

**(2018) 08 CAL CK 0018**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 237 of 2016**

Mrityunjoy Chowdhury

APPELLANT

Vs

Kolkata Municipal Corporation & Ors.

RESPONDENT

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**Date of Decision :** 03-08-2018

**Acts Referred:**

Constitution of India 1950 — Article 12

**Citation :** (2018) 08 CAL CK 0018

**Hon'ble Judges :** DEBANGSU BASAK, J

**Bench :** Single Bench

**Advocate :** Achintya Kumar Banerjee, R.N. Chakraborty, Ranajit Chatterjee,  
Sima Chakraborty, Arijit De

**Final Decision :** Disposed Off

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## Judgement

DEBANGSU BASAK, J.

The petitioner has challenged a Model Lease Agreement proposed by Kolkata Municipal Corporation for the purpose of stalls at Hogg Market.

Learned Advocate for the petitioner has submitted that, the petitioner is one of the stall holders at S.S. Hogg Market, Phase-II. All stall holders of

Hogg Market are entitled to be treated equally. The Corporation is treating stall holders of different markets all over the city of Kolkata, differently.

He submits that, there was a proposal by the Corporation to enhance the lease period from 30 years to 60 years as prevailing in some cases of the

Hogg Market complex and also at Gariahat Market complex. Such proposal was approved by the Mayor. He has referred to the relevant documents

in that regard.

He has also referred to the transfer policy relating to a stall at the Hogg Market. He has submitted that, such transfer policy has not been uniformly

applied. He has referred to agreements entered into between the Corporation with other stall holders. He has submitted that, the Corporation has entered into agreements for 60 years in respect of few stall holders with additional rights being given to such stall holders. There is no reason for discrimination against the petitioner on such parameter. Several representations made to the Corporation have not been answered by the Corporation till date. He has relied upon All India Reporter 1980 Supreme Court page 1992 (M/s. Kasturi Lal Lakshmi Reddy v. The State of Jammu & Kashmir & Anr.) in support of his contention that, every action of an Article 12 Authority must satisfy the test of reasonableness. An Article 12 Authority cannot enter into a contract which is arbitrary and irrational.

Learned Advocate appearing for the Corporation has submitted that, the petitioner or members of the association to which the petitioner belongs, have not been discriminated. All stalls of Hogg Market cannot be compared with each other because of the nature of their location and size. The instances that, the petitioner has given with regard to agreements being entered into for 60 years, are in respect of portions of Hogg Market area which ordinarily a stall holder will not subscribe to. He has referred to such lease agreement and submitted that, the apprehensions expressed by the petitioner are misplaced. He has relied upon 2003 Volume 4 Supreme Court Cases page 579 (Indian Railway Construction Co. Ltd. v. Ajay Kumar) and submitted that, an authority is entitled to exercise discretion. Exercise of such discretion need not be judicially reviewed unless, mala fides in such exercise are established.

M/s. Kasturi Lal Lakshmi Reddy (supra) has held that, the Government has a discretion in the grant of largess. In exercise of discretion a Government can grant largess, by way of negotiation. However, such discretion is not unlimited. The discretion exercised must satisfy the test of reasonableness and public interest. Ajay Kumar (supra) has held that, judicial review of administrative action is permissible when, the action complained of is in excess or abuse of discretionary power or is an illegality or suffers from irrationality and procedural impropriety. It has held that, judicial review of administrative action is possible, when there is nonconsideration and non-application of mind to the relevant factors, which renders the exercise of discretion manifestly erroneous.

In the facts of the present case, grant of lease in respect of stalls of a market place is under consideration. The Corporation authorities have prepared a model lease deed, which an intending stall holder will enter into with the Corporation, in respect of a stall. The terms and conditions of the model lease deed are to be universally made applicable for all stall holders of the Hogg Market. The petitioner seeks rewriting of certain clauses of the deed of lease to be in consonance of a policy decision. It is in support of the contention that, the lease deed should be for a period of 60 years and such is the policy decision of the Corporation, reliance has been placed on the recommendation of the Corporation as approved by the Mayor on March 12, 2010.

It appears from the records that, the Deputy Municipal Commissioner (Market) had put up a note with regard to the proposed lease deed to be entered into between Corporation and a stall holder in respect of the Hogg Market. Such note specifies that, the present clause in the lease deed is for 30 years. It records the demand of the association. It also records the proposed modification. The modification proposed is that a lease deed should be for a tenure of 60 years. Such modification also stipulates other obligations on the part of a stall holder. This proposal was recommended for approval and was approved by the Mayor in Council on March 12, 2010.

Nothing is on record to suggest otherwise. Subsequent to March 12, 2010, therefore, Corporation should act in terms of its decision approved by the Mayor in Council. Any action contrary to such a decision would be tainted with unreasonableness and abuse of power. The lease deed that is proposed to be entered into by the Corporation with the stall holders has a tenure of 30 years. Therefore, such clause in the lease deed is not in conformity with the decision of the Mayor in Council dated March 12, 2010. The authorities cannot act contrary to its decision dated March 12, 2010.

The Corporation should adhere to such decision.

In such circumstances, the Corporation authorities will execute a lease deed with the petitioner, if the petitioner wants to, and subject to compliance with all other requirements in respect of a stall at S.S. Hogg Market, Phase-II, Kolkata having a period of 60 years tenure in accordance with the decision dated March 12, 2010. W.P. No. 237 of 2016 is disposed of accordingly.