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

WRIT PETITION NO.2097 OF 2011

- 1] Hamida Mistry
Adult, Indian Inhabitant of Mumbai
Residing at 8, Al-Madina Co-operative
Housing Society Limited, 59, Samuel
Street, Second floor, Mumbai – 400 009

- 2] Dr. Aslam Qureshi,
Adult, Indian Inhabitant of Mumbai
Residing at Farzand Apartment,
Second Floor, Flat No.212,
Badlu Rangari Street, Byculla,
Mumbai – 400 008. ... Petitioners

Versus

- 1] Municipal Corporation of Greater Mumbai
A body corporate constituted under the
Provisions of the Bombay Municipal
Corporation Act, 1888 and having
its offices at Mahapalika Bhavan,
Mahapalika Marg,
Fort, Mumbai – 400 001.

- 2] The Municipal Commissioner
Adult, Indian Inhabitant of Mumbai,
Having his office at Mahapalika Bhavan
Mahapalika Marg,
Fort, Mumbai – 400 001. ... Respondents

Mr. P.M. Havnur for the Petitioners.

Mr. A.Y. Sakhare, Senior Counsel a/w Mrs. Geeta Joglekar for the
Respondent Nos.1 and 2 - BMC.

CORAM : A.S. OKA & C.V. BHADANG, JJ.

DATE ON WHICH SUBMISSIONS WERE HEARD : 25.02.2016

DATE ON WHICH JUDGMENT IS PRONOUNCED : 13.07.2016

JUDGMENT (PER A.S. OKA, J.):

(Signed Judgment pronounced by A.S. Oka, J. as per clause (iii) of Rule 296 of the Bombay High Court Original Side Rules as C.V. Bhadang, J. is sitting at Panaji)

. By this Petition under Article 226 of the Constitution of India, the Petitioners have challenged the resolution dated 17th August, 2011 bearing No.470 passed by the General Body of the Mumbai Municipal Corporation. The issue in this Petition concerns Pay and Park Scheme implemented by the Mumbai Municipal Corporation (for short “the said Municipal Corporation”) at various places in the city. Under Section 326A of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”) the said Corporation is entitled to earmark parking spaces for vehicles in any part of the public streets or public places. A circular dated 19th August, 2002 was issued by the Municipal Corporation providing that all Assistant Commissioners should identify the locations where pay and park schemes can be implemented. The circular provided for the Assistant Municipal Commissioners implementing the Scheme by inviting spot quotations or by appointing security men. The case made out in the Petition is that on 7th December, 2009, the Municipal Corporation invited tenders from the Contractors for running Pay and Park Scheme. It is pointed out in the Petition that the tender process initiated on the basis of notice dated 7th December, 2009 was cancelled.

2. On 11th March, 2010, a meeting was held in the Chamber of the Hon'ble Mayor of the said Corporation to discuss the issue. It was decided to refer the matter to the Improvement Committee. According to the case made out in the Petition, a resolution was passed by the Improvement Committee of the said Corporation on 28th April, 2010 on the basis of the proposal of the Municipal Commissioner dated 3rd April 2010. The said Resolution was approved by the General Body of the said Corporation vide the impugned Resolution No.470 dated 17th August 2010. The said Corporation finalized 92 Pay and Park locations in 15 Administrative Wards. Out of 92 locations, 50% were reserved for Mahila Bachat Gats (self help groups of women) and 25% were reserved for Social Organisations/Agencies of Educated Unemployed. The reserved locations were also identified. The General Body Resolution provides that even the legal representatives of Martyrs of the Sanyukta Maharashtra Movement should be also accommodated in the scheme. The Petitioners are relying upon a note dated 27th April, 2011 prepared by the Deputy Chief Engineer (Traffic), a copy of which was supplied to them under the Right to Information Act,2005. The said note was prepared on the basis of the impugned resolutions of the Improvement Committee and the General Body.

3. The challenge by the learned counsel appearing for the Petitioners to the resolution of the Improvement Committee and the

resolution of the Municipal Corporation is on the ground that making provision for reservation of more than 50% of the parking spaces for a particular category is unconstitutional and illegal. It was submitted that Mahila Bachat Gats exist for doing small scale household works such as stitching, cooking, etc. It is pointed out that there is a requirement of payment of substantial security deposit which is beyond the capacity of the Mahila Bachat Gats. The submission is that tenders will be filled in by the interested persons on behalf of or in the name of Mahila Bachat Gats. It was submitted that even the reservation of 25% for educated unemployed is absurd and illegal. It was also pointed out that concession provided to Mahila Bachat Gats and organisations of educated unemployed in the price of the tender form and amount of security deposit is also discriminatory. His submission is that the allotment of spots of pay and parking cannot be made in this arbitrary manner. He pointed out that cost of tender form for unreserved location is Rs.5,000 + 5% VAT and for Mahila Bachat Gats, it is Rs.500 + 5% VAT. He pointed out that the handbook of Mahila Bachat Gats shows that 51 types of activities which could be conducted by the said groups have been identified and that running pay and park scheme is not one of the said 51 activities. He pointed out that for Mahila Bachat Gats and organisations of educated unemployed, there is no requirement of furnishing bank guarantee or security. He pointed out that the members

of the said organisations may not possess any skill to run pay and park scheme.

4 There is a reply filed by Shri J.K. Madan working as Executive Engineer (Traffic Planning) Mumbai Municipal Corporation. There is one more affidavit filed by the same officer on 23rd November, 2011. There is an additional affidavit filed by Shri Rajendra Gandhi on behalf of the said Corporation. It is pointed out that the licence fees for reserved and unreserved categories is the same and even the Earnest Money Deposit (EMD) and security deposit is the same. As regards concession in the cost of the tender form, it was stated that the fee charged for supply of tender form is non-refundable. It is pointed out that there are several tenderers who take forms and therefore, grant of concession to such organisations will not cost any material financial loss.

5 The learned Senior Counsel appearing for the Mumbai Municipal Corporation urged that the Petitioners cannot rely upon constitutional provisions regarding reservation as the reservation provided is not in educational institutions or in the matter of employment. Inviting tenders for allotment of spots in Pay and Park Scheme is a matter of contract. The learned Senior Counsel relied upon

the decision of the Division Bench of this Court in the case of Kapoorchand Durgaprasad Gupta Vs. Municipal Corporation of Brihan. Mumbai & Anr.¹. He relied upon the decision of the Apex Court in the case of Sterling Computers Limited and Ors. Vs. M & N Publications Limited and Ors.². He relied upon a decision of Delhi High Court in the case of Dj Singh (Retd.) (Commodore) Vs. New Delhi Municipal Council decided on 20th May, 1998. He also relied upon a decision of Kolkata High Court in the case of Sudarsan Dhari Mondal & Ors. Vs. State of West Bengal & Ors. decided on 1st October, 2008 in Writ Petition No.4993 of 2008 and other connected matters. His submission is that there is nothing arbitrary about the decision of the Municipal Corporation. We have also heard the submissions of the intervenors.

6 We have given careful consideration to the submissions canvassed across the Bar. The relevant provision of the said Act is Section 326A which reads thus :-

“326A. Provisions for parking or halting places or lots and fees or charges therefor.

- (1) The Commissioner may, in consultation with the Commissioner of Police, Bombay, from time to time, earmark such places as he thinks fit to be the parking or halting places or lots for vehicles on any part of the public street or public place.

1 2012(6) Bom.C.R.315

2 AIR 1996 SC 51

- (2) The Commissioner may charge such fees or charges from any person for use of such place or lot by him for parking or halting a vehicle for each day or part thereof subject to such terms and conditions as he may think fit, with the approval of the Corporation:

Provided that, the parking places and the rates of fees or charges for parking vehicles under the Pay and Park scheme, as fixed by the commissioner during the period commencing on the 15th day of October, 1988 and ending on the day immediately preceding the date of commencement of the Bombay Municipal Corporation (Amendment) Act, 1990 and approved by the Corporation shall be deemed to be the parking places and the rates of fees or charges fixed under this section, and they shall continue to remain in force until altered or modified under this section.”

7 It will be necessary to make a reference to the decision of the Improvement Committee which was approved by the General Body of the Municipal Corporation. A note was submitted by the Municipal Commissioner for consideration of the Improvement Committee of the Municipal Corporation. The note is in respect of 118 parking spots on which pay and park scheme was proposed. The recommendation of the Municipal Commissioner which was placed before the Improvement Committee provided that if the proposal of revising rates of Pay and Park Scheme is approved, total revenue of Rs.12 Crores is expected. There were 11 points mentioned in the note submitted by the Municipal Administration which is approved by the Improvement Committee.

It provided that 50% Pay and Park slots should be reserved for allotment to Mahila Bachat Gats/ Self Help Groups and 25% shall be reserved for the institutions of educated unemployed. It provides that Mahila Bachat Gats should be registered for minimum two years. It further provides that the institutions of educated unemployed should be registered with the Charity Commissioner and its members must be included in the list maintained by the Employment Exchange. It is provided that Mahila Bachat Gats and institutions of educated unemployed will have to pay security deposit equivalent to licence fee payable for three months in respect of the concerned pay and parking slot. It was stated that concessional price of the tender form for these two reserved categories should be Rs 500 + 5% VAT. The said proposal was approved by the Improvement Committee and was approved by the General Body. The General Body made only one modification providing that even the legal representatives of those who lost their lives in Sanyukta Maharashtra Movement should be given representation.

8 Firstly, we must note here that the reservation provided is not a constitutional reservation in the matters of employment or education. It is a question of giving priority in allotment of parking lots for pay and park scheme. The Municipal Corporation instead of managing the pay and parking lots itself by appointing its own staff

decided to give contracts by inviting tenders. The argument is that Mahila Bachat Gats can deal only with specified activities which are 51 in number. However, there is no statutory bar shown which prohibits them from undertaking said work. For the purposes of managing pay and parking slots, it is not the case of anybody that any special skill is required. The parking charges are required to be collected at the prescribed rates from those who park their vehicles. This work does not require any special skill. The Mahila Bachat Gats are formed by women belonging to the weaker sections of the society. The object is to provide income to the women belonging to the weaker sections of the society. The object seems to be to support groups of educated unemployed. The reservation does not become illegal because of possibility of being misused.

9 In case of some of the contracts of the government, priority is given to the societies of educated unemployed and Mahila Bachat Gats. The requirement in the impugned decision is that the Association or organisation of educated unemployed has to be registered with the Charity Commissioner and the members of the organisation must be possessing enrollment in the employment exchange.

10 At this stage, we may make useful reference to the decision of the Apex Court in the case of Sterling Computers Limited. Paragraph

18 of the said decision reads thus :-

“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the “decision making process”. In this connection reference may be made to the case of *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141] where it was said that: (p. 144a)

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court.”

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141] the courts can certainly examine whether “decision-making process” was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.”

11 As stated earlier, maintenance of Pay and Park slots and recovery of parking charges from those who park vehicles therein is not a work which involves any special skill. A policy decision was taken by the Municipal Corporation with a view to ensure that 50% of the slots are allotted to the Mahila Bachat Gats and 25% to the societies of educated unemployed. There is a concession granted to these two categories of the applicants is only in the cost of the tender form. In the

affidavit of Shri Rajendra Gandhi, Assistant Engineer (Traffic and Co-ordination) of the Municipal Corporation, it was contended that large number of tender forms will be purchased by various parties. For unreserved categories, tender form is sold at the rate of Rs.5,000 + 5% VAT and for these reserved categories, it is sold at the rate of Rs.500 + 5% VAT. It is pointed out that as large number of tender forms are purchased, by giving concession to two categories, there is no material loss suffered. Secondly, it is specifically stated that Earnest Money Deposit is the same for the reserved as well as unreserved categories. Mahila Bachat Gats and the societies of educated unemployed are not entitled to any concession in any other respects.

12 The Petitioners placed reliance on the decision of the Apex Court in the case of M.P. Oil Extraction and another Vs. State of M.P. and others³. In paragraph 41 the Apex Court observed thus :-

“41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit

3 1997(7) SCC 592.

of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.”

(emphasis added)

13 The Apex Court was dealing with the issue of arbitrariness in distribution of the State largesse. The Apex Court held that treating unequals unequally does not violate Article 14 of the Constitution and, therefore, favourable treatment to industrial units in backward and tribal areas was upheld.

14 In the matter of distribution of State largesse, the distribution has to be made by adopting a fair and transparent procedure/method. In the present case, regular tender process will be followed by the Municipal Corporation and that institutions falling in reserved categories will have to compete with the other institutions of the same category. We fail to understand how Article 14 can be invoked on the ground that certain pay and parking slots are reserved for category of the Mahila Bachat Gats which are organisations of women belonging to weaker sections of the society and category of institutions of the educated unemployed. The policy of the Municipal Corporation provides for 25% of the parking slots to be allotted to the other categories including individuals. Therefore, we see no illegality or arbitrariness in the policy decision taken by the Improvement Committee of the Municipal Corporation and affirmed by the General Body of the Municipal Corporation.

15 Accordingly, we pass the following order :-

ORDER

- (i) Rule is discharged with no order as to costs;
- (ii) If any interim relief is operative in the petition the same shall continue to operate for a period of eight weeks from today;

- (iii) All notices of motion and chamber summonses, if pending, shall stand disposed of.

(C.V. BHADANG, J)

(A.S. OKA, J)