

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6097 OF 2006

M/s. Murbad Manufacturers Association Ltd. ... Petitioner
Vs.
The Municipal Commissioner,
Kalyan Dombivali Municipal Corporation & Anr. ... Respondents

Mr. K. K. Malpathak, for the Petitioner.
Mr. A. S. Rao, for the Respondent No. 1.
Mrs. R. A. Salunkhe, AGP for the Respondent No. 2.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : FEBRUARY 8, 2018

PC :

1. Called out for final hearing.
2. Prayer clauses (a) and (b) which are substantive reliefs

sought in this petition, read thus:

“(a) That this Hon'ble Court be pleased to pass a writ of mandamus or a writ, order, or direction in the nature of mandamus quashing and setting aside the provisions of Rule 17(6) of the Kalyan Municipal Corporation (Octroi) Rules, 1995 by declaring the same to be unconstitutional and beyond the legislative and executive powers of the Respondents;

- (b) That this Hon'ble Court be pleased to pass a writ of mandamus or a writ, order, or direction in the nature of mandamus quashing and setting aside the Resolution No. 43 dated 9/8/2002 of the Resp. No. 1, increasing the escort fee to Rs. 100/- per consignment by declaring the same to be unconstitutional being violative of the provisions of Section 466 (2) of the Bombay Provincial Municipal Corporation Act, 1949, as well as beyond the powers conferred under Item 52 of List II of Schedule VII of the Constitution of India.”

3. In paragraph 1 of the petition, it is mentioned that the Petitioner is a company registered under the Companies Act, 1956 and it represents the interests of the firms and companies carrying out industrial / business activities in Murbad taluka and its main object is to promote and safeguard the interests of the trade, industry and its members.

4. The learned counsel for the Petitioner accepts that now prayers (a) and (b) have become academic in the sense that now there is no question of the Municipal Corporation recovering octroi and therefore, there will be no occasion to charge escort fee. He, however, submits that the issues raised will have to be gone into inasmuch as if the Petitioner succeeds in the petition, the claim for refund will survive.

5. The petition does not disclose the names of the traders on whose behalf the Petitioner has filed this petition. Some of them may have already recovered the amounts from their customers. Therefore, the claim for the refund at the instance of the Petitioner cannot be entertained as the Petitioner is not claiming refund for itself. If the traders, for whose benefit this petition is allegedly filed, want to claim the refund, we grant liberty to such traders to file a petition seeking refund and reliefs in terms of prayer clauses (a) and (b). There is no reason to entertain this petition filed on behalf of a company which claims to have filed this petition on behalf of the traders and persons carrying out industrial / business activities in Murbad Taluka. Therefore, while disposing of this petition, we grant liberty as aforesaid. Rule is accordingly discharged.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]

Vinayak Halemath