

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1190 OF 2014

Sujit Bhimrao Sawant } Petitioner
versus
Incharge Manager, }
Central Dairy Aarey and Ors. } Respondents

Mr. S. G. Kudle for the Petitioner.

Mr. G. W. Mattos-AGP for Respondent Nos. 1
and 3.

**CORAM :- S. C. DHARMADHIKARI &
 G. S. KULKARNI, JJ.**

DATED :- JULY 8, 2015

P.C. :-

By this Writ Petition, the Petitioner seeks a direction to the authorities and particularly the Manager, Central Dairy Aarey, Goregaon (East), Mumbai so as to enable the Petitioner to carry on the business of managing and running a stall.

2) The Petitioners prays that the records and proceedings pertaining to order dated 11th March, 2013 and subsequent order dated 22nd October, 2013 be called for and after holding necessary inquiries, these orders be quashed and set aside.

3) After hearing Mr. Kudle appearing for the Petitioner and Mr. Mattos for Respondent Nos. 1 and 3 on the earlier occasion, we had passed a detailed order. In continuation thereof, the learned Additional Government Pleader Mr. Mattos has placed before us an affidavit of Mr. Sachin Gangadhar Yadav, Manager In-charge, Central Dairy, Aare, Goregaon (East), Mumbai.

4) The Petitioner relies upon the fact that he submitted a application to the second Respondent, namely, the Municipal Corporation requesting for permission to set up a stall to sell the Aarey milk products. This application of the Petitioner was verified, considered and by Annexure 'C' dated 25th September, 2012, the Petitioner was permitted to shift the stall which was installed earlier at Undrai Road, Near New Era Theatre, Malad (West), Mumbai. The stall at Malad was set up in September, 2008 and to be precise on 5th September, 2008.

5) The Petitioner is educated but is unemployed. He belongs to the Schedule Caste. However, the Petitioner himself, in para 4 of the Petition, has stated that at the earlier place where the stall was set up, the products could not be sold properly. Therefore, he submitted an application for shifting of this stall to the present spot at Kandivali. The correspondence between him and the In-charge of Aarey Dairy has been

relied upon. The Petitioner states that he obtained the requisite no-objection certificates from the Municipal Corporation of Greater Mumbai and equally the Joint Commissioner, Traffic Police. The Petitioner states that there has been never any objection raised by any pedestrian or local public for the location of the stall at Kandivali. Still, without giving an opportunity to the Petitioner, an order has been passed on 11th March, 2013, objecting to the location of the stall at Kandivali.

6) Genesis of the complaint is that at the request of the authorities and pursuant to their permission, the stall was shifted and now at the relocated location as well the Petitioner is not being allowed to function. This deprives him of his source of livelihood. In the light of the earlier order passed by this Court and since Mr. Kudle repeatedly contended that this is a question of the Petitioner's livelihood that we perused the entire material and called upon the authorities to indicate as to why they do not wish to continue the stall at Kandivali. On 24th April, 2015, an order was passed by this Court and after compliance of that order was ensured, we are informed that the Petitioner has been permitted to reconstruct the stall which was demolished.

7) The larger issue still remains and that is why in our earlier order dated 12th June, 2015, we directed the authorities to clarify as to

whether at all they wish to have a stall and admeasuring 14X7 feet at 120 Feet Road, Lokhandwala Complex, Near Whispering Palm Building, Kandivali (East). Accordingly, after taking detailed instructions, a further affidavit has been filed by the Managing In-charge and in paras 2 and 3 of this affidavit, the authority states as under:-

“2. I say that Central Dairy Aarey would permit the Petitioner to run the Milk Booth at Undrai Road, Malad (West), Mumbai 400 064 where the Petitioner was earlier granted permission by it to run a Milk Booth on 5th September, 2008. However, the Petitioner would have to fulfill the following conditions:

- (a) That the Petitioner would have to pay to the said Dairy a sum of Rs.1,20,000/- incurred by the State Exchequer for erecting the Milk Booth at Undrai, Malad (West), Mumbai 400 064, which Milk Booth was illegally and unauthorisedly demolished by the Petitioner;
- (b) The Petitioner enters into an agreement with the Central Dairy Aarey for running the Milk Booth and would construct the booth as per the design and size intimated to him by my office;
- (c) The Petitioner would have to give an undertaking to the Central Dairy Aarey as well as to this Hon'ble Court that he would sell only Aarey milk products at the said booth or other edible items only as permitted by the Government;
- (d) The Petitioner would also have to pay the arrears of the licence fees for the period 1st April, 2014 till date and all other charges which would be intimated by my office to him within a week from the date thereof.

3. I say that the Milk Booth would be permitted to be re-erected only where it was hitherto situate, that is, at Undrai Road, Malad (West), Mumbai and the Petitioner would have to demolish the Milk Booth constructed by him opposite the building known as “Whispering Palms” situate at Lokhandwala, Kandivali (East), Mumbai 400 101.”

8) It is only on this limited aspect that we have given detailed hearing to both sides. Mr. Kudle submitted that there has never been any impediment or objection or complaint for the stall to be located at

Kandivali. The authorities cannot be permitted to shift their stand conveniently and repeatedly so as to adversely affect the right of livelihood of a party like the Petitioner. When the Petitioner was desirous of selling the Aarey products at Malad, it is the authority who suggested him the location at Kandivali. When the Petitioner set up the stall at Kandivali that was demolished but only with the intervention of this Court it was re-erected. Thereafter, some authority or the other is raising such objections and now the Aarey itself desires to change the policy. Though these are policy decisions, the authorities must ensure that such decisions are consistent with the mandate of Articles 14, 19(1)(g) and 21 of the Constitution of India.

9) In the light of such a grievance, we inquired from Mr. Mattos-learned AGP as to why the authorities have changed and shifted their stands and frequently. He invited our attention in that regard to the affidavit filed on behalf of the Traffic Department and to their specific objection. The objection is to the effect that the Petitioner's stall at Kandivali is causing problems for smooth and proper movement of traffic. The objection has been raised by the Department in that regard. Reliance is also placed upon a report, which indicates number of casualties or accidental deaths. It is stated that it is in these circumstances that the decision was taken not to allow any stall to be set up at that location.

10) It is in the light of this that we are not impressed by the arguments of Mr. Kudle. These are essentially policy matters. It has been indicated in the affidavit filed by the Assistant Commissioner of Police, Traffic that serious and minor accidents have taken place at the location. They have specifically stated that earlier the In-charge Police Inspector, Traffic, Kandivali (East) had given his no-objection for erection of the said relocated booth but later on the matter was reviewed. In such circumstances and given the specific statements on oath, we have no hesitation in concluding that in these matters the Court cannot interfere and particularly in its Writ Jurisdiction. No malafides can be attributed to the authorities and in such matters. In the light of the traffic congestion and management of traffic to ensure smooth flow of vehicles, if earlier decisions are reviewed or modified, the authorities have ample powers and freedom in that regard. Their expert view cannot be substituted by us and when there is no material to indicate any malafides or arbitrariness on their part. It is stated that though earlier permissions were given, but now increasing traffic has posed new challenges. Further, even movement of pedestrians requires clearance of pavements and footpaths. Any structure thereon can be removed so that those walking can use them freely and are not required to come on the road.

11) In such circumstances, the only query raised by us was that if the Petitioner is desirous of relocating and shifting to Malad, Mumbai, then, it should not happen that at the existing location at Kandivali, some other stall would come up and to sell Aarey milk products. It is stated that the deponent of this affidavit is present in Court. Mr. Mattos states that the Aarey Mily Dairy has no policy nor has it taken any decision to erect or permit erection of a stall at Kandivali (East) and at the location which has been indicated hereinabove. They do not wish to give any licence or permit anybody to erect a stall nor the Dairy itself would put up the stall there. Since there is a traffic hazard, this decision is taken. All the statements made by Mr. Mattos, on instructions from the competent officials, are accepted as undertakings given to this Court. We direct that neither the Aarey Milk Dairy nor its officials will erect or permit erection of such stall at the location at 120 Feet Road, Lokhandwala Complex, Near Whispering Palm Building, Kandivali (East), Mumbai.

12) However, in the event if there is any change in the policy and the matter is reviewed at the end of the authorities, then, the authorities shall duly consider the Petitioner's application and if he is desirous of erecting a stall at Kandivali or shift from Malad to Kandivali, then, let his application be given priority and before any other

application is considered. The Petitioner be given an opportunity to make such an application and thereafter the same be dealt with in accordance with law. Until the Petitioner's application is dealt with and decision thereon is communicated to him, no other application be taken up for consideration.

13) Since we not only accept the statements of Mr. Mattos but the statements made in paras 2 and 3 of the affidavit dated 7th July, 2015, we have no doubt that in the event the Petitioner approaches the Manager and In-charge of the Aarey Milk Dairy and wishes to set up the stall at Undrai Road, Malad (West), Mumbai and fulfills all the terms and conditions in that regard, then, the Petitioner shall be permitted to put up such a stall and all clearances shall be then given by the authorities including the Municipal and Police authorities. Let the Petitioner make an application in that regard within a period of two weeks from today. Let that application be taken up for consideration first and if the Petitioner produces proof of compliance of all the conditions so also gives an undertaking as desired and sought, then, the Petitioner shall be permitted to erect the stall and the business licences be issued. Equally, the Manager must ensure timely and proper supply to the Petitioner's stall of all the milk and dairy products. Until the Petitioner's application is under consideration, no other applications be

entertained by the Manager, Aarey Milk Dairy. If the Petitioner does not make any application within two weeks or after making if fails to comply with the conditions imposed, then, of course other applications be invited and considered.

14) Since this is a policy decision and the authorities are free to apply commercial standards, we expect the process to be completed as expeditiously as possible and within a period of two months from the date of receipt of copy of this order.

15) In the light of the above, save and except the directions in the foregoing paragraphs, we proceed to dismiss this Writ Petition. However, there would be no order as to costs.

16) Since the Petitioner is yet to take a decision and seeks some time to make up his mind, only as an indulgence and without prejudice to the rights and contentions of either parties, we direct the Manager of Aarey Milk Dairy and equally the Municipal and State officials not to demolish or take steps to demolish the existing stall at Kandivali (E) for a period of two months from today. No extension of time will be granted.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)