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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1624 OF 2016

Rajasthan Sanskriti
Sanrakshan Sanstha & Ors. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

None for the Petitioners
Ms Aparna Vhatkar for the respondent Nos.1 and 5.

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : MARCH 31, 2017

P.C.:

1 On the prayer made by the learned counsel for the petitioner on 29th March 2017 to take up the petition urgently, writ petition is listed today. The petitioner is relying upon a letter/communication dated 28th March 2002 issued by the State Government to the Commissioners of all Municipal Corporations and the Chief Officers of all Municipal Councils directing them to ensure that on the day of Mahavir Jayanti, all abattoirs and the shops selling meat remain closed.

2 In substance, the petitioner is seeking the enforcement of the directions contained in the letter dated 28th March 2002. We may note here that the learned AGP has placed on record a photo copy of the original letter which shows that the date of the said communication is 28th March 2003. A copy of the

letter tendered by the learned AGP is taken on record and marked 'X-1' for identification.

3 On the last date, we had called upon the learned counsel for the petitioner and the learned AGP to point out the source of statutory power which is exercised for issuing the direction contained in the communication dated 28th March 2003. The learned AGP had sought time to take instructions.

4 Today, the learned AGP is unable to point out any statutory provision under which the said direction could have been lawfully issued by the State Government to all Municipal Corporations and Municipal Councils.

5 We have perused the provisions of the Maharashtra Municipal Corporations Act, 1949, the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 and the Mumbai Municipal Corporation Act, 1888. As the Municipal Corporations and the Municipal Councils are the Planning Authorities under the Maharashtra Regional and Town Planning Act, 1966, we have examined the provisions of the said Act as well. There are no provisions under these statutes which empower the State Government to direct the Municipal Corporations and Municipal Councils to ensure that the shops selling meat which are possessing requisite licences should be kept closed on the day of Mahavir Jayanti. Similarly, the abattoirs which are lawfully running cannot be ordered to be kept

closed by issuing directions under any of the aforesaid statutes.

6 In our view, the State Government was powerless to issue the directions which are issued under the communication dated 28th March 2003. At this stage, we may note that Writ Petition (L) No.2662 of 2015 was filed on the Original Side of this Court by the Bombay Meat Dealers Association and another wherein the challenge was to the notification/circular issued by the State Government and by the Mumbai Municipal Corporation directing closure of Deonar Abattoir and closure of all meat selling shops on some of the days during Paryurshan (annual holy festival of the Jain community). By order dated 14th September 2015, a Division Bench of this Court recorded a prima facie finding about the illegality of the circular/direction issued by the State Government and granted interim stay thereof.

7 In this petition a writ of mandamus is sought in terms of the prayer clauses (b) and(c) which read thus:

“(b) To issue writ of mandamus or any other appropriate writ, order or direction in that nature directing the respondents to follow the said circular and keep closed all the butcher shop, fish market and Slaughter houses on Mahavir Jayanti;

(c)to issue a writ of mandamus or any other appropriate writ, order or direction in that

nature directing the respondents to take necessary action, civil as well as criminal against the butcher shop, fish market and Slaughter houses and against the said officer also who are responsible to keep open the said shop."

8 A writ of mandamus is sought on the basis of the directions contained in communication dated 28th March 2003. As we find that the State Government had no statutory power to issue such directions, a writ of mandamus cannot be issued to enforce the said directions. Accordingly, we find no merit in the petition and the same is rejected.

(A.K.MENON,J.)

(A.S.OKA,J.)