

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 2911 of 2016.

Ram Menghraj Bhatia.

.... Petitioner.

Vs.

Bombay Municipal Corporation & Anr.

.... Respondents.

Mr. Uday P. Warunjikar i/by Mr. Siddhesh A. Pilankar for the Petitioner.

Mr. R.S. Apte, Senior Counsel a/with Mr. H.C. Pimple for the Respondent Municipal Corporation.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.
DATE : 9th OCTOBER, 2017.**

P.C. :

1 We have heard Mr. Warunjikar appearing for the petitioner. The petitioner relies upon the communication at page 18 of the paper book from Municipal Corporation, Greater Mumbai (for short "MCGB") dated 30th June, 2015. He states that this refers to one Tikam Bhatia. The present petitioner is the real brother of Shri Tikam Bhatia. The petitioner is younger to him. Both were in the services of MCGB. There was an error in the date of birth recorded in

the service book of the said Tikam Bhatia. It was recorded as 3rd June, 1957. It was corrected to 2nd April, 1958.

2 Mr. Warunjikar, learned Advocate appearing for the petitioner would submit that if the elder brother was born on 2nd April, 1958, it is inconceivable that the petitioner would be born on 1st June, 1958. The petitioner's correct date of birth, according to Shri Warunjikar is 27th November, 1959. However, at the fag end of his career, the request for change or alteration in the date of birth of the brother is accepted by the MCGB, whereas an identical request of the petitioner is rejected. Hence, this petition.

3 According to Shri. Warunjikar, this is a clear discrimination and the Municipal Corporation which is a public body could not have acted contrary to the mandate of Article 14 and 16 of the Constitution of India.

4 There is an affidavit filed by Administrative Officer of the MCGB. In paragraph 2 of the affidavit-in-reply, the deponent states

that the petitioner was born, according to the service record on 1st June, 1958. After completing 58 years of age, he retired on 31st May, 2016. Now, a request for correction of his date of birth cannot be accepted. The petitioner could have approached this Court along with the brother or shortly thereafter. From the record the brother's application was pending and he sought a direction, from this Court by filing a Writ Petition (Lodging) No. 929 of 2014, that his request be considered and appropriate orders passed expeditiously as he is about to retire.

5 We find from the record that a petition was filed by the brother of the petitioner way-back in 2014. He got direction issued to the Municipal Corporation on 5th May, 2014 so that his application/ representation dated 19th September, 2013 could be considered in a time bound manner. After that application also we do not find any attempt being made by the petitioner. Thus, the brother having been informed that there is correction effected in his date of birth, the petitioner woke up and made representation. The petitioner's representation was rejected on 18th January, 2016. The

representation of the petitioner is not in close proximity to his brother's representation nor did he take any steps immediately thereafter.

6 The Municipal record, according to the deponent of the affidavit in reply indicates that though the petitioner may claim that an application was submitted in the year 1986 to 'G' South Ward requesting a change in the date of birth, there is no record of such written application. In the circumstances, we do not think that in writ jurisdiction we can assist the petitioner. The petition is filed possibly agitated by the fact that brother has been granted a relief or he is successful in obtaining it. We cannot therefore rely on the relief granted to the brother and direct the Municipal Corporation now after the petitioner's retirement to alter his date of birth. That would not be fair, just and equitable, particularly, because the Municipal Corporation was not approached by the petitioner during tenure of service and immediately after the brother obtained the relief. In such circumstances, we do not think that this is a case of any discrimination or contravention of the constitutional mandate.

7 Though Mr. Warnujikar would submit that the petitioner had also approached this Court, what we find is that the writ petition prior to this writ petition was filed by the petitioner in the year 2016. To be precise that W.P. (L) No. 1075 of 2016 was disposed of on 29th April, 2016. The order on that petition, copy of which is at page 21 (Exh.H) of the paper book reads as under:-

“The petitioner's representation, to correct his date of birth, dated 29th March, 2016, is pending till this date. The petitioner is retiring on 31st May, 2016. Therefore, at this stage, by keeping all points open and in the interest of justice, we direct Respondent No.2/concerned Officer/Department, to decide the representation filed by the petitioner, as early as possible, preferably within three weeks from today.

Writ Petition is accordingly disposed of with liberty. There shall be no order as to costs.”

8 We do not think any assistance much less advantage of this order can be taken Court for the simple reason that it directs the MCGB to consider the petitioner's representation dated 29th March, 2016. Beyond that this Court did not express any opinion on whether the petitioner can obtain the correction or otherwise. In such

circumstances, we do not think any reliance can be placed on the above order or direction of this Court.

9 The petition is devoid of any merit and is dismissed. No costs.

[SMT.BHARATI H. DANGRE, J.] [S.C. DHARMADHIKARI, J.]