

(2007) 08 DEL CK 0076

In the Delhi High Court

Case No : Writ Petition (C) No. 5140 of 2007

Sonu and Others

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Constitution of India, 1950 — Article 19(6)

Citation : AIR 2007 Delhi 251

Hon'ble Judges : Sudershan Kumar Misra, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : S.K. Sinha, for the Appellant; Kapil Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—By this writ petition, the petitioner seek quashing of the advertisement dated 25-1-2005, issued by respondent No. 1 and 2. They also seek a writ of mandamus or direction to the MCD, "for awarding contract for removal of dead animals by amongst the enlisted contractors with right on the final product."

2. On a point of background, it may be noted that an advertisement dated 25-1-2005 titled, "Expression of Interest for Operating Rendering Plant-cum-Carcass Utilization Centre at Ghazipur," was published by MCD in the Times of India. By that advertisement, the MCD invited an "Expression of Interest" from interested parties for operating the said rendering plant, as well as for removal of dead animals within the limits of NCT, with the right to the final products of the rendering operation such as, bone meal, fat, skin, hides, etc. The relevant extract from the advertisement is reproduced for facility of reference:

Municipal Corporation of Delhi is establishing a fully automatic Modern Rendering Plant-cum-Carcass Utilization Centre at Ghazipur, Delhi. The plant will have arrangements for unloading the animals from the vehicles, air de-hiders for de-skinning the animals, offal opening and cleaning area, pre-breaker with provision

of automatic transfer of pre broken carcasses to two No. batch cookers of 15000 litre capacity each through a screw" conveyor with pneumatic weighing devices. The plant will also have a 10 T boiler with provision to run by HSD/ CNG.

Vapours handling will be done through air-cooled condenser only. There will be provision of automatic unloading of the material into the percolating tank, fat extraction by a screw press and the crackles transfer through conveyor. The whole plant will be computer controlled. The building design for this plant will be pre fabricated structure in area 2150 sqm. (approx.) with a chilling facility for storing 100 carcasses. The plant has been provided with 100% captive power back up and Effluent Treatment Plant. The project is expected to be operational by 1st week of July, 2005.

MCD invites the "Expression of Interest" from reputed, experienced, financially strong, interested parties for undertaking the operations, maintenance of the plant and lifting of fallen/dead animals within NCT of Delhi, initially for a period of five years on lease basis. The permission to render the material/carcasses from the adjoining area of NCT of Delhi may also be granted to utilize the spare capacity of the plant. Lessee will collect the fallen/dead animals from the area either himself or through his sub-contractor and will have right on the final product of the rendering plant such as bone meal, meat meal, bone chips, fat, skin, hides etc.

3. We are informed by counsel for MCD, Mr. Kapil Dutta, on instructions from Dr. Hari Lal, Superintendent, Slaughter House, MCD, who is also present, that the testing and trial running of the said Rendering Plant-cum-Carcass Utilisation Centre, at Ghazipur, is going on. We are informed that two further advertisements were taken out inviting, "Expression of Interest", and after evaluating the financial and technical bids of the parties who had expressed their interest, the contract has been awarded to respondent No. 3, namely, M/s. Aztec Exim Pvt. Ltd. As per the agreement, the respondent No. 3 is permitted to collect all the carcasses of dead animals within all the 12 zones of the NCT of Delhi. ,In addition, under the contract, respondent No. 3 is also responsible for the operation and maintenance of the rendering plant. The contract also entitles respondent No. 3 to the benefits of the final products thereof. We are informed that respondent No. 3 had bid Rs. 12,01,050/- p.m. for this contract. Counsel for MCD has brought the record in Court. He submits that since the rendering plant is being tested and trial runs are going on, Therefore, for the time being, the existing arrangements/contracts that had been awarded to some of the petitioners and other persons, have been extended up to 30-9- 2007. Before the award of the work, which now includes running the new rendering plant also, to respondent No. 3, the right of removal and utilisation of animal carcasses from the NCT of Delhi was awarded to different parties, zone wise. This included petitioner No. 1, who is entitled to lift all the dead animals from South and Central Zone, for which he is paying the MCD Rs. 1,00,000/- and Rs. 25,000/- per month respectively. Petitioner's counsel claims that petitioner No. 5 has the

contract for lifting of dead animals from Narela for which he is paying Rs. 3,00,000/- per month, for a period of six months.

4. Coming to the grievance of the petitioners, learned Counsel for the petitioner submitted that petitioners belong to the Scheduled Castes (according to him Chamaar), who are engaged for generations in the work of lifting of dead animals, and extracting all beneficial products from them. He submits that interests of these professional under privileged persons deserve to be protected. He relies on *Gulshan and Others Vs. Zila Parishad and Others*, . There the Supreme Court had directed the State Government to frame a Model Scheme for Carcass Utilization in the Etawah district at village Panchayat level on experimental basis. In devising the proposed scheme, the Court's concern was to ensure that persons like the petitioners, traditionally engaged in the work of skinning, tanning and preparing articles of leather goods, are not deprived of their means of subsistence and do not become the victims of exploitation by contractors. It was directed that the State Government may under the scheme, set apart places in each block or other regions for the purpose of storing skins and arrange for Government tanneries or other institutions or organizations to purchase skins from the petitioners and others at a reasonable price so that they may get a fair recompense for the work done by them, as also for the skins. An undertaking was given on behalf of the Zila Parishads that they would render full, co-operation to the State in formulating such scheme and implementing it so as to eliminate any middleman who might become an instrument of exploitation.

5. Learned Counsel for the petitioner, Mr. Sinha submits that based on the above analogy, petitioners are also entitled to the same protection and the Court should, Therefore, direct the Government that the lifting of dead animals and the benefits arising there from, should remain with persons like the petitioners, who have been traditionally engaged in the trade.

6. Petitioner's case appears to be that by the aforesaid judgment in *Gulshan v. Zila Parishad*, the Supreme Court has laid down that henceforth, all municipalities are bound to contracts for lifting of dead animals and processing them with a view to extracting whatever useful products might be available there from, only to persons who have traditionally been engaged in such work for generations, and that this dictum would apply across the board to every municipality throughout India. We do not think that the Supreme Court has intended to create any such exclusive monopoly reserving the benefits to be obtained from such work to any particular group or class of individuals throughout India. We might also notice that while delivering the aforesaid judgment in the case of *Gulshan (supra)*, the Supreme Court has also noticed an earlier decision by that Court in *Suraj Pal v. Zila Parishad Banda*, which is turn had examined the decision in the *State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh* : [1969]2SCR392 wherein, the Supreme Court had taken view to the contrary on the ground that the analogous bye-law framed by the Municipal Corporation of Bombay regulating the trade of carcass utilization

amounted to reasonable restrictions within the meaning of Article 19(6) of the Constitution in the context of the thickly populated Metropolitan city of Greater Mumbai, where such restrictions were necessary in the interests of the public health, sanitation and hygiene. In *Gulshan* (supra), the Supreme Court also concluded that the considerations which weighed with the Court in *State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh* were of no relevance in determining the reasonableness of the restriction on such trade in sparsely populated rural areas.

7. In the case of *Gulshan v. Zila Parishad*, the original controversy was as to whether bye-laws made u/s 239(2)(E)(a) of the Uttar Pradesh Kshetra Samiti and Zila Parishads Adhiniyam, 1961 which provide for auctioning the right to trade in what is termed as "carcass utilisation", is ultravires, inasmuch as the same provides for the auction of the same right. In that case, the impugned by-law pertained to carcass utilization in the rural area of the Zila Parishads.

8. However, during the course of arguments in that matter, the Government of U.P. issued a circular setting down a policy framed by the State Government, aimed at encouraging the formulation of Industrial Co-operative Societies by persons engaged in this work by stating that henceforth, licenses for disposal of carcass of the animals should be granted only to such registered Co-operative Societies. In view of this policy decision of the State Government, the Supreme Court did not consider it necessary to go into the Constitutional question any further. It confined itself to certain directions with regard to the proper and effective implementation of the aforesaid policy decision of the Government of U.P. We might note that the decision in the case of *State of Maharashtra v. Mumbai Upnagar Gramodyog Sangh* : [1969]2SCR392 (supra) was not affected in any way by this judgment.

9. A perusal of the aforesaid judgment in *Gulshan's* case (supra) also shows that, with a view to doing justice in that matter, the Supreme Court had directed the State Government to frame a Model Scheme for Carcass Utilization in the Etawah district at the village panchayat level on an experimental basis. The Supreme Court also appointed a Commission to make an in-depth study of the problem. It is in this context that the State Government, after examining the said Model Scheme for Etawah District, took a decision that the aforesaid Model Scheme for Etawah should govern other Zila Parishads and Districts also.

10. After hearing the matter for some time, we are of the opinion that there is a vast difference in the circumstances, the ground reality, and the situation prevailing in the various Zila Parishads and other Districts of the State of U.P. and a major Metropolitan city like Delhi. We do not think that the petitioner can seek any support from the decision in *Gulshan's* case (supra), where the Supreme Court ultimately confined itself to giving certain directions for the implementation of a scheme formulated by the Government of State of Uttar Pradesh for granting licenses for Carcass Utilization to Industrial Co-operative Societies formed for that purpose by persons traditionally engaged in that work in the rural districts;

to persuade us to invoke the writ jurisdiction of this Court against the Municipal Corporation of Delhi, who has set up a modern, automated and computerized rendering plant to serve the needs of the entire NCT of Delhi. The MCD has installed its plant and formulated a scheme for effective running of the same, keeping in mind the unique circumstances of NCT of Delhi.

11. The National Capital Territory of Delhi comprises 12 municipal zones. Traditionally, contracts for lifting and utilizing the carcasses of dead animals, and of extracting useful products there from, has been carried out by persons belonging to the background of the petitioners. The location and methods employed by such persons for this activity was left to the contractors themselves. Now with a view to automating the entire process, an automatic computerised rendering plant has been set up by the Government of Delhi. It is obvious that "his plant aims at centralizing all these operations in a fully automatic plant, using modern techniques. An examination of the advertisement issued by the MCD inviting, "Expression of Interest", for the plant, shows that the same is completely automated and computer controlled. It has a chilling facility for storing carcasses and other up to date modern equipment. The outlay on this plant is obviously very high and has been borne by the MCD itself. It goes without saying that the duties of the MCD with regard to the necessity for removal and efficient, hygienic and safe disposal of dead animals, keeping in mind the unique circumstances of the NCT of Delhi, require the type of arrangements envisaged under the aforesaid, "Expression of Interest", sought by it. We feel that under the circumstances, if the same lead to any restriction on the traditional occupation of persons such as the petitioner, the same is only a necessary regulation and cannot by any stretch of the imagination be termed as unreasonable.

12. Furthermore, on the petitioners own showing, we find that petitioner No. 1 is a contractor, who is paying about Rs. 1,00,000/- p.m. for lifting and utilizing the carcasses from South Zone. He also pays Rs. 25,000/- for the same privilege qua the Central Zone. Similarly, petitioner No. 5 is paying around Rs. 3,00,000/- p.m. for the Narela Zone. It is, Therefore, obvious that whatever else may be the case, the petitioners before us are certainly not deprived economically. On the contrary, they appear to be established contractors in the trade, who are seeking an order from this Court with a view to ensuring their perpetual monopoly over this trade. They are not traditional workers eking out a marginal and unprivileged existence and who, but for this occupation, would be left to starve.

13. Be that as it may, even if there are some traditional workers who are to eke out a living from this occupation, it is open for them to constitute themselves into a co-operative society, or any other entity, and then bid for the contract. In the present case, however, it appears that the petitioners have already missed the bus because contracts have already been awarded to respondent No. 3 based on the advertisement taken out for the aforesaid, "Expression of Interest."

14. For all the above reasons, we do not find any ground made out for

interference in the exercise of writ jurisdiction.

15. The petition is dismissed.