014).

Shri Prateek Dwivedi, Advocate for the appellant (in LPA No.2044 of 2014 and for respondent No.3 in LPA No.2043 of 2014).

Shri Sunil Chadha, Senior Advocate with Shri M.S.Atwal, Advocates for the appellant (in LPA No.224 of 2015).

Shri Atul Nanda, Advocate General, Punjab with Ms.Rita Kohli, Additional A.G. Punjab and Shri Hanspal Virk, A.A.G. Punjab (for the appellants in LPA No.2052 of 2014).

Shri Bhuwan Vats, Advocate.

MAHESH GROVER, J.

By this common order we propose to dispose of L.P.A. Nos.2043, 2044, 2052 of 2014 and 224 of 2015 as they hover around the same controversy

raised by the appellants. All of them arise from a common judgment dated 1.12.2014 of the learned Single Judge passed in C.W.P. No.7345 of 2014 which is the order impugned herein. L.P.A. No.2043 of 2014 has been preferred by Dalip Kumar Jha who was also the writ petitioner in C.W.P. No.7345 of 2014. The Divya Jyoti Sansthan (hereinafter referred to as the Sansthan) has filed L.P.A. No.2044 of 2014, while the State, equally aggrieved of the judgment of the learned Single Judge, has filed L.P.A. No.2052 of 2014, while Sadhvi Tapeshwari Bharti a follower has filed L.P.A. No.224 of 2015.

We need not set out the facts of the petition and the counter replies submitted by the contestants to the controversy in detail, as they have been elaborately set out in the impugned judgment, but for the purpose of forming a complete narrative of the present order, we would briefly touch upon the factual aspects so that it offers an understanding of the controversy that we have embarked upon to answer.

A religious preacher by the name of Ashutosh Ji Maharaj, Head of the Divya Jyoti Sansthan (hereinafter referred as the Sansthan) is at the centre of the dispute, after he proclaimed himself to be in a 'state' of Samadhi, with a declaraion to return to the world of mortals (though he has not reverted to state of consciousness thereafter) with his followers, in unimpeachable belief of this fact and preserving the body though declared to be clinically dead by a medical board.

Dalip Kumar Jha claims that Ashutosh Ji Maharaj was his father who expired on the intervening night of 28/29th January, 2014 and he would as his biological son, be entitled to perform his last rites and thus prays his body be handed over to him for the purpose.

Against this i.e. the Sansthan claims that Ashutosh Ji Maharaj is not dead and has rather taken Samadhi and is expected to return after fulfillment of his spiritual mission. The Sansthan thus resists the petition of Dalip Kumar Jha as

also all attempts to dispose off the body by those who presume him to be dead.

The State in turn, supports the Sansthan to the extent that they (Sansthan) cannot be forced to dispose off the body of Ashutosh Ji Maharaj and similarly, it (State) cannot be directed to do so against the wishes of the Sansthan in violation of their belief, of the Maharaj being in Samadhi.

Prior to the filing of C.W.P. No.7345 of 2014 by Dalip Kumar Jha and Criminal Misc. No.M-9195 of 2014 by Puran Singh (Driver of Ashutosh Ji Maharaj), a number of petitions were filed similarly where interference was declined by this Court holding that no public interest is involved. Some of those writ petitions and Criminal Misc. petitions may be noticed here below :-

Sr.No.	Case No.	Petitioner	Prayer	Date of Order
1.	Cr.W.P.-169/2014	Puran Singh	Habeas Corpus	11.2.2014 Dismissed.
2.	CWP 3393 of 2014 (PIL)	Mohinder Pal Singh	Praying for issuance of a writ in the nature of Mandamus directing the Respondent No.1(State of Punjab) to immediately take over the entire property (Movable & immovable) and assets belonging to dera namely Divya Jyoti Jagrati Sansthan.	24.2.2014 Dismissed as withdrawn. The Bench made it clear that on this subject matter no Public Interest Litigation would be entertained as no public funds are involved.
3.	Cr.M-M-6808 of 2014.	Puran Singh	Seeking direction for conducting autopsy	24.4.2014 Dismissed as withdrawn with liberty to seek alternative remedy.
4.	CWP 5792 of 2014 (O&M)	Gurmail Singh	The petitioner was desirous of knowing how Shri Ashutosh Ji Maharaj has gone into Samadhi. The petitioner is of the view that scientific temperament needs to be developed as per the mandate of the Constitution and a high-Powered Committee be appointed regarding concept/science/logic/ hypocrisy/game plan or any other theory as the case may be pertaining to the Samadhi of Shri Ashutosh Maharaj ji.	26.3.2014 Dismissed. We find the petition completely devoid of any merit. We are not here to satisfy the quest of of knowledge of the petitioner. There is no public interest involved in this matter. The petitioner is not concerned with Shri Ashutosh Maharaj as conceded by learned counsel for him.

5. Cr.M-M-9195 of 2014.	Puran Singh	Seeking direction for conducting autopsy.	Pending.
6. CWP	Dilbagh Singh	Seeking withdrawal of security given to Shri Ashutosh Maharaj ji.	

The learned Single Judge in the opening para of the impugned judgment, briefly summed up what was required to be adjudicated and then framed the questions that it was required to answer. We may extract it here below :-

> "This Court has been called upon to adjudicate the conflict whether the belief and practice of the followers of spiritual personality Shri Ashutosh Ji Maharaj that he has been in the state of 'Samadhi' despite having been declared clinically dead, would constitute an essential and integral part of religion for claiming the protection under Articles 25 and 26 of the Constitution of India. Dalip Kumar Jha, petitioner, has approached this Court for enforcement of his religious belief that being son of the above said Godman, he has got to dispose of the body as per the religious rituals. "

The Court then went on to formulate the following questions :-

(1) Locus standi of the petitioner in context to the material made available on the record and the relevant law on the subject.

(2) Maintainability of the writ petition and determination of religious rights of the contesting parties under Articles 25 and 26 of the Constitution of India.

(3) Present biological status of Ashutosh Maharaj Ji as per the material available on record.

(4) Mode of disposal of the body of Maharaj ji in case he is

medico legally declared to be clinically dead or under suspended animation i.e. in 'Samadhi'.

(5) Legal analysis of the claim of the parties, preservation of the body in context to the constitutional right under Articles 25 and 26 of the Constitution of India.

(6) Locus standi and right of Puran Singh in CRM M-9195 of 2014 seeking post mortem on the body of Maharaj Ji and investigation.

(7) Conclusion and relief.

In so far as the claim of Dalip Kumar Jha alleging himself to be the son of Ashutosh Ji Maharaj and his right to claim the body in order to cremate him in accordance with the religious rights as a duty cast upon a son, the Writ Court declined the prayer in view of the disputed question of facts of not only the petitioner Dalip Kumar Jha being the son of the Maharaj Ji, but also, whether Ashutosh Ji Maharaj and Mahesh Jha were one and the same person, which questions were left to be determined in appropriate proceedings before a Civil Court if initiated. The concluding portion of the observation of the Court in this regard may be extracted here below :-

> "In view of the above circumstances, this Court is of the opinion that petitioner does not have any locus standi to file the present petition having not been able to prima facie establish his relationship with Maharaj Ji. He might be son of one Mahesh Jha but whether said Mahesh Jha is Ashutosh Ji Maharaj, cannot be presumed while deciding this petition under Article 226 of the Constitution of India. Any observation made will not prejudice the right of the petitioner

regarding the inheritance and claim of succession of Maharaj Ji in accordance with law, by establishing relationship.

The exercise of jurisdiction to determine the relationship had been necessitated on account of the document relied upon by the petitioner and the plea taken by the petitioner to establish his relationship with Godman Ashutosh Maharaj ji."

The remaining controversy revolving around the belief of the Sansthan of Ashutosh Ji Maharaj having taken Samadhi and the conflict between such a belief and the medical fraternity who declared him to be clinically dead as also the protection claimed by Sansthan and the State of Articles 25 and 26 of the Constitution of India, to resent any action of forcible destruction of the body in violation of their belief, the Court concluded against the State and Sansthan and negated their contentions altogether. Resultantly, the following directions were given :-

"The Civil Writ Petition No.7345of 2014 filed by Dalip Kumar Jha and the CRM M-9195 of 2014 filed by Puran Singh, on the basis of above said discussion, are hereby disposed of with following observations/directions :-

(i) A declaration is issued that Ashutosh Maharaj Ji has died a natural death w.e.f. January 29, 2014 when he was declared clinically dead ;

(ii) In the peculiar circumstances of the case, the present civil writ petition is maintainable ;

(iii) The petitioners Dalip Kumar Jha and Puran Singh do not have any locus standi on the basis of the material produced by them before this Court to claim right for

possession of the property in the body which deserves to be disposed of by cremation, in accordance with the religious rights without prejudice to the rights of the petitioners, devotees and followers of Ashutosh Maharaj Ji and DJJS to participate in the last rites subject to public order, morality and health ;

(iv) The body of Maharaj ji will be cremated by a Committee consisting of District Magistrate, Jalandhar, SDM of the area concerned, SSP, Jalandhar, Commissioner, Municipal Corporation, Jalandhar, Chief Medical Officer, Jalandhar. The above said Committee is directed to make necessary arrangements for disposal of the body of Maharaj ji within a period of 15 days by getting the services of any religious person. The said Committee will implement the order of this Court under the close and strict supervision of Chief Secretary, Principal Secretary, Home, Secretary Health, Secretary Local Bodies and D.G.P. for the State of Punjab. The Committee will report the compliance of the order.

(v) It is declared that belief of the followers of Maharaj ji and DJJS that they have got a right to retain the body of Maharaj ji under refrigeration for an uncertain period being in 'Samadhi' is held to be not a practice protected by their religion being not essential and integral part of their religion under Articles 25 and 26 of the Constitution of India. It is their fundamental duty under

Article 51(A)(h) of the Constitution to develop scientific temper, humanism and the spirit of inquiry and reform ;

(vi) Members of the Committee and the above said supervisory authorities will ensure that there is no breach of peace and violation of law and order without curtailing the right of the followers, alleged relations and members of public to participate in the last rites of Ashutosh Maharaj ji ;

(vii) The mode of disposal of the mortal remains after cremation or burial or immersion would be determined by the Committee ;

(viii) The petition bearing CRM M-9195 of 2014 for a direction to conduct autopsy on the body of Maharaj Ji is dismissed.

It is further directed that during the interregnum period, the body of Maharaj ji will be kept with respect, dignity, and decency and will not be displayed for any other purpose except for the “last darshan” of persons claiming to be his relations, friends or followers subject to public order and morality.

It is further observed and expected that it is the high time that the legislature in its wisdom should rise to the occasion to take up the matter for formulating statute laying down guidelines for disposal of the bodies after declaration of 'death', taking into consideration the various aspects of the religious rites, rituals, customs besides constituting a forum

for adjudication of such disputes."

Learned counsel for appellant Dalip Kumar Jha (L.P.A. No.2043 of 2014) contended that he being the son of Ashutosh Ji Maharaj, has an inherent right to cremate the dead-body of his deceased father as the normal customs and religious practices would dictate. He has further stated that he has the right to claim the dead-body in preference to others who want to preserve it thereby denying the deceased respect and decency in death.

He, however, has been unable to show any enforceable right to claim the body assuming that Ashutosh Ji Maharaj is dead and that he is his son – with both facts remaining unestablished and disputed.

As against this, learned counsel for the Sansthan and the State have offered arguments, representative of their respective stands, convergent in nature.

Shri Dwivedi, learned counsel for the Sansthan has argued that followers of Ashutosh Ji Maharaj firmly believe that their spiritual Guru is in Samadhi and is likely to return once his spiritual mission is over and thus, conservation of his body is of an immense importance to them. Resisting the claim of Dalip Kumar Jha, they have pleaded that nobody including his son (assuming him to be so) can claim right to his body for it is not a property. It has further been argued that their belief cannot be questioned as they would be protected by Articles 25 and 26 of the Constitution of India and the courts cannot answer the issues which involve interpretation of their faith much less give directions of the kind given by the learned Single Judge. Arguments have also been advanced to cite the examples of holy men taking Samadhi and offering symptoms of being clinically dead in that period. Likewise, instances from the history, of bodies being preserved have also been offered as a justification. They have also fallen back on the science of cryonics to contend that preservation of bodies in the hope of

infusing life in them at some future point of time in terms of 'scientific belief' is not unknown and there would hence be no reason for the Court to give directions destructive of such a belief.

The State in turn, refers to several mandates of the Court with obligations cast upon it by the learned Single Judge to contend that they cannot be directed to forcefully cremate the body as no law requires them to do so and in the absence of any law or practice, there cannot be any mandate to them.

The learned Advocate General, Punjab representing the State has with equal vehemence supported the plea of the Sansthan and their rights under Articles 25 and 26 of the Constitution.

Apart from this, a question has been raised that there was no occasion for the learned Single Judge to give the aforesaid directions once it concluded that the writ petition preferred by Dalip Kumar Jha and Criminal Misc. Petition preferred by Puran Singh was not maintainable on the issue of locus. According to him, there was no lis offered for adjudication once this conclusion was arrived at.

We have heard the learned counsel for the parties and perused the material on record.

There is indeed a tempting argument offered by the State that once the leanred Single Judge concluded that Dalip Kumar Jha petitioner in C.W.P. No.7345 of 2014 and Puran Singh petitioner in Cr.M.No.M-9195 of 2014 had no locus, there was an occasion for the Court to give a quietus to the controversy particularly when some earlier attempts to rake up a public interest with similar prayers had been negated by this Court.

Tempting it may be, but we are of the opinion that the learned Single Judge was right in seizing the moment when constitutional issues of practices ; personal beliefs and the shield of Articles 25 and 26 of the Constitution were

raised, to claim protection.

For a Constitutional Court, it becomes imperative not to succumb to sheer technicalities as the one offered in the argument of the learned counsel for the State and give a quietus to the controversy when serious issues of constitutional remedies and violability of fundamental rights are claimed by the citizenry of the country. We thus conclude that the learned Singhe Judge was correct in his approach to answer the unsettling issues before it.

We are now left to examine as to whether the learned Single Judge was right in interpreting Articles 25 and 26 of the Constitution with respect to the protection of belief and faith claimed by the Sansthan and followers of Ashutosh Ji Maharaj and the consequent mandate given to cremate/dispose of the dead-body while rejecting their plea.

Before we comment on that, a closer look at the directions given by the learned Single Judge reveal them to be a bundle of contradictions apart from being declarations which a Writ Court would normally refrain from making particularly in view of the serious conflict centering around facta.

In clause (i), the Court takes upon itself a declaration that Ashutosh Maharaj ji has died a natural death w.e.f. 29.1.2014 when he was declared clinically dead. Such a conclusion of natural death or even death ought not to have been made when firstly there was a dispute about this very issue with one side disclaiming death and rather proclaiming the Maharaj Ji to be in Samadhi in terms of their belief while the other accepting death as a fact. Besides, whether it was a natural death or not, was not a conclusion the Court could have made, it being bereft of any inputs in this regard. Even if there was an enquiry on which reliance has been made by the Court, such facts need more scientific inputs that an examination of a body in post-mortem or autpsy can alone determine, besides Courts have no power to issue such declaration in the absence of any law or

evidence.

While holding that Dalip Kumar Jha and Puran Singh do not have any locus on the basis of the material produced by them before the Court, the learned Single Judge observed that they had no claim or right of possession of the 'property in the body' which deserves to be disposed of by cremation in accordance with the religious rights.

There would be a serious concern about the body being described as a property.

Secondly, to direct disposal of the body by cremation without ascertaining the custom or practice of the parties would be clearly hurting the sentiments of a group or community if they do not believe in it. The Court had no material to ascertain whether cremation was endemic to the personal beliefs of Ashutosh Ji Maharaj and his followers.

This contradiction becomes more important when in subsequent directions particularly clause (vii), the Court directs the State and the Committee to determine the mode of disposal of the mortal remains after cremation or burial or immersion.

We are of the view that these were eminently avoidable directions for the reasons that we propose to give while dealing with the questions that have been offered during the intensive debate inter-se between the parties to which we were a privy having been called upon to decide the three LPAs.

The first and foremost question that comes to the mind of this Court is whether the learned Single Judge could have presumed the death of the deceased. This is one question which is immensely difficult to answer without doing injustice and damage to the belief of the followers of the Sansthan who vehemently contend that Ashutosh Ji Maharaj is in Samadhi. All other issues i.e. whether the dead-body is a property ; whether the science of cryonics would permit

the retention of a body, with a hope of infusion of life at a future point of time, would flow from an inherent conclusion of a person being dead but that goes against the core belief of the followers.

We would thus relegate these issues which precede from a conclusion of Maharaj Ji being dead to be answered subsequently, if necessary. The first question is whether the Sansthan can claim that the body be kept in a preseerved state, in view of thier belief that Maharaj Ji is in Samadhi.

To our mind, the crucial question is to weigh the worth of protection under Articles 25 and 26 of the Consitution of India and the sanctity of the belief proclaimed by the followers of Ashutosh Ji Maharaj. For the purpose of reference, Articles 25 and 26 are extracted here below :-

> "**25. Freedom of conscience and free profession, practice and propagation of religion.-** (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
>
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -
>
> (a) regulating or restricting an economic, financial, political or other secular activity which may be associated with religious practice ;
>
> (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
>
> *Explanation 1*.- The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.
>
> *Explanation II*.- In sub-clause (b) of clause (2), the reference

to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property ; and

(d) to administer such property in accordance with law.

It is also essential for us to trace out the observations made by the Hon'ble Supreme Court as also the other High Courts on the relevance of Article 25 in protecting professed beliefs and faiths of the citizens of the country.

In **Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** A.I.R. 1954 S.C. 282, the Hon'ble Supreme Court observed as under :-

"14. We now come to Article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. A question is raised as to

whether the word "persons" here means individuals only or includes corporate bodies as well. The question, in our opinion, is not at all relevant for our present purpose. A mathadhipati is certainly not a corporate body ; he is the head of a spiritual fraternity and by virtue of his office has to perform the duties of a religious teacher. It is his duty to practise and propagate the religious tenets, of which he is an adherent and if any provision of law prevents him from propagating his doctrines, that would certainly affect the religious freedom which is guaranteed to every person under Article 25. Institutions, as such cannot practise or propagate religion ; it can be done only by individual persons and whether these persons propagate their personal views or the tenets for which the institution stands is really immaterial for purposes of Article 25. **It is the propagation of belief that is protected, no matter whether the propagation takes place in a church or monastery, or in a temple or parlour meeting.**

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17. It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a

fundmental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the article applies. What then are matters of religion ? The word “religion” has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an *American Case* it has been said “that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence of His Being and character and of obedience of His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter”. We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of the Constitution are based for the most part upon Article 44(2) of the Constitution of Eire and we have great doubt whether a definition of “religion” as given above could have been in the minds of our Constitution maker when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is

nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observations, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observations might extend even to matters of food and dress.

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19. These observations apply fully to the protection of religion as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2)(a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices. The learned Attorney General lays stress upon clause (2)(a) of the articles and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation."

In **Ratilal Panchand Gandhi v. State of Bombay and others** A.I.R. 1954 S.C. 388, the Hon'ble Supreme Court observed as under :-

"10. Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of

conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon its right by clause (2) of the article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they

are associated with religious practices.

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13. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religious lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate. Of course, the scale of expenses to be incurred in connection with these religious observations may be and is a matter of administration of property belonging to religious institutions ; and if the expenses on these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to the observation of Davar J. in the case of *Jamshed ji v. Soonabai* and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad baj, Vyezashni, etc., which are sanctioned by the Zoroastrian

religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose. "If this is the belief of the community" thus observed the Learned Judge, "and it is proved undoubtedly to be the belief of the Zoroastrian community, - a secular Judge is bound to accept that belief – it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind". These observations do, in our opinion, afford an indication of the measure of protection that is given by Article 26(b) of our Constitution."

In **Riju Prasad and others v. State of Assam and others** (2015) 9 S.C.C. 461, the Hon'ble Supreme Court observed as under :-

"60. According to the respondents while granting right to profess, practise and propagate religion under Article 25(1), by clause (2) of the same Article the Constitution has saved the operation of any existing law and also vested power in the State to make laws for

"25 (2)(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ; and

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

In contrast Article 26 does not envisage any restriction

through a statute made by the State so far as freedom to manage religious affairs is concerned. But the right under Article 26 has also been made subservient to public order, morality and health, the same three factors that control the right under Article 25(1) which has been made subject to the other provisions of Part III also.

61. There is no need to go into all the case laws in respect of Articles 25 and 26 because by now it is well settled that Article 25(2)(a) and Article 26(b) guaranteeing the right to every religious denomination to manage its own affairs in matters of religion are subject to and can be controlled by a law contemplated under Article 25(2)(b) as both the Articles are required to be read harmoniously. It is also well established that social reforms or the need for regulations contemplated by Article 25(2) cannot obliterate essential religious practices or their performances and what would constitute the essential part of a religion can be ascertained with reference to the doctrine of that religion itself. In support of the aforesaid established propositions, the respondents have referred to and relied upon the judgment in *Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirath Swamiar of Sri Shirur Mutt* and also upon *Sri Vankatarmana Devaru v. State of Mysore.*

62. An interesting situation arose in Bijoe Emmanauel v. State of Kerala School children having faith in Jehovah's Witnesses sect refused to sing national anthem in their school for which they were expelled on the basis of executive

instructions contained in circulars which obliged singing of national anthem in schools. Such action against the children was challenged with the help of defence based upon Article 25(1) and 19(1)(a). In the aforesaid judgment, this Court upheld the defence of the children on both counts. In paras 19 and 20, Article was considered with a view to find out the duty and function of the Court whenever the fundamental right to freedom of conscience and to profess, practise and propagate religion is invoked. The answer given in the judgment in a concise and succinct manner is as follows : (SCC pp.626-27).

> **"19. ... Therefore, whenever the fundamental right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the fundamental right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorized by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do. Here again as mentioned in connection with Articles 19(2) to (6), it must be a law having the force of a statute and not a mere executive or a departmental instruction.**

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64. In *Seshammal v. State of T.N.*, paras 11 and 12 exhibit a detailed discussion relating to the Agamas which contain elaborate rules relating to construction of temple as well as consecration of the idol. It is the religious belief of Hindu worshippers that once the image of the Deity is consecrated, it is fit to be worshipped in accordance with the detailed rituals only by a competent and trained priests. The religious belief extends to protecting any defilement of the idol and if the image of the Deity is defiled on account of violation of any of the rules relating to worship, purificatory ceremonies must be performed for restoring the sanctity of the shrine. The worshippers value the rituals and ceremonies as a part of Hindu religious faith. In para 12, the Court concluded that : (Seshamal case, SCC P.21).

> "12. Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorized by the Agamas would violently interfere with the religous faith and practices of the Hindu worshipper in a vital respect and would, therefore, be prima facie invalid under Article 25(1) of the Constitution."

65. In the aforesaid judgment in *Seshammal case* it was also held that the matter of appointment of a competent archaka i.e. the priest is a secular matter and therefore can be regulated by a State action. However, the situation may be different and more complicated if, like in the present case, the

Bordeories are the trustees as well as the priest and the management of religious and secular activities have been entrusted by the Bordeories themselves to their elected representatives, the dolois. The element of appointment stand substituted by the action of the trustees themselves performing the necessary rituals. This aspect need not be pursued any further because there is no statute framed by the State so far to regulate even the secular affairs of the Temple. Only when such State action takes place, there may arise an occasion to examine the related issues as to whether interference with the custom governing appointment of Dolois would amount to regulating only the secular affairs of the Temple or it shall obliterate the essential religious practices of the institution.

66. **On considering the rival submissions and the relevant case laws, we are inclined to agree with the submissions on behalf of the respondents that Article 13(1) applies only to such pre-Constitution laws including customs which are inconsistent with the provisions of Part III of the Constitution and not to such religious customs and personal laws which are protected by the fundamental rights such as Articles 25 and 26. In other words, religious beliefs, customs and practices based upon religious faith and scriptures cannot be treated to be void. Religious freedoms protected by Articles 25 and 26 can be curtailed only by law made by a competent legislature to the permissible extent. The court can surely examine and**

strike down a State action or law on the grounds of Articles 14 and 15. But in a pluralist society as existing in India, the task of carrying out reforms affecting religious beliefs has to be left in the hands of the State. This line of thinking is supported by Article 25(2) which is clearly reformist in nature. It also provides scope for the State to study and understand all the relevant issues before undertaking the required changes and reforms in an area relating to religion which shall always be sensitive. While performing judicial functions stricto sensu, the Judiciary cannot and should not be equated with other organs of the State – the Executive and the Legislature. This also fits in harmony with the concept of separation of powers and spares the judiciary or the courts to dispassionately examine the constitutionality of State action allegedly curbing or curtailing the fundamental rights including those under Articles 25 and 26."

... ...

"23. It is to be noted that both in the American as well as in the Australian Constitution the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection. An adjustment of the competing demands of the interests of Government and constitutional liberties is always a delicate and a difficult task and that is why we find difference of judicial opinion to such an extent in

cases decided by the American courts where questions of religious freedom were involved. Our Constitution makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only ; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination of organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Article 26(d), it is the fundamental right of a religious denomination or its

representative to administer its properties in accordance with law ; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26."

In **Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** 1954 S.C.R. 1005 (supra), the Hon'ble Supreme Court observed as under :-

"18. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religious and this is made clear by the use of the expression "practice of religion" in Article 25. Latham, C.J. of the High Court of Australia while dealing with the provision of Section 116 of the Australian Constitution which inter alia forbids the Commonwealth to prohibit the "free exercise of any religion" made the following weighty observations :

"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this

> distinction as relevant to the interpretation of Section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion."
>
> 19. These observations apply fully to the protection of religious as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clauses (2)(a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices. The learned Attorney-General lays stress upon clause (2)(a) of the article and his contention is that all secular activities, which may be associated with religion do not really constitute an essential part of it, are amenable to State regulation."

In **Aayubkhan Noorkhan Pathan v. State of Maharashtra and others** (2013) 4 S.C.C. 465, the Hon'ble Supreme Court observed as under :-

> ... ...
>
> "9. ..... A writ petition under Article 226 of the

Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is restored to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to *enforce a legal right.* In fact, the *existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced* must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide State of Orissa v. Madan Gopal Rangta, Saghir Ahmad v. State of U.P., Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., Rajendra Singh v. State of M.P. and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C.Sekar.

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression,

> "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury ; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized. (Vide Shanti Kumar R.Canji v. Home Insurance Co. of New York and State of Rajasthan v. Union of India)."

It is thus, clear that both Articles 25 and 26 which are being referred almost in the same breath, prescribe an inherent right to the citizenry to practise one's belief, faith and manage religious affairs of an institution provided they do not conflict with the public order, health, or morality besides giving an individual the freedom of conscience.

To borrow the language of Article 25, "all persons are equally entitled to '**freedom of conscience**' and the right freely to profess, practise and propagate religion".

The words that stand out conspicuously are 'freedom of conscience' which are used distinctively than the words right to 'freely profess, practise and propagate religion'. This Article, therefore, is the most fragrant in the bouquet of fundamental rights, being foundational to an individual liberty. Even Article 21 as it exists, upon interpretations placed on it through judicial pronouncements and other rights contained in Chapter III would seem secondary to the hallowed right of 'freedom of conscience', for it makes freedom of speech and expression meaningful as it would, the other individual liberties of professing a faith and practising a religion. It symbolizes the free spirit of an Indian citizen. A free conscience would give **freedom to nurture a thought,** acquire a belief, embrace a religion, adopt a practice, theorize an idea, give vent to intellectual outpourings and enhance creativity, preserve tradition, shun contemporary thought, pursue modern values, societal mores, give reasons for assent and offer courage for

dissent etc. and is thus endemic to a pluralistic and a vibrant society for there can be none visualized if an individual's spirit is cast in a mould of an entrapped conscience.

Rather, liberties guaranteed under Articles 19 and 21 of the Constitution would be incomplete without Article 25. The freedom enshrined in Article 19 would be totally hollow if not accompanied by the freedom of conscience. Can there be any freedom of speech and expression without the freedom of conscience ? Similarly, Article 21 as interpreted by the courts from time to time to ensure the basic human rights which are rather natural rights such as right to food, shelter, clothing, health, education etc. etc., would be incomplete without the existence of freedom of conscience which is almost spiritual giving ample room and permitting every individual to follow the dictates of his inner voice resonating from deep recesses of heart and mind to freely profess, practise and propagate religion or belief, provided it does not offend public order, morality and health. In fact, it injects a libertarian thought, giving a meaningful contour to the freedoms enjoyed by an individual as a fundamental right.

Having said so, let us now examine whether the belief of the followers of Ashutosh Ji Maharaj would entitle them to retain the body in a state of preservation and assert the protection of Article 25 of the Constitution or should the courts in the exercise of its powers impose a generally acceptable perception of mortality when symptoms of life do not manifest themselves in a body to offer a declaration of death and a mandate to dispose of the dead body, when no law exists in this regard.

Before we even venture to say anything in this regard, it would be just and fair to the Sansthan to notice what is understood by Samadhi.

Samadhi as a concept is not alien to the Indian society having formed a part of many a folk-lore and mythology. It finds vociferous practitioners amongst

the Yogis and the ascetics. It is known to be the “Final Initiation” also termed as 'ascension' where the practitioner abandons the physical body to achieve an elevated stage. It is supposed to result in complete detachment of oneself from the physical realm of existence. There would be examples where even practitioners of Yoga would offer this state albeit for a limited period and while being in Samadhi would offer no symptoms that the medical practitioner acknowledge as essential to life.

The Court does not wish to be seen as an advocate or an adherent to the concept of Samadhi to propagate its acceptability. Suffice it to say that the concept and belief of Samadhi in fact, does form an essential part of mythology and religion around which a large part of Hindu/Indian philosophy revolves. One cannot therefore, accuse the Sansthan of harboring or practising a belief which is shockingly deviant from the generally accepted societal beliefs or as seemingly absurd to a rational mind.

It is also to be understood that preservation of a body is not the core belief of the Sansthan or the followers of the Maharaj, who live and die as ordinary mortals, with their bodies being disposed of in the customary Indian way.

Their belief is in the word of their spiritual Guru that he has taken Samadhi and is in a state of 'ascension' and equanimity, but the Guru intends to return to live in the same body for which preservation is essential. Destruction of the body will render this course impossible.

The learned Single Judge proceeded to give directions on the presumption that the practice of Samadhi does not form the core of their belief or religious practice. His reasoning stems from this understanding while what is core to the Sansthan and its followers is the word of their Guru which they consider infallible and thus, it is not their belief in concept of Samadhi that has to be tested on the touchstone of inherentness but their faith in their Guru's words and

teachings which are integral to their belief and if he has proclaimed himself to be in Samadhi, his followers cannot be faulted for believing it. Their belief stems from their unshakeable and unimpeachable faith in their Guru which is foundational to the Sansthan and the followers. The outside world in turn would never learn about the truth of Maharaj's proclamation of being in Samadhi unless someone from the Sansthan vomits truth to the contrary.

It is equally important to understand the dictionary meaning of word 'belief'. Oxford defines it as "an acceptance that something exists, or is true, especially one without proof ; a religious conviction". It flows therefrom that religion and its practices are a matter of belief and being unverifiable are still accepted even transcending all the limits of imagination or reason known to a human mind.

A theist would question the belief of a non-believer. History would show a deep conflict between believers of God and the propagators of science and philosophy. Every discipline of science, philosophy, theories of economics, Mathematics have initially germinated from a thought, progressing into a belief to be subsequently established by verifiable data only to be questioned with equal vigour by a counter thought or belief or a theory.

Beliefs, therefore, come wrapped in mystique and often do not offer a foundation unlike a statute which flows from a legitimate process adopted by civilized polities or an executive fiat which can be tested on constitutional proprieties.

Consequently, whether one accepts the theory of Karl-Marx or the economic theory of Prof.Smith, Keynes or 'Freud' in mind sciences, would be a question of belief of the propagator, with the non subscriber having a right to disagree but not to the point of curbing or stifling the others' belief unless it offends public order, health or morality for these would be just reasons to

circumscribe an offending thought to thwart an anarchy. Likewise in religion.

The courts would thus, be wary of wading into the correctness of beliefs and decline an invitation to a circus if they do not wish to drown themselves in the vastness and boundlessness of a sea of speculation unless there is a law or a statute which permits them such evaluation.

The belief of the Sansthan of the Maharaj being in Samadhi cannot be forcefully shattered through the power of the State or a mandate from the Court, without inviting an accusation of violating the provision of Article 25 of the Constitution of India, particularly till the time such a belief does not conflict with public order, health or morality.

The learned Single Judge has referred to Article 51A(h) of the Constitution of India in support of its observation that the belief of the Sansthan in the concept of Samadhi goes against the grain of the fundamental duty to develop a scientific temper and spirit of enquiry and reform. Article 51A is extracted here below :-

> "**51A. Fundamental duties.-** It shall be the duty of every citizen of India -
>
> (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
>
> (b) to cherish and follow the noble ideals which inspired our national struggle for freedom ;
>
> (c) to uphold and protect the sovereignty, unity and integrity of India ;
>
> (d) to defend the country and render national service when called upon to do so ;
>
> (e) to promote harmony and the spirit of common

brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women ;

(f) to value and preserve the rich heritage of our composite culture ;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures ;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform ;

(i) to safeguard public property and to abjure violence ;

(j) to strive towards excellence in all spheres of individuals and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

It will indeed be laudable if all the fundamental duties enshrined in Article 51A are imparted as an education to create responsive, responsible citizenry as they are expectations of the society itself from each citizen but the endeavour to achieve this has to flow from the State and the society in cohesion with each other and not enforced through any mandate of a Court.

It is a travesty that on the one hand, the Constitution of India talks of a scientific temper in Article 51A(h), whereas the ground reality is to the contrary.

The deeply religious and traditional society that the country offers is fraught with innumerable beliefs where even the political entities have not remained insulated from it, rather, such beliefs and practices are often used as a subterfuge to their political and social agendas.

The courts, therefore, can merely refer to Article 51A(h) of the Constitution of India as a gentle nudge to the State to move in the direction desired by the said provision in the constant and firm hope of evolution of a mature society capable of acquiring rational thought without damaging the inherent social values.

The issue whether a dead-body is a property or the science of cryonics, that talks of preservation of a body, would not be issues to be determined by us even if they have been offered as crutches to the main arguments of Articles 25 and 26 of the Constitution of India to protect their belief, for the reason, that to do so, we have to proceed from a positive conclusion of the demise of Ashutosh Ji Maharaj – a conclusion which eats into the belief of the Sansthan and as observed already, would need respect on account of Article 25 of the Constitution of India till the time such a state of the preserved body does not conflict with public health or morality or endanger public order. More importantly we do not have any law to fall back on ; to give a mandate or to prohibit any action, regarding which the law is consistent.

We thus, find ourselves in a piquant situation where in the absence of any law or obligation flowing therefrom, to give any directions to dispose of the body even if one were to venture considering to do so, without impinging on the belief of the Sansthan and violating the provisions of Article 25 of the Constitution of India.

Power of the Court under Article 226 of the Constitution to issue a mandamus is settled in **Director of Settlements, A.P. v. M.R.Apparao** (2002) 4

S.C.C. 645, wherein it was observed as under :-

> "17. Coming to the third question, which is more important from the point of consideration of the High Court's power for issuance of mandamus, it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore, essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression "for any other purpose". The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by

issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition (Kalyan Singh v. State of U.P.).* The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. When the aforesaid principle is applied to the case in hand, the so-called right of the respondents, depending upon the conclusion that the Amendment Act is constitutionally invalid and, therefore, the right to get interim payment will continue till the final decision of the Board of Revenue, cannot be sustained when the Supreme Court itself has upheld the constitutional validity of the Amendment Act in *Venkatagiri case on 6.2.1986 in Civil Appeals Nos.398 and 1385 of 1972* and further declared

> in the said appeals that interim payments are payable till determination is made by the Director under Section 39(1), the High Court in exercise of power of issuance of mandamus could not have said anything contrary to that on the ground that the earlier judgment in favour of the respondents became final, not being challenged. The impugned mandamus issued by the Division Bench of the Andhra Pradesh High Court in the teeth of the declaration made by the Supreme Court as to the constitutionality of the Amendment Act would be an exercise of power and jurisdiction when the respondents did not have the subsisting legally enforceable right under the very Act itself. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court committed serious error in issuing the mandamus in question for enforcement of the so-called right which never subsisted on the date, the Court issued the mandamus in view of the decision of this Court in *Venkatagiri case*. In our view, therefore, the said conclusion of the High Court must be held to be erroneous."

We have repeatedly asked the learned counsel for the State whether there is any law relating to the disposal of the dead-bodies and the stoic answer is in the negative.

Absence of any law would put to rest the reasoning given by the learned Single Judge while relying on the precedent of a French Court mandating disposal of a dead-body on the basis of an existing law in that country. In the absence of any law, we are unable to accept that precedent and even though the present controversy has lingered on for a few years by now the State unfortuantely

has not woken up to the necessity of having a law that would obviate such like contingencies. The lament of the learned Single Judge in this regard is absolutely justified.

In the passing however, we would still notice the judgment of an English Court, as our attention was drawn to it where a fourteen year old afflicted with a terminal ailment expressed her desire to preserve her body according to the science of Cryonics where a body is kept in a frozen state, after following a preservation procedure that the technology dictates.

Even cryonics, at least today would be a 'belief of a science' of the medical fraternity who have their reasons to believe that cell can revive itself if kept frozen thus hoping that life can be infused at some future point of time.

Till the time it does not actually translate into reality, it will be a belief and no better than the belief of the followers who believe their spiritual Guru to be in a state of Samadhi.

History is replete with examples where bodies were preserved but we need not spend time on it for this is an argument of the Sansthan and the followers to justify the retention of body and shake of the perception of absurdity of their belief.

The Court can thus only put the State on caution that if the preservation of the body of Ashutosh Ji Maharaj creates a situation which threatens public health, morality or public order, it would have to step in instantaneously to enforce its writ and stem such a course forthwith and dispose of the body.

We would hence decline to invade the sacred territory of personal beliefs and faiths and disagree with the learned Single Judge and his mandate to dispose of the body unless there is cogent material to show its degeneration or the issue snowballs into one of public health, order or morality.

We have noticed the existence of Coroners Act of 2008 in England. It is high time our country wakes up to the requirement of such a law. The Coroners Act of 1871 is archaic. Such an Act will go a long way to decide issues of deaths, natural and unnatural and empower the Coroner to enquiry into and declare a death.

We sincerely hope that the Union Government does notice these issues of concern to awaken to the need of such a law and thus direct that the copy of this order be supplied to the Additional Solicitor General Shri S.P.Jain.

For the reasons aforesaid, we would set aside the judgment of the learned Single Judge and liberate the Sansthan and the State from the mandate given by him while leaving the alleged son Dalip Kumar Jha to his remedies in law as directed by the learned Single Judge with whom we agree in this regard. The prayer of Dalip Kumar Jha to conduct a DNA Test would also be left to him to be raised, if he chooses to take recourse to a civil suit and we make it clear that if such a course is adopted by Dalip Kumar Jha, the Sansthan will not resist the handing over of a DNA sample from the body of Ashutosh Ji Maharaj, as may be determined by any procedure to be determined by the medical professionals.

We would also unhesitatingly give the following directions to ensure that the body of Ashutosh Ji Maharaj does not degenerate or decay :-

(1) A medical team would be constituted by the D.M.C., Ludhiana of which C.M.O., Jalandhar would be a part who would visit the place where the body has been kept to examine it and ensure its preservation in good state.

(2) The frequency of the inspection and the intervening period between inspections would be left to the wisdom of the medical fraternity.

(3) The D.M.C., Ludhiana would also be at liberty to prescribe its charges which the Sansthan will have to pay and if the amount is not paid by the Sansthan to the doctors, they would be at liberty to apprise the C.J.M., Jalandhar

who would seek to execute this order and recover the amount from the property of the Sansthan.

(4) To obviate a default, it is directed that the Sansthan would create a corpus of Rs.50 lacs to be retained in a Bank in an F.D.R. which will ensure a security for the professional charges of the medical team.

With these observations, all these LPAs are disposed of.

L.P.A. No.2043 of 2014 filed by Dalip Kumar Jha is dismissed.

L.P.A. No.2044 of 2014 filed by the Sansthan, L.P.A. No.2052 of 2014 filed by the State and LP..A. No.224 of 2015 filed by Sadhvi Tapehswari Bharti are allowed.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

July 5, 2017
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No