

**THE REPUBLIC OF TRINIDAD AND TOBAGO  
IN THE COURT OF APPEAL**

**CIVIL APPEAL NO. CA P139 of 2021  
Claim No. CV 2021 - 02431**

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR  
JUDICIAL REVIEW PURSUANT TO PART 56.3 OF THE CIVIL  
PROCEEDINGS RULES, 1998 AND PURSUANT TO SECTION 6(1) OF THE  
JUDICIAL REVIEW ACT, CHAPTER 7:08.

AND

IN THE MATTER OF SECTION 14 OF THE CONSTITUTION

Between

**CINDY-ANN RAMSAROOP-PERSAD**

Appellant

AND

**THE MINISTER OF HEALTH**

1st Respondent/ Intended Defendant

**THE COMMISSIONER OF POLICE**

2nd Respondent/ Intended Defendant

**THE ATTORNEY GENERAL**

Respondent/Defendant

---

**RULING**

**Appearances:**

Mr. Anand Ramlogan SC for the Appellant  
Instructed by Ms. Jayanti Lutchmedial, Mr. Vishaal Siewsam  
Ms. Jesse Rampersad, Ms. Natasha Bisram, Ms. Cheyenne Lugo

Mr. Fyad Hosein SC for the Respondent  
Instructed by Mr. Rishi A. Dass, Ms Tenille Ramkissoon, Ms. Sarah  
Sinanan, Mr. Matthew Kadine, Ms. Janine Joseph,

**THE APPLICATION**

1. The Appellant has appealed to the Court of Appeal against that part of the decision of the Honourable Madam Justice Avason Quinlan-Williams made on August 3, 2021 refusing the Appellant's interim relief and leave to apply for Judicial Review against the First Respondent and the case management order made on August 5, 2021 giving case

management directions that were inconsistent with the previous order deeming the matter fit for urgent hearing.

**DETAILS OF ORDER APPEALED:**

2. The details of the order being appealed are as follows:

(1) The decision of the Honourable Madam Justice Avason Quinlan-Williams made on August 3, 2021 refusing the Appellant's application for interim relief and leave to apply for Judicial Review against the First Respondent

(2) The case management orders made on August 5, 2021 that:

- i) Claimant to file and serve any further affidavits (if necessary) on or before 10th August 2021
- ii) The Defendants to file and serve affidavits in response on or before 7th September 2021
- iii) Claimant to file and serve affidavit in reply to new issues only if necessary on or before 20th September 2021
- iv) Claimant to file and serve written submissions with authorities on or before 18th October 2021
- v) Defendant to file and serve submissions in response on or before 1st November 2021
- vi) Claimant to file submissions in reply to new authorities raised in submissions on or before 11<sup>th</sup> November 2021
- vii) Matter adjourned to 15th November 2021 at 10:00 am for further oral submissions, 1 hour for each side.

**ORDER SOUGHT:**

The Appellant has applied to this Court seeking the following orders:

1. an order reversing the decision and the grant of leave to judicially review the Guidelines.

2. an order that interim relief be granted in terms of the Appellant's notice of application for leave filed July 30, 2021:

*[i] An interim declaration that the policy ban on open air cremations/or persons who died from the corona virus which is based on the " Recommendations and Guidelines for Hospital Staff and Funeral Agencies in the context of Covid-19" which states that Open-Air Pyre Cremations will not be allowed for persons who are COVID-19 positive at the time of death as indicated on the death certificate is irrational, unfair and illegal.*

*[ii] An order directing the 2nd Respondent/ Intended Defendant to issue a cremation permit within 24 hours to allow the Claimant to have open-air pyre cremation for the late Silochan Ramsaroop also known as Seelochan Ramsaroop subject to compliance with the same guidelines that apply to non-COVID related deaths*

3. an order that this matter is deemed fit for urgent and expedited hearing with appropriate case management directions.
4. an order for the costs of the appeal.

**DETAILS OF FINDING OF FACT AND LAW WHICH ARE CHALLENGED:**

3. The Appellant has submitted the findings of law and fact which are challenged in the following paragraphs of the court's judgment:

*"[47] The Minister's Guidelines, do not have the force of law, they require voluntary compliance, and there are no legal consequences for non-compliance – these are the arguments of the applicant. Therefore, the application against the Minister of Health and the Attorney General that the Guidelines are irrational, unreasonable, arbitrary, fundamentally unfair and illegal and that the said regulations and guidelines are in contravention of Section 4(a), 4(d) and (h) of the Constitution of the Republic of Trinidad and Tobago are contrary to the applicant's claims. The application for leave to apply for judicial review against the Minister of Health and the Attorney General is not arguable and does not have a realistic prospect of success.*

*[53] The applicant sought interim relief; interim declarations and an order directing the Commissioner of Police to issue a cremation permit within 24 hours to allow the applicant to have an open-air pyre cremation for the late Silochan Ramsaroop also known as Seelochan Ramsaroop. Based on the court's decision to refuse the applicant's application to grant leave to apply for judicial review against the Minister of Health and the Attorney General, the application for interim declaratory relief is refused.*

*[54] Regarding the application for interim relief directed towards the Commissioner of Police, the court cannot hide from the reality or pretend that it did not give consideration to the dangerous infectious disease, COVID-19. When the applicant filed the application, the available statistics for COVID-19 revealed that there were close to 40,000 confirmed cases and more than 1000 deaths in Trinidad and Tobago. The court does not know what the Commissioner of Police considered. But, by any measure there are risks associated with the dangerous infectious disease that is COVID-19.*

*[55] The Public Health Ordinance allows Regulations to be made for the management of this public health crisis and the disposal of bodies. The court notes the evidence of Pundit Maharaj that he has no fear of contracting COVID-19 from persons who died from COVID-19 and that he is prepared to conduct open-air pyre cremations. The court also notes the "Report" of Dr Cleghorn, that there are risks even if those risks are*

*diminishing. The court notes that Dr Cleghorn reports that the scientific data suggest the virus lives in a cadaver for 2 to 3 days. The court also notes the evidence of Pundit Maharaj's description of the preparation of the body and that the body of a deceased Hindu must be cremated at the earliest opportunity, usually within 2 days.*

*[56] At this time, the just decision is to refuse the application for interim relief. To direct the Commission of Police to issue a cremation certificate will affect not only this applicant. Without the Commissioner of Police having an opportunity to respond and without a full hearing the consequences of such interim relief may be deleterious and irreversible.”*

#### **GROUND OF APPEAL:**

4. The Appellant's grounds of appeal are as follows:

i) The Judge erred in not granting leave for the Appellant to judicially review the First Respondent's Guidelines on that basis that the Guidelines do not form part of any law and is not capable of being judicially reviewed.

ii) The Court erred by failing to recognize that Government policies can be judicially reviewed, and the appropriate principles are referred to as the **Gillick** Principles, which were recently affirmed in **R v the Secretary of State for the Home Department [2021] UKSC 37**.

iii) The Court erred in finding that the Appellant did not meet the threshold for leave for Judicial Review against the First Respondent as per the test in the governing principle identified in **Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14** : the Appellant has arguable grounds for judicial review which has a realistic prospect of success.

iv) The Court erred in refusing the application for urgent interim relief. Having deemed the matter fit for urgent hearing and granted leave, the Court ought to have granted interim relief to allow the open-air pyre cremation of the deceased by way of a Court order for the relevant permit by the Commissioner of Police.

v) The Court erred in dismissing the application for interim relief on the ground that “the consequences of such interim relief may be deleterious and irreversible”. This was in fact contrary to the independent expert advice which stated that the risk exposure for the COVID- 19 virus was actually higher in an indoor crematorium.

vi) The Court erred in failing to recognize the Appellant had raised a strong prima facie case that justified the grant of interim relief in the circumstances of the case.

vii) The Court erred in failing to apply the relevant test and legal principles that governs the grant of interim relief (See: **Seepersad v Ayers-Caesar & Ors [2019] UKPC 7**).

viii) The court erred in giving case management directions that were inconsistent with its previous order deeming the matter fit for urgent hearing. It erred in acceding to the Respondent's request for unreasonably long case management dates when it should have deemed fit for expedited hearing and give appropriate case management directions for the matter to be dealt with as a matter of urgency. The issues raised the case are of fundamental public importance and affected the entire Hindu community and plainly required expedition.

## **APPELLANTS SUBMISSIONS BACKGROUND**

5. Part 64.10 allows any party to an appeal to apply for the appeal to be expedited.
6. Part 64.17 endows the Court of Appeal with the powers of the High Court including the power to bring forward a hearing to a specific date and shorten the time for compliance with any rule (CPR Part 26 Rule 1 (1)(d) and (e)).
7. The Appellant's ex-parte application for leave was filed in the High Court on the 30th July 2021 at around 9 am and was heard *inter-partes* at 2 pm on the said date. Having heard the parties, the Court adjourned the matter to Tuesday 3rd August 2021 at 3pm for delivery of its judgment.
8. On the 3rd August 2021, the Court delivered an oral judgment, making the following orders:
  1. *That this matter be deemed urgent and fit for hearing.*
  2. *Leave is granted to apply for Judicial Review.*

### **As against the 2nd Respondent**

*(i) A declaration that the policy of the Commissioner of Police of not granting any cremation permits to facilitate open-air pyre cremations is illegal, null and void and of no legal effect.*

*(ii) A consequential order of certiorari to quash the policy of the Commissioner of Police to refuse to grant any applications for cremation permits for open-air cremations of persons who died from COVID-19 or any COVID related issue based on the "Recommendations and Guidelines for Hospital Staff and Funeral Agencies in the context of Covid-19" which states that Open-Air Pyre Cremations will not be allowed for persons who are COVID-19 positive at the time of death as indicated on the death certificate.*

*(iii) An order of certiorari to quash the decision of the Commissioner of Police to revoke the cremation permit granted to Enal Ramsaroop*

*for the cremation of the Applicant/intended claimant's father Silochan Ramsaroop also known as Seelochan Ramsaroop.*

**And as against the Attorney General: Relief pursuant to Section 14 of the Constitution**

*(iv) A declaration that the restriction of open-air pyre cremation for COVID deaths has breached the Claimant's constitutional rights under sections 4 (b), 4 (d) and/or 4(h) of the Constitution;*

*(v) A declaration that the restriction on open-air pyre cremation is unconstitutional;*

*(vi) An order that the Claimant is entitled to an award of damages, including vindicatory damages, for the breach of her constitutional rights; Relief under both claims*

*(vii) Costs;*

- 3. Leave to apply for Judicial Review against the 1<sup>st</sup> Respondent is refused;*
  - 4. The application for interim relief is refused;*
  - 5. Permission is granted to the Claimant to rely on the affidavit of Cindy Ann Ramsaroop-Persad with exhibits, sworn and filed on July 30, 2021, affidavit of Tara Ramsaroop with exhibits, sworn and filed on July 30, 2021, affidavit of Pundit Satyanand Maharaj with exhibits, sworn and filed on July 30, 2021, expert report of Dr Farley Cleghorn dated July 29, 2021 and filed on July 30, 2021, affidavit of Kamla Devi Ramphal with exhibits sworn and filed on July 30, 2021, and the Supplemental affidavit of Cindy Ann Ramsaroop-Persad with exhibits, sworn and filed on July 31, 2021 filed in support of the ex parte Application, in support of this claim and to dispense with the filing of Affidavits in support of the Claimant's Fixed Date Claim Form;*
  - 6. An order pursuant to Part 33 of the Civil Proceedings Rules 1998 that permission is granted to the Claimant to refer to and rely on the expert reports of Dr Farley Cleghorn and Pundit Satyanand Maharaj together with the exhibits thereto filed herein in support of the ex parte application for leave in the substantive claim;*
  - 7. Costs of the application for leave to be costs in the cause.*
9. After judgment was delivered, Junior Counsel for the Respondent's indicated that the relevant authorities were meeting later that day to address the issue raised by the Applicant i.e. the ban on open air-pyre cremations in the Minister's Guidelines (the New Normal - Recommendations and Guidelines for hospital staff and funeral agencies in the context of COVID-19). The Court expressed the hope that the parties could dialogue to see if the matter could be resolved and adjourned the matter to Thursday 5th August 2021 for a further CMC hearing.

10. That same evening around 6pm, the Claimant filed her Fixed Date Claim form for judicial review and constitutional relief. It was served via email that evening.
11. The matter came up again on Thursday 5th August 2021 at 10.30am. Senior Counsel for the Appellant asked that the Court deem the matter fit for expedited hearing and give case management directions to facilitate same. This was necessary in light of the dismissal of the application for interim relief. Senior Counsel for the Respondents indicated that the Respondents would need a minimum of 28 days to file evidence in response. He also indicated that the Guidelines were under constant review.
12. Having heard the parties, the Court indicated that given its present timetable, it would not be able to facilitate an expedited hearing and was prepared to accede to the Respondent's request. Senior Counsel for the Appellant indicated that if the Court was not prepared to hear the matter on an expedited basis, the Appellant would wish to have the opportunity to consider whether any further evidence should be filed. The Court then made the following CMC directions:
  - i. Claimant to file and serve any further affidavits (if necessary) on or before 10th August 2021*
  - ii. The Defendants to file and serve affidavits in response on or before 7th September 2021*
  - iii. Claimant to file and serve affidavit in reply to new issues only if necessary on or before 20th September 2021*
  - iv. Claimant to file and serve written submissions with authorities on or before 18th October 2021*
  - v. Defendant to file and serve submissions in response on or before 1st November 2021*
  - vi. Claimant to file submissions in reply to new authorities raised in submissions on or before 11<sup>th</sup> November 2021*
  - vii. Matter adjourned to 15th November 2021 at 10:00 am for further oral submissions, 1 hour for each side.*
13. The Appellant has appealed Her Ladyship's decision to refuse leave for judicial review and the refusal to grant interim relief, as a procedural appeal. The appellant submitted that the appeal is urgent because it concerns the following:
  - (i) The Respondents have had notice of this issue which is a serious and sensitive grievance that the Hindu community is suffering from since July 12, 2021 (See letter from Dinesh Rambally annexed as C.R. 16 to the supplemental affidavit of the Appellant). To date the Respondents have failed to respond to the urgent requests made by leaders in the Hindu community for clarification regarding the rationale and justification for the present ban on open air-pyre cremations.
  - (ii) More than 17 months have elapsed since the COVID-19 was declared a pandemic by Her Excellency, the President, by legal

notice no. 34 of 2020 dated January 31, 2020. Given the daily death toll, many Hindu families are, on a daily basis, being affected by the ban on open air-pyre cremations which prevents the cremating their loved ones in accordance with their religious belief and practice. The matter is, therefore, of fundamental importance because it affects a significant percentage of the population.

(iii) Having correctly deemed the matter fit for urgent hearing, the learned judge erred in acceding to the Respondents' request for a prolonged case management time table. The matter ought to have been expedited because of the continuing daily impact on the Hindu community, bearing in mind the fact that the Respondents have failed to provide the requested justification for the ban on open air-pyre cremations to date and that the Respondents' would have easy access to expert advisors.

14. The Appellant submitted that the Court was plainly wrong in refusing leave for the appellant to pursue her claim for judicial review against the Minister of Health. Government policy and guidelines are amenable to judicial review of her Ladyship's reasoning at paragraph 47 of her decision on this issue is fundamentally flawed (See the recent UK Supreme Court's judgment dated July 30, 2021 in ***R v Secretary of State for the Home Department [2021] UKSC 37***)
15. The Appellant submitted that the Court was wrong to dismiss the application for interim relief because:
  - i. the Appellant had demonstrated a strong *prima facie* case with a realistic prospect of success;
  - ii. the balance of convenience/ justice weighs heavily in favour of the grant of interim relief without which the Appellant's quest for permission to cremate her father in accordance with her (and her father's) religious belief and practice would be an exercise in futility as she will be forced to cremate him contrary to her (their) religious belief and;
  - iii. damages is not an adequate remedy.
16. Alternatively, the dismissal of the Application for urgent interim relief mandated the Court to treat the substantive claim in an expeditious manner and the court was wrong to accede to the Respondent's request for such a prolonged case management timetable.
17. This is a challenge to the Recommendations and Guidelines for Hospital Staff and Funeral Agencies in the Context of COVID- 19 made pursuant to the 2019 Novel Coronavirus (2019-Ncov) Regulations which state that "*Open-Air Pyre Cremations will not be allowed for persons who are COVID-19 positive at the time of death as indicated on the death certificate*" on the basis that this policy is irrational, unreasonable, arbitrary, fundamentally unfair and illegal and that the said regulations and guidelines are in contravention of Section 4 (b) ,

4(d) and (h) of the Constitution of the Republic of Trinidad and Tobago which guarantees the rights to equality before the law and the protection of the law and the right to freedom of conscience and religious belief and observance.

18. This is a matter of fundamental public importance which affects the national Hindu community, which accounts for almost 20% of the national population in Trinidad and Tobago. Generally, cremations done according to Hindu tradition are done quickly, usually within 2 days. The Applicant's father has been deceased since 25th July 2021, and due to the current backlog of bodies at funeral homes the Appellant must wait 1-2 weeks before she can secure an appointment in a crematorium to cremate her father.
19. Birth, death and the after-life are subjects of specific religious prescription and injunctions. In Hinduism the bodies of deceased family members are usually cremated as soon as possible to allow the soul to be freed from the body.
20. The Appellant submitted that she remains in limbo as she is unable to lawfully cremate her deceased father via open air-pyre in accordance with his last wishes and her religious beliefs. Conversely, she is unable to afford an expensive and protracted indoor cremation process. There is at present, a bottleneck and backlog in the cremation of COVID-19 positive corpses via indoor crematorium at time when disposal should be quick and efficient. As a result of the said backlog the costs of the cremation have significantly increased as there is a daily cost for storing and keeping the body refrigerated of approximately \$300.00 per day.
21. The Appellant submitted that the alleged breach of the constitutional rights involved are fundamental and continuous and will affect future persons. This matter should be heard urgently as it deals with sacred fundamental rights concerning the manner in which the bodies of deceased citizens are disposed of at time when the COVID- 19 death toll has crossed 1000.
22. The Appellant submitted that this an appropriate case where the Court's power to deal with matters expeditiously should be utilised to facilitate an efficient and effective use of the Court's resources and further the overriding objective at a time when the Covid-19 restrictions have impacted on the operations of the courts and legal profession.

### **RESPONDENT SUBMISSIONS**

23. The Notice of Appeal appeals all of the case management directions. The Respondent has recognized and outlined the Appellant arguments as follows:

- this is an issue that affects the entire Hindu community. It is also a matter of urgency because the Appellant's father's body is being kept in a funeral home on ice.
  - this is a matter of constitutional importance namely; religious freedom and protection of the law. The Appellant is distraught and thus there is an emotional component.
  - there is also a cost component dealing with the maintenance of the deceased in a funeral home as well as the cost of cremation.
24. The Respondent submitted that the Court must have regard for the following-
- i) In order to sustain an argument for urgency, there must be some review of the merits. A totally unsubstantiated argument cannot be deemed urgent especially during this pandemic and State of Emergency. Community interest and the preservation of the health of the society has to take precedence.
  - ii) The learned trial judge has deemed the matter urgent and she has since 05 August 2021 fixed dates for the filing of affidavits which will include expert evidence. This order reaffirmed the position of the state which had noted in its pre-action reply of 29 July 2021 in response to the pre-action letter it required time to source expert evidence.
  - iii) The decision to have an open pyre cremation is exercised in accordance with the Cremation Act and in particular Regulation 6. This case will not solve the problem of the entire Hindu community since every decision to allow open pyre cremation is an individual decision by the relevant authority.
  - iv) Allowing an expedited Appeal on the guidelines without the State making a proper evidential contribution would therefore be impractical.
  - v) The Respondent submitted that the guidelines have been described by **Suraj** as merely guidelines. They do not carry the force of law and they do not attract any sanctions for breach. Therefore, striking down the guidelines would be of no value since the Authority granting the cremation permit may ignore it or take it into consideration.
  - vi) The preparation of these guidelines was done on a consultative basis in which pathologists and funeral homes and religious bodies were extensively consulted.
  - vii) The Court cannot substitute its own decision and grant a permit for open pyre cremation. The matter must be remitted back to the authority under the Cremation Act.
  - viii) The Affidavit of Dr. Parasram has been noted which is one of several Affidavits which the State intended to file. Dr. Parasram in his capacity

of the CMO plainly contradicted Dr. Cleghorn. In such cases, the Court of necessity leans in favour of maintaining the status quo.

ix) Trial dates have been set and the matter should be allowed to proceed.

x) The Court would not likely disrupt the trial Judge in the exercise of its case management powers.

xi) The effect of making an Order sought by the Appellant without full evidence on the part of the State would virtually open up a Pandora's Box in every instance where a cremation authorization is refused.

xii) The Court at this preliminary stage must hold the status quo so as to allow the resolution of this matter.

xiii) There is no urgency in this matter that would justify a court disrupting a decision of the trial Judge.

xiv) The Respondent submitted that the State has repeatedly said that all of the Public Health Regulations and State of Emergency Regulations are under constant review and that the science of Covid 19 is not fully understood.

xv) This would also have an impact on other religious communities and unless the State is acting illegally or unconstitutionally a court should not intervene.

xvi) The Respondent noted the emotional state of the Appellant as well as the allegation of the cost issue and submitted that difficult choices have to be made in these very trying times internationally. The Appellant's individualized rights cannot trump the rights of the entire community and afford her a place on the list on the basis of her emotional distress or the cost component.

### **COURT'S REASONING**

25. In this case, the Appellant seeks an interim relief to allow the open-air pyre cremation of the deceased by way of a Court order for the relevant permit by the Commissioner of Police. The lens through which this application ought to be viewed commands the exercise of caution to the extent that the reasoning in this decision is to be employed, albeit the decision was one for injunctive relief.

26. The Canadian case of **Beudoin v British Columbia 2021 BCSC 248** is of relevance and this Court finds guidance from it.<sup>1</sup> We are in

---

<sup>1</sup> Para 3 states as follows:

the midst of a terrible pandemic and the health and safety protocols in place seek to protect citizens from the ravages of the pandemic. This Court adopts the views espoused as follows:

[45] ...The petitioners liken the risk of such exposure to the virus during their religious activities to other activities permitted by Dr. Henry. The petitioners assert that the risks created by their continued religious activities can be reasonably addressed with the safety measures imposed on other activities that create comparable risks without safety measures.

[46] The respondents correctly point out that this step in the RJR-MacDonald analysis presumes that duly enacted laws are operable. At 346, the majority wrote:

*“In our view, the concept of inconvenience should be widely construed in Charter cases. In the case of a public authority, **the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant.** This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. **The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.***

***A court should not, as a general rule, attempt to ascertain whether actual harm would result from the restraint sought. To do so would in effect require judicial inquiry into whether the government is governing well, since it implies the possibility that the government action does***

---

*“The petitioners protest a Ministerial Order and certain orders made by the respondent Dr. Henry in response to the COVID-19 pandemic. The orders restrict gatherings and events, including religious gatherings. The petitioners seek to have them declared to be of no force and effect as unjustifiable infringements of their, or their parishioners’ Charter rights. They seek to have the orders quashed, and interim and final injunctions granted to enjoin the respondents from further enforcement action that would interfere with religious services, as well as an order quashing certain violation tickets issued pursuant to the impugned orders.”*

***not have the effect of promoting the public interest and that the restraint of the action would therefore not harm the public interest. The Charter does not give the courts a licence to evaluate the effectiveness of government action, but only to restrain it where it encroaches upon fundamental rights.***

[48] *Both Harper and RJR-Macdonald are cases where applicants for a stay of the effect of legislation sought stays of the enforcement of that legislation pending the resolution of their claims that the legislation was ultra vires the enacting body. The applicants in those cases sought to delay the legal effect of regulations which had already been enacted and to prevent public authorities from enforcing them. Here, it is the enacting body that seeks injunctive relief to enforce its legislation. In the result, the lens through which the application before me is to be viewed commands the exercise of caution to the extent that the reasoning in those decisions are to be employed.*

27. The alternative remedies available to the Appellant are factors to be considered in the exercise of my discretion. The challenged orders remain extant unless and until set aside or overturned by this Court.
28. This Court has relied on the reasoning of this Canadian decision on the issue of the COVID 19 constitutional challenge. I have found guidance from this case which speaks to no fault of government officials in implementing Health and Safety Protocols and Guidelines during a Pandemic where there is an outbreak of an infectious disease. There is no constitutional breach of individual's religious rights.

### **CONCLUSION**

29. Having considered the written and oral submissions inclusive of the filed affidavits and authorities advanced by both parties in this matter this Court holds the following in relation to each ground.

#### GROUND 1

30. This Court finds that the learned trial judge did not err in not granting leave for the Appellant to judicially review the First Respondent's Guidelines on the basis that the Guidelines do not form part of any law and is not capable of being judicially reviewed.

#### GROUND 2

31. This Court finds that the learned trial judge did not fall into error by failing to recognize that Government policies can be judicially reviewed. Whilst the appropriate principles are referred to as the case of ***Gillick*** Principles, which were recently affirmed in ***R v the Secretary***

***of State for the Home Department [2021] UKSC 37***, the learned trial judge was not wrong in her ruling in dismissing this ground.

GROUND 3

32. This Court finds that the learned trial judge did not err in finding that the Appellant did not meet the threshold for leave for Judicial Review against the First Respondent as per the test in the governing principle identified in ***Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14***. On this ground, the Appellant did not satisfy the test of the grounds having a realistic prospect of success.

GROUND 4

33. This Court finds that the learned trial judge did not err in refusing the application for interim relief. However, the Court having deemed the matter fit for urgent hearing, the Court should not have granted such a long case management timeline.

GROUND 5

34. This Court holds that the learned trial judge did not fall into error in dismissing the application for interim relief on the ground that “the consequences of such interim relief may be deleterious and irreversible”. Despite the independent expert advice which stated that the risk exposure for the COVID-19 virus was higher in an indoor crematorium the learned trial judge exercised her discretion in considering the evidence before her in arriving at her decision.

GROUND 6

35. This Court holds the view that the learned trial judge did not err in failing to recognize that the Appellant had raised a strong prima facie case that justified the grant of interim relief in the circumstances of the case.

GROUND 7

36. This Court is of the view that the learned trial judge did not fall into error in failing to apply the relevant test and legal principles that governs the grant of interim relief. In fact, from the reasoning above, the learned trial judge gave a decision in line with the seriousness of the COVID-19 pandemic and Health protocols in place to prevent the further spread of the deadly virus.

37. This Court has taken note of the alleged hardship, which the Appellant claim’s she suffered and notes the application made for an interim relief. The appeal is grounded on the fact that second named respondent granted a permit, contrary to guidelines and later revoked the said permit. The decision was said to be a breach of the Appellant’s constitutional right to practice religion. However, such breach was deemed justifiable by Quinlan-Williams, J in the interest of the public, in light of the COVID-19 pandemic.

38. In the grounds, the Appellant complained that the learned trial judge ignored evidence of the expert opinion and the impact of ban on open pyre funerals on the Hindu community. This was an issue that was relevant in the High Court proceedings and therefore relevant to this appeal. It is therefore relevant to the application before this court.

39. Further, having considered the Affidavit of Dr Parasram (CMO), this Court is satisfied that the expert evidence filed on behalf of the Respondent is cogent and that the Ministry of Health, the new normal, Recommendations and Guidelines for Hospital Staff and Funeral Agencies in the context of COVID-19 are in accordance with the World Health Organization (WHO) which declared an outbreak of the newly discovered coronavirus as a Public Health Emergency of International Concern.<sup>2</sup>

40. This Court notes that the CMO has been guided by the international guidelines of the WHO and notes at para 6 of the CMO's Affidavit as follows:

*“...the advice is not country specific. Each country is at a different phase of the pandemic and has different resources, limitations, populations and local considerations. As such, this guidance must necessarily be adapted to local conditions.”*

41. This Court also finds significance at para 15 of the CMO's Affidavit where he stated:

*“Bearing in mind that ceremonial rites performed on behalf of a deceased member of a community or family are of immense personal, social and cultural value and are sacred and the Ministry's general appreciation and recognition of the rights of individuals with respect to inclusiveness and consultation in the development of all its policies and guidelines, the Ministry, in March 2020, assembled a team to **prepare draft guidelines for the handling of COVID-19 decedents, with the understanding that the protection of human life in all religious beliefs takes precedence over such rites and rituals.**”*

42. This Court further notes para 17 of the Affidavit of the CMO that the completed draft guideline for the handling of COVID-19 decedents

---

<sup>2</sup> Para 5 of the Affidavit of Dr. Parasram (CMO)

*“...On 31<sup>st</sup> January 2020, by Legal Notice No 34 of 2020, Her Excellency President Paula- Mae Weekes declared that the 2019 Novel Coronavirus (COVID-19) was “a dangerous infectious disease”. This virus was eventually given the name COVID-19 and on 11<sup>th</sup> March 2020 was declared a pandemic by the WHO, meaning that there was worldwide spread.”*

was forwarded and circulated to all members inclusive of the Hindu community for consideration and suggestions. In-fact the suggestions made by the President of the Inter-Religious Organization was taken into consideration in the final guidelines document.

43. This Court is satisfied with the expert evidence provided by the Affidavit of the CMO.<sup>3</sup> Particularly at para 20 which states:  
*“[20] As regards the prohibition of open pyre cremation in the guidelines, this was premised on the following factors:*

---

<sup>3</sup> Para 18-20 of the Affidavit of Dr. Parasram (CMO)

*“18. The key principles used in this Guideline, that lead to the strict restrictions on the way in which COVID-19 decedents were handled from the time of their death to either cremation or burial, were the following:*

- i. As is currently understood, SARS-CoV-2 is transmitted via infected respiratory droplets and close contact (i.e. within 6ft or 2 meters for a prolonged period) with an infected individual. There is emerging evidence that it may also be transmitted by inhalation of aerosols.*
- ii. The virus has been detected in saliva, sputum, blood, urine and stool. As such these should be considered infectious and aerosolization of bodily fluids should be limited.*
- iii. It is currently unknown how long the SARS-CoV-2 virus remains virulent after death. As such decedents should be treated as infectious to limit transmission to the public. Studies have shown that SARS-CoV-2 genomic fragments were still present in the body of an exhumed person who died from COVID-19. Like a lot of viruses, it has an envelope which makes it more sensitive to the environment. Indeed, temperature and humidity are important factors that influence the virus survival. SARS –CoV-2 can survive in cadavers for a long time; it depends on the amount of virus detected before death, on which organ and tissue the virus had been detected in, and also on the burial process. Studies have indicated the persistence of the virus on skin as long as 14 days post-mortem and has also been detected on bodies post embalming. The expanding literature on the presence of SARS-CoV-2 viral RNA in or on a dead body indicates that the virus may be present in a wide array of bodily tissues and fluids and can be detected at extended intervals of several hours to days’ post mortem.*
- iv. In Trinidad and Tobago, the detection of the virus via nasopharyngeal swab have been detected via RT PCR in multiple samples of deceased individuals. The most recent detection was in three (3) cadavers whose burnt remains were brought to the Forensic Science Centre. The persons died due to being burnt in their home. All three presented positive COVID-19 results which provides further evidence that COVID-19 remains on or within the body of deceased individuals.*
- v. The Indian Council of Medical Research (ICMR) has indicated that even mucosal surfaces, such as those in nasal and oral cavities, gases or fluids expelled through natural orifices as a result of compression of cavities, which can occur during transport, can be sources of disease transmission. Hence, surface disinfection does not provide protection against COVID-19 during autopsy and burial. As a result, they have recommended double bagging of all COVID-19 decedents.*

*19. Based on the above, the Ministry was advised to and took the decision, for example, in its policy document, that all COVID decedents will be placed in a 9mm body bag at the time of death by medical staff who would be wearing the appropriate Personal Protective Equipment (PPE) and that that bag would be sealed and not opened except for the sole purpose of body identification by ONE family member, who would be allowed to view the face only whilst wearing appropriate PPE. The policy seeks to limit handling of the COVID-19 decedent to a minimum in order to limit the possibility of transmission. Body bags for non-infectious use are usually 5mm thick.”*

- i. *A study conducted by Alunni, et al examined the forensic science behind cremations on wooden pyres. The study concluded the average pyre does not completely destroy a human body effectively. In many cases there were “pyre suicides” which showed signs of remains being more charred rather than completely oxidized by high temperatures, are in anatomically correct positions and had poor bone fragmentation.*
- ii. *In modern crematoriums, the corpse is incinerated in a **pecially designed chamber**. The chamber allows for an **extremely high internal temperature of 870-980 Celsius (1,598-1,796 Fahrenheit)** to be reached and **maintained throughout the process**. Additionally, the **burn chamber is a sealed insulated compartment ensuring protection of those in close proximity to the chamber**. Crematoriums are outfitted with **exhaust systems and scrubbers to ensure that emissions are not only safe with respect to particulate matter discharge but also toxic chemicals**. They are therefore **fully compliant with the EMA Air Pollution Rules 2014** as well as the requirements of a Certificate of Environmental Clearance. In comparison open pyre cremations do not work as efficiently and are dependent on factors such as stacking, environmental elements, body size of corpse as well as the properties of the wood being used. Although these pyres can reach high temperatures, the temperatures start off slowly resulting in early cooking rather than incineration. Air although providing oxygen for the burn also cools the process and makes the burn temperature variable. Environmental conditions such as rain can also severely affect the burn cycle and also lead to contaminated runoff from the pyre. The plumes of smoke emanating from such sites are also not in compliance with EMA regulations. The evaporation of body fluids combined with the rupture of body cavities can be heard by those around. The fact that these fluids are rich in viral content presents an uncertain risk to those nearby.*
- iii. *There have also been many studies highlighting disease outbreaks amongst workers involved in facilities where incineration of infective material was not being achieved because of improper burning.”*

44. This Court finds that current situation is properly capsuled at para 22 of the Affidavit where the CMO stated:

*“Due to the above and the nature of the COVID-19 virus and now its variants and our inability to say at this time, how the virus may further mutate, the Ministry, on my advice, has adopted a **precautionary principle that will ensure that the measures adopted will protect its citizens from unnecessary exposure and hence limit the morbidity and mortality seen with this disease, as public health safety is always paramount.**”*

45. I have considered the arguments advanced by the Respondent and find credence with the submission that the effect of the Appellant’s request without full evidence on the part of the State would open up a floodgate scenario in every instance where a cremation authorization is refused. This Court notes the emotional distress and financial strain of the Appellant during this COVID-19 pandemic, and notes that the experience has been similar to all persons worldwide.

46. Whilst, the issues raised in this case are of fundamental public importance and have affected the Hindu community, this Court is of the firm view that the Appellant’s individual rights cannot outweigh the rights of the entire community at large. Community interest and the preservation of the health of the society has to take precedence. The Public interest remains paramount in times of a dangerous infectious disease which is currently mutating into different strains of the virus.

47. This Court finds therefore, that the Appellant has failed to provide cogent evidence to support her submission that the virus cannot be transmitted on a corpse and cannot be spread in open pyre cremations. Instead, the Appellant have mounted arguments and speculated about the Health Officials reasons for preventing open pyre cremations. Dr. Parasram (CMO) in his expert opinion plainly contradicted Dr. Cleghorn. The Health Official’s precautionary measures are even more crucial, as it is currently unknown how long the virus remains virulent after death. Thus, this Court is in agreement that the decedents are to be treated as infectious to limit transmission to the public.

#### GROUND 8

#### **EXPEDITED APPEAL ISSUE TO BE DETERMINED**

48. The central issue for my determination is whether or not the Appellant have satisfied me that this appeal should be deemed urgent and expedited pursuant to Rules 64.10 of the CPR as amended.

#### **LAW**

49. Rule 64.10 provides –

- (1) Any party to an appeal may apply for the appeal to be expedited;
- (2) On hearing the application the court may give such directions as are appropriate and in particular may direct that any part of rule 64.12 or 64.13 are not to apply or substitute different time limits for any time limits provided by the rules.

50. Rule 64.10 of the CPR as amended permits the court to make an order for the hearing of an appeal to be expedited. The Appellant would like this court to make such an order and in their Notice of Application relied on eight grounds to support their request for an expedited hearing of this appeal. The Respondent argued that there is no basis for this appeal to be expedited.

51. In deciding whether or not to exercise my discretion in this matter I considered that the overriding objective of the CPR is to treat cases fairly. Treating cases fairly does not only mean fairness to the parties to this appeal but to other parties awaiting for their appeals to be heard. An application for an expedited hearing of an appeal is essentially a request to the court to give an appeal priority over other appeals already listed for hearing.

52. Apart from considering the overriding objective of the CPR, I also considered the principles enunciated in **Trinidad and Tobago Civil Rights Association v Patrick Augustus Manning, Civil Appeal No. 147 of 2004, Unilever PLC vs Chefaro Proprietaries Ltd [1995] 1 All E R 587 and Robert Gormany and Shaun Sammy vs The Trinidad and Tobago Housing Development Corporation, Civil Appeal No. S375 of 2018**. These cases provided me with useful guidelines for deciding whether or not to exercise my discretion to expedite this appeal.

53. Nelson, JA in **Trinidad and Tobago Civil Rights Association v Patrick Manning**, endorsed the views expressed by Sir Thomas Bingham in **Unilever PLC v Chefaro Proprietaries Limited** on the consequences of expediting an appeal:

*“Since most appeals are scheduled to be heard on dates fixed well in advance, and since court sittings are so far as possible planned a long time ahead, the expediting of an appeal other than the shortest is likely to have one or other of two consequences, usually both. One is that a fixture already made for the hearing of another appeal has to be cancelled. The other is that the hearing of another appeal, which may well have been awaiting hearing for about 18 months, has to be deferred.’... ‘Both these consequences are highly*

*distasteful both to the court and the parties in the displaced appeal or appeals.”*

54. Further, Nelson, JA following the principles enunciated in Unilever, stated the following in **Trinidad and Tobago Civil Rights Association**:

*“... the court is very sparing in its grant of applications for urgent hearing especially in view of the fortunate position in which our Court of Appeal list stands. Secondly, that the court in fixing a date for an early hearing would give weight not so much to the wishes of the parties to that appeal, but to the interest of other parties who would be adversely affected by the cancellation or postponement of their appeals. One has to consider that all persons who filed appeals feel that those appeals ought to be heard urgently. It would therefore require some exceptional case to be made out for an urgent hearing to be granted especially in view of the relatively short time-lag between setting down and hearing of an appeal in this jurisdiction.”*

55. While the time lag between setting down and hearing of an appeal in this jurisdiction is not the same as it was at the time of the Trinidad and Tobago Civil Rights Association case, the position adopted by Nelson, JA in Trinidad and Tobago Civil Rights Association and held by Sir Thomas Bingham in Unilever are still valid.

56. Additionally, Sir Thomas Bingham in Unilever stated that a party must cross a high threshold before its application for an expedited appeal should be granted.

57. In deciding the approach to such applications, Bingham considered two kinds of cases. One, where justice can only be done if the appeal is heard immediately or within days. An example of this is where an accused convicted of murder is seeking a stay of execution to prevent the State from carrying out his execution. (Of course, there are other examples less extreme than this one.) Two, cases where certain circumstances warrant an expedited hearing. For example, where –

- i. A party may lose its livelihood, business or home or suffer irreparable loss or extraordinary hardship;
- ii. The appeal will become futile;
- iii. The resolution of numerous cases turning on the outcome of a case under appeal will be unreasonably delayed, or the

orderly management of class or multi-party litigation in a lower court will be disrupted;

- iv. Widespread divergences of practice are likely to continue, with the prospect of multiple appeals until the correct practice is laid down; and
- v. There would be serious detriment to good public administration or to the interest of members of the public not concerned in the instant appeal.

58. While this list is not exhaustive it was instructive to me in coming to my decision. The common thread that ran through the **Trinidad and Tobago Civil Rights Association** (supra), **Unilever** (supra), **Robert Gormany** (supra) and the recent case of **The Attorney General of Trinidad and Tobago vs Ryan Reno Mahabir** (supra) was that appeals should only be expedited where there are exceptional circumstances.

59. The delays in the course of the trial are relevant issues for my consideration in this application. The Respondents submitted that none of these grounds provided any support for this application to expedite the hearing of this appeal.

60. This Court notes that whilst the Appellant raised the merits of the appeal and argued that the Appellant have a fair prospect for success. The merits of the appeal are not a factor that I need to take into consideration in deciding whether to expedite this Appeal. In considering the overall submissions made before me the Appellant have shown that there are exceptional circumstances which have passed the high threshold that is required for me to deem this appeal urgent.

61. This Court is of the view that the Respondent's request for a long case management dates is unreasonable as the matter is deemed fit for expedited hearing. Case management directions for the matter are to be dealt with as a matter of urgency. This Court agrees that the issues raised the case are of fundamental public importance and have significantly affected the entire Hindu community.

62. In conclusion, the Appellant has satisfied me on a balance of probability that this appeal involves exceptional circumstances that should lead me to exercise my discretion to deem this appeal urgent pursuant to Rule 64.10 of the CPR as amended.

63. It was brought to the attention of the Court by both Senior Counsel in the matter that the Appellant had cremated her decedent father on Tuesday 10th August 2021. As a result, this materially

changes the urgency of this matter in relation to the application for the interim relief. The public interest aspect is still very much alive as the Court has been informed that Counsel for the Appellant has filed a similar JR Application for an intended claimant. The Court directs that all similar matters should be consolidated into this appeal.

### **COURT'S DECISION**

64. The Appellant's application for judicial review against that part of the decision of the Honourable Madam Justice Avason Quinlan-Williams made on August 3, 2021 refusing **the Appellant's interim relief and leave to apply for Judicial Review against the First Respondent** and the case management order made on August 05, 2021 giving case management directions that were inconsistent with the previous order deeming the matter fit for urgent hearing **is hereby denied.**

### **COURT'S ORDER**

65. The Appellant's application seeking the following orders:
1. an order reversing the decision and the grant of leave to judicially review the Guidelines **is hereby denied.**
  2. an order that interim relief be granted in terms of the Appellant's notice of application for leave filed July 30, 2021
    - [i] An interim declaration that the policy ban on open air cremations/or persons who died from the corona virus which is based on the " Recommendations and Guidelines for Hospital Staff and Funeral Agencies in the context of Covid-19" which states that Open-Air Pyre Cremations will not be allowed for persons who are COVID-19 positive at the time of death as indicated on the death certificate is irrational, unfair and illegal*  
**is hereby denied.**
    - [ii] An order directing the 2nd Respondent/ Intended Defendant to issue a cremation permit within 24 hours to allow the Claimant to have open-air pyre cremation for the late Silochan Ramsaroop also known as Seelochan Ramsaroop subject to compliance with the same guidelines that apply to non-COVID related deaths*  
**is hereby denied.**
  3. an order that this matter is deemed fit for urgent and expedited hearing with appropriate case management directions **is allowed.**

4. an order for the costs of the appeal **is hereby denied.**

66. The Appellant's application for an expedited appeal is hereby granted with the following **case management orders** that:

- i) The Appellant to file and serve any further affidavits (if necessary) on or before 27th August 2021
- ii) The Respondent to file and serve affidavits in response on or before 13th September 2021
- iii) The Appellant to file and serve affidavit in reply to new issues only if necessary on or before 23th September 2021
- iv) The Respondent to file and serve written submissions with authorities on or before 15th October 2021
- v) The Respondent to file and serve submissions in response on or before 25th October 2021
- vi) The Appellant to file submissions in reply to new authorities raised in submissions on or before 2nd November 2021
- vii) Notice of appeal filed on 5th August 2021 as a procedural appeal to be heard as a substantive appeal. The hearing of the appeal is fixed to be heard before the panel of Judges presiding in the East Court on the 22nd November 2021.

**Dated this 13<sup>th</sup> day AUGUST 2021.**

*Malcolm Holdip*

---

**MALCOLM HOLDIP  
JUSTICE OF APPEAL**

Shoba G. Nandalal  
Judicial Research Counsel II