

SUPREME COURT OF INDIA

Tushar Arun Gandhi

Vs.

State of Orissa

(Ahmadi CJI, Sujata V. Manohar JJ.)

26.11.1996

JUDGMENT

AHMADI, CJI

Shir Tushar Arun Gandhi, the Great Grandson of Mahatma Gandhi addressed a letter in the form of an appeal to one of us (the Chief Justice of India) stating that he had come to know from Press reports about the existence of an Urn containing the ashes of his late Grandfather Shri M.K. Gandhi, popularly known as Mahatma Gandhi lying in a locker in the State Bank of India, Cuttack. On learning about the same he wrote letters to the Chief Minister and the Governor of Orissa as well as the Chairman of the State Bank of India, Cuttack requesting them to enquire into the matter and, if the Press reports were correct to use their good offices to help him secure the Urn from the locker to enable him to complete the last rites as per the Hindu religious practice. Unfortunately he did not receive any reply to his letters from the Chief Minister or the Governor of Orissa but the Chairman of the State Bank of India called him and assured him that he would ascertain the facts and inform him of the outcome of his enquiry. Sometime thereafter the Chairman verbally informed him about the existence of a box stated to contain the 'Asthis' of Mahatma Gandhi kept in safe deposit in the year 1950 by the then Secretary to the Chief Minister of Orissa. This verbal information was followed by a letter from one Shri Mehrotra wherein he gave details of how and when the Urn was deposited with the Bank. In his letter of 8th March, 1996 Shri Mehrotra states as follows:-

"(i) A sealed wooden box measuring approximately 18" x 20" said to contain an urn containing the ashes of Mahatma Gandhi was deposited with our Cuttack Branch on 29.11.1950 by the then Secretary to the Hon'ble Chief Minister of Orissa as s Safe Deposit Article. Safe Deposit Receipt No. 30/21 dated the 29th November 1950 was issued by the Branch.

(ii) The box is kept by the Branch with due care and reverence.

(iii) In December 1994, a letter was addressed to the Chief Minister of Orissa and discussions took up with the Secretary to the Chief Minister for withdrawal of the Safe Deposit Article, but no response was received from them."

It was further added that since the box was deposited by the State Government, they alone could decide on its disposal.

After receipt of this letter the petitioner once again addressed a letter to Shri J.B. Patnaik, the then Chief Minister of Orissa, Shri G.Ramanujam, the then Governor of Orissa and the Chief Secretary of the State and requested them to help him in securing the box to enable him to complete the last rites as per the Hindu religious practice. He did not receive any response to his letters and so he visited Bhubaneswar on 21st March, 1996 and met the Chief Minister who, says he, responded by saying that it was a big hoax. On further enquiry as to why he considered it a hoax he was told that according to the State Bank of India the Secretary of the then Orissa Chief Minister Shri Naba Krushna Choudhury had kept the box in a safe deposit in 1950 when there was in fact no such post of Secretary to Chief Minister in existence. He was told that there was only a Private Secretary to the Chief Minister in those days and the Government also did not have any record of the deposit of the said box with the State Bank of India. The Chief Minister is even reported to have remarked that the State Bank of India was upto some mischief and so he would order a CBI enquiry into the entire matter.

The Petitioner then stated that he was taken aback by what the Chief Minister informed him and was also surprised that a responsible officer of the State Bank of India was prepared to stick his neck out on such a sensitive issue and felt hurt that he did not realise the seriousness of the matter. The Chief Minister is reported to have further stated that he was proposing to order a CBI enquiry so that the ashes could be chemically tested to ascertain if they really belonged to Mahatma Gandhi. He was informed that he would be duly informed at the conclusion of the investigation by the CBI. In fact by the letter dated 23rd March, 1996 the Commissioner-cum-secretary to the State Government wrote to the General Manager (Operations), State Bank of India, Bhubaneswar that the State Government did not accept that the box contained the ashes of Mahatma Gandhi or that the State Government had, through its official, placed it with the Bank for safe custody. He also stated that it was open to the State Bank of India to dispose of the said box in any manner it considered appropriate. In the meantime, according to the petitioner, considerable public opinion was created. He then proceeded on fast and ultimately the Government relented and stated that the Bank could do as it pleased with the box in question. After the Government thus withdrew the petitioner broke his fast and approached the Bank officials in Bhubaneswar to cooperate and put an end to the controversy but unfortunately in the meantime several organisations and individuals jumped into the fray and complicated the matter. The State Bank officials, therefore, informed the petitioner to secure court orders on the strength whereof they could part with the possession of the box. He, therefore, wrote the letter dated 26th May, 1996 in the form of an appeal to the Chief Justice of India.

After this letter was received, the PIL Cell of the Supreme Court addressed letters to the State Bank of India, Cuttack as well as the Government of Orissa in this behalf. From the replies received by the PIL Cell it transpired that the State Bank of India was in possession of the box since many years and the urn bore the inscription "it contains the ashes of Mahatma Gandhi". The State Bank of India also informed the PIL Cell that till date no claim had been made by the Government of Orissa for its delivery. After this exercise was undertaken by the PIL Cell of this Court, it was directed that the letter be treated as a Writ Petition under Article 32 of the Constitution. It was, therefore, put up before the Court on the judicial side on 10th May, 1996 on which date we directed notices to issue to the Union of India, State of Orissa, as well as the State Bank of India, Cuttack returnable within 8 weeks. They were directed to file their counters in the form of affidavits within the said time so that the Court could give appropriate directions in the matter.

Respondents 2 and 3 entered an appearance. On behalf of Respondent No.3 Bank an affidavit was

filed wherein it was stated that the record of the Bank revealed that on 29th November, 1950 a sealed wooden box marked 'Secretary HPM Orissa' stated to contain the ashes of Mahatma Gandhi was deposited by the Secretary to the Chief Minister of Orissa, Cuttack and that it bore a wax seal with the words "HPM Orissa". The affidavit then deals with the events that had followed once the matter had come to public notice. Reference has also been made to the visit of the petitioner to Cuttack which we have already mentioned hereinbefore. A xerox copy of the entry in the Safe Deposit Register of the Bank has been annexed to the affidavit. The correspondence that had ensued between the Bank and the State Government has also been appended to the affidavit. The matter was also raised in the Rajya Sabha.

On behalf of the State of Orissa Shri F.M. Panda, Additional Secretary in the Home Department of the Government of Orissa has filed a counter affidavit and has stated that the Government of Orissa had already informed the General manager (Operations), State Bank of India, Bhubaneswar by letter dated 23rd March, 1996 that the deposit of the wooden box said to be containing the ashes of Mahatma Gandhi purported to have been made by the Secretary to the then Chief Minister of Orissa as recorded in the said Deposit Register of the Bank is not reflected in any of the records of the State Government and hence the Commissioner- cum-Secretary to the Government of Orissa could not accept that the said box containing the ashes of Mahatma Gandhi had been deposited by the Government for safe custody. Since this raised a doubt as regards the genuineness of the claim of the State Bank of India it was left open to the State Bank of India to dispose of the said box in such manner as they deemed appropriate. It further stated that the Register of the bank did not bear the signature of the then Secretary to the Chief Minister and that at the relevant point of time there was no such post in existence nor did the bank possess any letter from the concerned officer supporting such deposit. It was also difficult to visualise how two years after the assassination of Mahatma Gandhi his ashes could be available for deposit with the Bank. In these circumstances the State of Orissa was unable to positively respond to the enquiries made by the petitioner as well as others including the media in this behalf. The Government of Orissa had, therefore, left it to the Bank authorities to deal with the box in the manner they thought proper as it did not want to get involved with the disposal of the ashes. In other words the Government of Orissa has left it to this Court to pass such orders as it deems appropriate in regard to disposal of the ashes contained in the urn purporting to be of Mahatma Gandhi.

After the pleadings were completed and the stand of the State Bank of India and the State of Orissa became clear, this Court issued notice on 2nd September, 1996 to the petitioner with a view to ascertaining from him how best, in the circumstances, could the ashes contained in the urn be disposed of. The petitioner stated that he would leave it to the Court to decide on the mode of disposal of the ashes. From the above two things clearly surface, namely (i) on 29th November, 1950 an urn kept in a box stated to contain the ashes of Mahatma Gandhi was deposited with the State Bank of India and (ii) no one except the petitioner has claimed the same so far. It is also clear that the State of Orissa has left the question of disposal of the ashes to the sole discretion of the Bank since it does not desire to get involved therein. It is also evident from the Safe Deposit Receipt that the Secretary to the Chief Minister of Orissa at the relevant date had deposited the urn with the Bank. There was no need for the Bank to make any false entry in their register and since the entry is an old one of 1950 made in regular course of business of the Bank we fail to see why it should be viewed with suspicion. Merely because the designation is stated to be 'Secretary' to the Chief Minister and not 'Private Secretary' which post admittedly existed then, is not a strong point to doubt the genuineness of the entry. If the Government records do not contain any note or if no such note is traced is no ground to doubt the entry in the Bank's register. But be that as it may, since the

box contains an urn with ashes and no one else has claimed it after more than four decades we see no harm in directing the disposal of the ashes as prayed by the petitioner.

In the result we deem it proper to direct that the Hon'ble Chief Justice will nominate the Registrar of the High Court or a Senior Judicial Officer to take charge of the box containing the urn in the presence of the petitioner and a high level officer of the Bank after drawing up a memo regarding its physical condition and then seal the box and keep it in Safe Deposit and thereafter on the same day or on any other appointed date to be fixed in consultation with the Bank official and the petitioner, they shall carry the ashes to a mutually agreed upon site on the River Ganges (the Ganga) for being disposed of with reverence and dignity behoving the occasion. After the same is done, the Registrar/Judicial Officer will submit a report to this Court addressed to the Registrar General who will include the same as a part of the record with a note that it will be permanently preserved. A copy of the same will be kept with the Bank for its record also. This writ petition will stand so disposed of with no order as to costs.