

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2375 OF 2015

Mr. Ramnayan Saheblal Gupta Petitioner

Vs.

Municipal Corporation for Greater Respondent
Mumbai.

WITH
WRIT PETITION NO.2253 OF 2015

Mr. Krishnakant Gangaprasad Tripathi.... Petitioner

Vs.

Municipal Corporation for Greater Respondent
Mumbai.

WITH
WRIT PETITION NO.2270 OF 2015

Mr. Ramprasad Kedarnath Mourya Petitioner

Vs.

Municipal Corporation for Greater Respondent
Mumbai.

WITH
WRIT PETITION NO.2371 OF 2015

Mr. Namdeo Bhiku Kamate Petitioner

Vs.

Municipal Corporation for Greater Respondent
Mumbai.

WITH
WRIT PETITION NO.2372 OF 2015

Mr. Vijay Bhagwandas Gupta Petitioner

Vs.

Municipal Corporation for Greater Respondent
Mumbai.

WITH
WRIT PETITION NO.2373 OF 2015

Prashant Hiralal Gupta Petitioner

Vs.

Municipal Corporation for Greater Respondent
Mumbai.

WITH
WRIT PETITION NO.2374 OF 2015

Mrs. Vimal Ganpat Chavan Petitioner

Vs.

Municipal Corporation for Greater Respondent
Mumbai.

Ms. Nita Mandhyan alongwith Ms. Sayali Puri i/by M/s S.M.
Associates, Advocates for the Petitioners.

Mr. S.S. Pakale alongwith Ms. K.H. Mastakar for the respondent-
Corporation.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 8th October, 2015

P.C. :

1 Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken on board for final hearing. Heard the counsel.

2 This is a common order on the above petitions that have been heard together and involve challenge to the identical notices issued by the respondent-Corporation and the final orders passed thereon.

3 All the petitioners carry on business of sugar-cane crushing and selling sugar-cane juice from their respective stalls. They have been issued necessary licenses by the respondent. The subject matter of the present petitions is one of the licenses i.e. the "Hawker's Licence" issued by the respondent under Section 313A of Mumbai Municipal Corporation Act. The petitioners received notice dtd.6th June, 2015 informing them that samples of the water used at the crushing machines taken by the Health Inspector, on 15th May, 2015 was found to be contaminated and for that reason, their deposit amount was forfeited. The notice further called upon the petitioners to cease use of contaminated water within 48 hours, failing which face

action of cancellation of the licenses. Within a week thereafter, the petitioners replied the notices stating that until the receipt of notice, they were not aware that the water used by them was contaminated. They informed that since the date of receipt of the notice, they had started using the water supplied by the respondent for cleaning purposes and the Bislery water for other purposes. The Assistant Municipal Commissioner, "C" Ward, Mumbai however rejected the explanation and passed final orders dtd. 21st July, 2015 cancelling the licenses of the petitioners with immediate effect. He also called upon the petitioners to remove the sugar-cane crusher and vacate the site within 48 hours. On failure, the petitioners were threatened with forcible eviction. In his order, the Assistant Municipal Commissioner mentioned, for the first time that the contamination contained in the water used by the petitioner was of e-coli bacteria, which is hazardous to the health.

4 Ms. Mandhyan, the learned advocate for the petitioner submits that the first action taken by the respondent of forfeiture of the deposit amount was without any hearing and hence not sustainable. As regards the final order on the notice, it is her submission that the same is without application of mind, since it does not consider the factual denials in the reply of the petitioners. Mr. Pakale, the learned advocate for the respondent-Corporation submits in reply that the action of the Corporation is within the ambit of Section 313 of the Mumbai

Municipal Corporation Act and that contamination of water by e-coli bacteria being extremely hazardous to health, the Corporation was constrained to take action immediately.

5 Perusal of the show cause notice shows that it is silent about the contamination by e-coli bacteria. This would mean that the notice served upon the petitioners was not adequate in as much as it did not give the complete details of the contamination to the petitioners. Without giving the complete details and an opportunity of hearing, the respondent could not have taken the action of forfeiture of the deposit. In their replies, the petitioners have candidly stated that until the receipt of the notice, they were not aware that the water used by them is contaminated and not fit for consumption. Immediately after receipt of the notice, they had started using the municipal water for washing purposes and Bisleri water for human consumption. This claim of the petitioners is undisputedly not verified by the respondent. Nor is it considered. In the final order, the Assistant Municipal Commissioner has baldly stated that the explanation offered by the petitioners is not satisfactory and hence not accepted. There are no reasons stated for rejecting the explanation. It is not even the case of the respondent that the petitioners had been using contaminated water despite the knowledge of the water being contaminated. In any case, once the petitioners stated in their reply that they had started using municipal water and Bisleri water, it was necessary for the

respondent to verify this claim or call upon the petitioners to establish the same. Instead of taking this course of action, the respondents have simply cancelled the licenses issued to the petitioners. The action is clearly arbitrary and cannot be sustained. Hence, the petitions are allowed in terms of prayers clause (a) and (b).

(Smt. R.P. SondurBaldota, J.)