

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4689 OF 2016

Pradeep Dilip Jangam,
Age – 32 years, Occ-
211B, Jay Prakash Kunj,
Narmada Nagar, Cabin Road,
Bhayandar (E) 401103.

... Petitioner

Vs.

1. Mira Bhayandar Municipal Corporation
Through Commissioner,
Chhatrapati Shivaji Marg,
Bhayandar (W), Dist. Thane.

2. State of Maharashtra
Through Urban Development
Department, Mantralaya,
Mumbai.

... Respondents

.....

Mr. Ashutosh R. Gole for the Petitioner.

Mr. N. R. Bubna for Respondent No.1.

Mr. A.I. Patel, Additional Government Pleader for Respondent
No.2.

.....

**CORAM : A. S. OKA &
 SMT. VIBHA KANKANWADI, JJ.**

DATE : AUGUST 02, 2017.

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

1. Rule. Learned counsel appearing for the 1st respondent waives service. Learned Additional Government Pleader waives service for the 2nd respondent. Taken up for hearing.

2. Apart from various other questions, the main question involved in this Petition under Article 226 of the Constitution of India is whether a Municipal Corporation established under the Maharashtra Municipal Corporations Act, 1949 (for short, “the said Act”) can spend municipal funds for making arrangements for religious functions/ceremonies organized by individuals, private organizations or religious organizations.

3. There are two substantive reliefs sought in this Writ Petition which are in terms of prayer clauses (a) and (b), which read thus:

“(a) Writ of mandamus, writ in the nature of mandamus or any other appropriate writ, direction or order be issued and the Respondents be restrained from spending its funds on any religious festivals/events or events/festivals organised by private entities or celebrated by specific community.

(b) It be declared that allocation of funds by the 1st Respondent Corporation for celebration of religious festivals/events as specified in Resolution No.68 is illegal and ultra vires the provisions of the Maharashtra Municipal Corporations Act, 1949 and the Constitution of India and the said Resolution No. 68 be quashed and set aside.”

4. The specific challenge is to the General Body Resolution No. 68 passed by the General Body of the 1st respondent which is a

Corporation constituted under the said Act. By the said Resolution, funds were sanctioned for holding of various festivals such as *Ganesh Utsav, Navratra, Ramjan Eid, Bakri Eid, Ramzan Eid, Gangaur Utsav, Kartik Pournima, Chhat Puja, Dashma Devi Utsav, Velankani Utsav, Gudhi Padwa Dindi, Fatima Mata Utsav, etc.* Large funds were also sanctioned for celebrating occasions like *Guru Nanak Jayanti, Mahavir Jayanti, Dr. Babasaheb Ambedkar Jayanti* and the days of national importance like 1st May, 26th January and 15th August.

5. The learned counsel appearing for the petitioner has invited our attention to the fact that a similar resolution was passed for the year 2014-2015. The impugned resolution is dated 15th October, 2015. The learned counsel appearing for the petitioner has invited our attention to various documents annexed to the Petition which were obtained by the petitioner under the Right to Information Act, 2005. He pointed out that municipal funds have been utilized by private contractors for erecting pandals, platforms, stages and for providing public address system etc. He pointed out that on 29th May, 2015 and 31st October, 2015, a

private contractor viz. M/s. Dharavi Decorators submitted bills in the sum of Rs.39,96,276/- and Rs.1,11,15,505/- respectively. He also pointed out various letters on record, which show that for holding private religious functions, large amounts were demanded from the Municipal Corporation and the said amounts have been spent by the Municipal Corporation. His submission is that spending of amounts as provided in the impugned resolution is not supported by any provision of the said Act. He also pointed out sections 63 and 66 of the said Act which provide for the mandatory and the discretionary duties of a Municipal Corporation. He submitted that the action of spending huge funds on religious activities and religious ceremonies by private institutions is completely contrary to the provisions of the said Act. He submitted that though the impugned resolution may have been acted upon with the passage of time, the issue of legality and validity of the said resolution will have to be gone into.

6. The learned counsel appearing for the Municipal Corporation submitted that there is nothing wrong if funds were spent by the Municipal Corporation for making arrangements for

immersion of idols and for convenience of the citizens when religious ceremonies or functions are held. He submitted that the Municipal Corporation is empowered to spend funds for public reception, ceremony or entertainment and for promoting public safety, health or convenience. He, would, therefore, urge that no interference is called for, apart from the fact that the challenge in the Petition will not survive.

7. We have given careful consideration to the submissions. The issue involved is of loss to the public exchequer. Even assuming that the impugned resolution has been acted upon, the issue whether there was a loss to the public exchequer remains open for decision by this Court, and therefore, the same will have to be decided, especially in the light of the fact that similar resolutions have been passed by the said Municipal Corporation from time to time for earlier years.

8. Before we deal with the legal provisions, we must note here that the entire controversy will have to be addressed in the light of the well settled legal principle that secularism forms a part of basic

structure or basic feature of the Constitution of India, as held by the various decisions of the Hon'ble Apex Court.

9. Before going to the provisions of the said Act, it will be necessary to make a reference to the factual aspects of the case. There are certain documents placed on record which have been obtained by the petitioner under the Right to Information Act, 2005. On page no. 34 is a letter dated 10th July, 2013, addressed by an elected councillor of the said Municipal Corporation to the Commissioner of Municipal Corporation which records that every year a private organization is holding *Dashma Devi Utsav* for which arrangements such as pandal, stage, lights etc. are being made by the Municipal Corporation. Therefore, a request is made to the Municipal Commissioner to make arrangements for providing pandal, stage and other like facilities. A similar request for the same *Dashma Devi Utsav* function was made to the Commissioner by *Charottar Rukhi Samaj*. Another letter is at page 38, wherein a request was made to the Municipal Corporation to provide for various facilities such as pandal, a carpet in the pandal, stage, gate, chairs, sofa sets, tables, fans, sound system, band and LCD

TV screen. On page 40 is a letter dated 03rd March, 2014, addressed by one Mr. Gilbert Mendosa, a Member of Vidhan Sabha, in which he records that for celebrating Mahavir Jayanti, the Municipal Corporation has sanctioned fund of Rs.30 lakhs. There are letters on record addressed to the municipal officers by *Shri Rajasthani Jain Sanha*. First is the letter dated 10th March, 2015, wherein it is requested that the necessary arrangements should be made by the Municipal Corporation by providing pandal, public address system, stage arrangements, water, lunch and electricity. By a letter dated 16th March, 2015, addressed by the same organization to the Executive Engineer of the Municipal Corporation, a request was made not only to provide pandal, public address system etc. as stated in the earlier letter, but also to provide band, four chariots and six horses. Another letter dated 12th January, 2015, addressed by *Dharavi Devi Mandir Trust* is on record which seeks grant of Rs.3,00,000/- for carrying out various works such as erection of pandal, arrangements for providing safety to the devotees etc. at *Dharavi Devi Mandir* while celebrating *Mahashivratri Utsav*. There is a letter dated 16th October, 2014, addressed by *Sanskar Seva Samiti*, Bhayandar to

the City Engineer making a demand for providing a stage, 100 chairs, sofa sets, dressing rooms etc. There is a letter addressed by one of the elected Councillors dated 27th October, 2014, requesting the Executive Engineer of the Corporation to make arrangements for lighting around a lake known as 'Jarimari lake' for celebrating *Chhat Puja*. There are number of letters placed on record written by elected Councillors and organizations requesting to provide amenities such as stage, electricity supply, water supply for celebrating *Dasham Devi festival*. One of the elected Councillors, by his letter dated 11th July, 2013, requested the Commissioner of Municipal Corporation to depute municipal security guards for protecting a Masjid during the period of *Ramzan*. These letters which are placed on record suggest that the facilities as stated therein have been provided in the past by the Municipal Corporation at the cost of public exchequer.

10. There are two letters on record dated 23rd November, 2015 and 7th April, 2016, addressed by the Municipal Commissioner to the Secretary of the Urban Development Department praying that a part of the resolution no. 68 be rescinded by exercising powers

under section 451 of the said Act. The said letters record that funds of the Municipal Corporation are required to be used for making available the basic civic facilities for the citizens. It is also stated that the funds can be used for making proper arrangements for the security of the citizens when such functions or religious ceremonies are held at public places. The learned counsel appearing for the Municipal Corporation also tendered on record a reminder dated 17th December, 2016 and 12th January, 2017 issued by the Municipal Commissioner to the State Government for exercising powers under Section 451 of the said Act. However, no action has been taken by the State Government.

11. Now, we turn to the provisions of the said Act. Chapter VI of the said Act deals with the obligatory and discretionary duties of a Municipal Corporation. Section 63 lays down the mandatory duties of the Municipal Corporation. Section 66 lays down the duties which can be performed at the discretion of the Municipal Corporation.

12. The question before us is, whether the municipal funds can be utilized on the request made by religious organizations and social organizations to enable the said organizations to celebrate various religious and festivals. The question is whether the Municipal Corporation should spend its own funds for construction of pandals and platforms, for providing food to the devotees and various other arrangements at the time of functions organized by private/religious organisations. After having perused Clauses (1) to (25) of Section 63, we find that the Municipal Corporation has no duty to provide the aforesaid amenities and facilities at its own cost for celebrating religious and other festivals. If holding of such festivals or functions creates sewage and rubbish, under clause (3) of section 63, it will be a mandatory duty of the Municipal Corporation to make arrangements for collection, removal, treatment and disposal of the sewage and rubbish, including solid waste created due to holding of such ceremonies and functions. If, at a public place, large number of citizens are likely to gather for lawfully holding/celebrating religious festivals, under clause (4) of section 63, the Municipal Corporation will be under an obligation to provide public latrines, water urinals and similar conveniences.

As far as such functions which are held without permission of the competent authority are concerned, under clause (19) of section 63, it is the mandatory obligation of the Municipal Corporation to remove obstructions and projections in or upon streets and other public places.

13. Now, we turn to section 66. Clause (41) of section 66 permits the Municipal Corporation to make contribution towards any public reception, ceremony or entertainment, provided that the total expenditure during the official year shall not exceed rupees twenty-five thousand or such higher amount as the State Government may, from time to time, by notification published in the official gazette. No official gazette is placed on record containing any such notification. Therefore, clause (41) enables the Municipal Corporation to make contribution for public receptions and ceremonies which may be held on important days like 1st May, 15th August and 26th January etc. Reliance is placed on clause (42) of section 66 which provides that the Municipal Corporation, at its discretion, can provide measures which are not specifically covered by earlier clauses, for promoting public safety,

health, convenience or instruction. Clause (42) cannot be interpreted to mean that a Municipal Corporation is empowered to spend any amount for providing facilities to private or religious organizations for celebrating their own festivals. If, as a result of holding of such festivals or ceremonies at public places, public safety is likely to be endangered, the Municipal Council can certainly take recourse to clause (42) of section 66. By way of illustration, we may make a reference to immersion of idols of Lord Ganesh. For public safety and convenience, the Municipal Corporation can make arrangements to provide facilities for immersion of idols. The Municipal Corporation will be well within its powers to make arrangements for collection of idols and for its immersion at proper place. The Municipal Corporation will be well within its powers to provide for artificial lakes for immersion of idols. It can make lighting arrangements at the places where immersion is held for public convenience. However, by no stretch of imagination, the action of the Municipal Corporation of providing amenities such as pandal, public address system, stage, arrangements for supply of food, water and electricity to religious or other functions of organizations/religious organizations can be

said to be within the four corners of the provisions of the said Act. If, water supply is to be provided, the same will have to be provided in accordance with the Rules. If any religious function is to be held, which requires supply of electricity, the Municipal Corporation is under no obligation to provide electricity at its own cost. Electricity can be provided only for limited objects covered by clause (42) of section 66.

14. In the circumstances, in our view, many of the allocations made under the impugned resolution dated 15th October, 2015 will not be legal. We are conscious of the fact that the resolution must have been implemented by the authorities as the said resolution relates to the year 2015-2016.

15. We are surprised to note that the State Government kept the prayer made by the Municipal Commissioner for exercising powers under section 451 pending for such a long period, especially when the Municipal Commissioner has addressed himself on the issue of loss to the public exchequer and the fact that municipal funds are required to be spend essentially on providing basic amenities to the citizens.

16. We, therefore, hold that a Municipal Corporation constituted under the said Act can spend municipal funds on functions, religious festivals, religious ceremonies etc., only if the Municipal Corporation can draw support from any of the clauses of Sections 63 and 66. Even for making contributions towards any public reception, ceremony or entertainment, the Municipal Corporation will be bound by the constraints of the proviso to clause (41) of section 66.

17. The 1st respondent, while considering such proposals which will be submitted hereafter, will have to take appropriate decision only in the light of the law laid down by this Court in this Judgment.

18. The Municipal Corporation must bear in mind that secularism is a part of basic structure of the Constitution and that municipal funds are primarily required to be spent on providing civic amenities to the citizens.

19. As the prayers made in the representations made by the Commissioner for taking action under section 451 will not survive due to passage of time, now it will not be necessary for the State Government to decide the representations for taking action under section 451 of the said Act.

20. Hence, we pass the following order:

ORDER

- I. Whenever the 1st respondent-Municipal Corporation considers the issue of authorizing spending of municipal funds for ceremonies, festivals and functions which are subject matter of the impugned resolution, the Municipal Corporation shall follow the law laid down by this Court in this judgment and shall ensure that municipal funds are not utilized for the matters which are not provided in Sections 63 and 66 or under any other provision of Chapter VI of the said Act;
- II. The State Government shall consider of issuing necessary directions in terms of the law laid down by this Court to all the Municipal Corporations in the State;

- III. We direct the State Government through its Urban Development Department to forward copies of this judgment to all the Municipal Corporations in the State.
- IV. Rule is made partly absolute on the above terms. Writ Petition is accordingly disposed of. There shall be no order as to costs.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)