

(2016) 09 MP CK 0043
In the Madhya Pradesh High Court
Case No : W.P. No. 5975 of 2016

Dr. Jitendra K. Jain

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipal Corporation Act, 1956 — Section 366(5), Section 366(6)

Citation : (2017) 1 MPLJ 117

Hon'ble Judges : Mr. Alok Aradhe and S.A. Dharmadhikari, JJ.

Bench : Division Bench

Advocate : Mr. Anand V. Bharadwaj, learned Counsel, for the Petitioner; Mr. Vishal Mishra, learned Additional Advocate General, for the Respondents Nos. 1, 2 and 4; Mr. Gaurav Mishra, learned Counsel, for the Respondent No. 3; Mr. F.A. Shah and Mr. Tapendra Sharma,

Final Decision : Dismissed

Judgement

With the consent of the parties, matter is heard finally.

1. In this Public Interest Litigation, the petitioner inter alia seeks a direction to the respondents to impose restrictions on opening and running the slaughter houses/ shops during the Paryushan Parv, festival of Jain Community starting from 27.8.2016 to 4.9.2016 for Swetambar sect and from 5.9.2016 till 15.9.2016 for Digambar sect.

2. Facts giving rise to filing of the petition, briefly stated, are that this petition has been filed probono publico by the petitioner, who is a trustee of Digambar Jain Siddh Kshetra Sanrakshani Committee, Sonagir, District Datia and Secretary of Jail Milan, Gwalior. It is stated in the petition that Paryushan Festival for the Swetambar sect starts from 27.8.2016 till 4.9.2016 and thereafter for a period from 5.9.2016 to 15.9.2016 for Digambar sect. It has been averred in the writ petition that even the emperor Akbar used to remain vegetarian on Friday and Sunday only to respect the vegetarian persons. The relief in the writ petition is

founded on a decision rendered by the Supreme Court in the case of *Hinsavirodhak Sangh v. Mirzapur Murti Quiresh Jamaat & others*, AIR 2008 SC 1892. It is further stated that in the entire State of Madhya Pradesh, the population of Jains is more than 6 Lacs and, therefore, Collector as well as Municipal Corporation, Gwalior and Superintendent of Police should ensure that the slaughter houses are not allowed to operate during the Paryushan Festival. It has also been averred in the writ petition that in the States of Rajasthan, Haryana and Chhattisgarh, such restrictions have been imposed. It is also pointed out that Municipal Corporation had issued an order dated 18.9.2015, by which slaughter houses were directed to be closed for a period from 18.9.2015 to 27.9.2015 for the year 2015. In the aforesaid factual background, the petitioner has approached this Court.

3. Learned counsel for the petitioner has invited our attention to the provisions of Sections 255 and 366 (6) of the Madhya Pradesh Municipal Corporation Act, 1956 and paragraphs 37, 41, 45, 59 of the decision rendered in the case of *Hinsavirodhak Sangh* (supra).

4. On the other hand, learned Additional Advocate General has submitted that State Government by an order dated 23.9.2015 has issued directions to the Chief Municipal Officers of various Municipalities as well as Commissioners of Municipal Corporations in the State of Madhya Pradesh to close the slaughter houses on 17 days, which has been mentioned in the order in the light of the decision rendered by the Supreme Court in the case of *Hinsavirodhak Sangh* (supra). It is further submitted that in addition to the aforesaid 17 days, the local bodies would be at liberty to close the slaughter houses for such period as may be deemed expedient taking into account the surrounding circumstances. Learned counsel for the respondent No.3-Municipal Corporation submits that the respondent Corporation has no power under the provisions of Madhya Pradesh Municipal Corporation Act, 1956 to close down the slaughter houses on account of festival of any particular community and the decision relied on behalf of the petitioner in the case of *Hinsavirodhak Sangh* (supra) has no application to the fact situation of the case.

5. We have considered the rival submissions made at the bar.

6. At this stage, we deem it appropriate to reproduce the relevant provisions of Madhya Pradesh Municipal Corporation Act, 1956, namely, Sections 255 and 366 (5) and (6) as under:-

"Section-255- Selling animals, meat, etc., outside a market without a licence.-(1) Without a licence from the Commissioner no person shall sell or expose for sale any animal or any meat or fish intended for human food in any place other than a Corporation or licensed market.

Section 366- Licences and permissions-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) Any licence or written permission granted under this Act, or under any rule or bye - Law made thereunder, may at any time be suspended or revoked by the Commissioner if any of its restrictions or conditions is infringed or evaded by the grantee, or if the grantee is convicted of a breach of any of the provisions of this Act or of any rule or bye - Law made thereunder in any matter to which such licence or permission relates.

(6) When any such licence or written permission is suspended or revoked, or when the period for which the same was granted, has expired, the grantee shall for all purposes of this Act or of any rule or bye - Law made thereunder, be deemed to be without a licence or written permission until such time whether within the said period or otherwise, as the authority granting the same may see fit to cancel the order suspending or revoking the licence or written permission or until the licence or written permission is renewed, as the case may be."

From conjoint reading of Section 366(5) and Section 366(6), it is evident that a licence or written permission granted under the Act can be suspended only where the restrictions or conditions mentioned in the licence are infringed or evaded by the grantee or if the grantee is convicted of a breach of any provisions of this Act or any rule or bye - Law made thereunder in any matter to which such licence or permission relates. Thus, it is evident that a licence under Section 366(6) of the Act can be cancelled only on the grounds enumerated under Section 366(5) of the Act.

7. From close scrutiny of the provisions of the Madhya Pradesh Municipal Corporation Act, 1956, we find that there is no provision enabling a Municipal Corporation or a Municipality to suspend the licence of slaughter house on the occasion of festival of a particular community.

8. Now, we may advert to the decision of the Supreme Court in the case of Hinsavirodhak Sangh (supra). In the aforesaid decision, the resolution passed by Municipal Corporation, Ahmadabad in exercise of powers under Section 466(1)(D) (b) of the Bombay Provincial Municipal Corporation Act, 1949 was under challenge. The aforesaid provision reads as under:-

"The Commissioner may make standing orders consistent with the provisions of this Act and the rules and by-laws in respect of the following matters, namely:-

(A).....

(B).....

(C)

(D).....

(b) fixing the days and the hours on and during which any market, slaughter-house or stock-yard may be held or kept open for use and prohibiting the owner of any private market from keeping it closed without lawful excuse on such days or during such hours."

Thus, it is evident that under the provisions of Bombay Provincial Municipal Corporation Act, 1949 the Commissioner had the authority to fix the days and hours and during which any market, slaughter-house or stockyard may be held or kept open for use and prohibiting the owner of any private market from keeping it closed without lawful excuse on such days or during such hours.

9. In the instant case, there appears to be no para materia provision like Section 466(1)(D)(b) of the Bombay Provincial Municipal Corporation Act, 1949, which empowers the Municipal Corporation to close the slaughter houses on account of festival of any particular community. The Supreme Court in the case of *Hinsavirodhak Sangh (supra)*, has upheld the validity of the resolution on the ground that the same is neither unreasonable nor arbitrary. In the instant case, the petitioner is seeking a writ of mandamus to Municipal Corporation, Gwalior to close down the slaughter houses. In the absence of any provisions in the Municipal Corporation Act, 1956, in our considered opinion, the relief as prayed for by the petitioner cannot be granted to the petitioner as writ of mandamus can be issued only for enforcement of a legal right or a legal obligation. It is also pertinent to mention here that Division Bench of High Court of Judicature at Bombay in Writ Petition No. 2662/2015 by an order dated 14.9.2015 had stayed the order dated 7.9.2004 which provided for closure of meat selling shop and prohibition of selling of meat during Paryushan Festival. Against the aforesaid order, Special Leave Petition, namely, Special Leave Petition (Civil) No. 17345/2015, was preferred before the Supreme Court, which was dismissed vide order dated 17.9.2015.

10. In view of preceding analysis, we do not find any merit in the writ petition. The same fails and is hereby dismissed.