

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.158 OF 2015**

Mehul Mepani .. Petitioner

Vs.

The Commissioner,
Municipal Corporation of Greater
Mumbai & Ors. .. Respondents

...

Ms. Kruthi Venkatesh i/b Kranti L.C. for the Petitioner.

Mr. Vinod Mahadik for Respondent No.1, MCGM.

Mr. N.R. Bubna for Respondent No.2.

Mr. P.P. Kakade, Government Pleader with Mr. M.M. Pabale,
A.G.P. for Respondent No.3.

**ALONG WITH
WRIT PETITION NO.572 OF 2016**

Bombay Mutton Dealer Association
& Anr. .. Petitioners

Vs.

The State of Maharashtra
& Ors. .. Respondents

...

Ms. Mahima Sinha i/b Charles J. De'Souze for the Petitioners.

Mr. Shamrao B. Gore, A.G.P. for the Respondent No.1 - State.

Mr. N.V. Walawalkar, Sr. Advocate with Ms. K.H. Mastakar for Respondent Nos.2 and 3 – MCGM.

**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 04th SEPTEMBER, 2019.

P.C:-

1. On the last date of hearing, since counsel for the Petitioners were seeking an adjournment, we had mandated that today the Public Interest Litigation and the Writ Petition would be heard. Whereas counsel in Public Interest Litigation No.158 of 2015 is prepared to argue the Public Interest Litigation, counsel in Writ Petition No.572 of 2016 seeks an adjournment which is declined.

2. We have heard learned counsel for the Petitioner in Public Interest Litigation No.158 of 2015 and counsel for the Respondents.

3. On 07th September, 2004, the State of Maharashtra issued a general order to the Commissioners of all the Municipal Corporations in the State of Maharashtra requiring abattoir and meat selling shops to remain closed every year when the members of the Jain community observes Paryushan Parva from Shravan Vadya 12 to Bhadra Pad Shudh 5, duration of which ranges

between 4 – 10 days. Based thereon, the Municipal Corporation of Greater Mumbai and Mira-Bhayandar Municipal Corporation issued directions on 01st September, 2015 and 09th September, 2015 requiring closure of abattoirs and meat selling shops within their jurisdiction for the period the members of the Jain community celebrate Prayushan Parva.

4. Challenge in Public Interest Litigation No.158 of 2015 is to the Government Resolution issued in the year 2004 and the Office Circulars dated 01st September, 2015 and 9th September, 2015. Challenge in Writ Petition No.512 of 2016 is to the same Circulars which have been challenged in Public Interest Litigation No.158 of 2015.

5. We need not trouble ourselves much with the jurisprudence on the subject because at hand we have the decision of the Supreme Court reported as (2008) 5 SCC 33 in **Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat & Ors.** The subject matter of the said decision was Resolutions passed by the Municipal Corporation, Ahmedabad directing closure of slaughterhouses within their jurisdiction on account of Paryushan Parva from 19th August 1998 to 26th August, 1998 as also from 27th August 1998 to 05th September, 1998. The two Resolutions have been noted in paragraph 6 of the decision.

6. On the argument of right to carry on business in live stocks including slaughtering thereof, as also right to eat being part of Article 21 of the Constitution, which arguments have been succinctly culled out in paragraph 16 of the decision, in paragraphs 27 and 28, the Supreme Court concluded as under:

“26. Had the impugned resolutions ordered closure of municipal slaughter houses for a considerable period of time we may have held the impugned resolutions to be invalid being an excessive restriction on the rights of the butchers of Ahmedabad who practise their profession of meat selling. After all, butchers are practicing a trade and it is their fundamental right under Article 19(1)(g) of the Constitution which is guaranteed to all citizens of India. Moreover, it is not a matter of the proprietor of the butchery shop alone. There may be also several workmen therein who may become unemployed if the slaughter houses are closed for a considerable period of time, because one of the conditions of the licence given to the shop-owners is to supply meat regularly in the city of Ahmedabad and this supply comes from the municipal slaughter houses of Ahmedabad. Also, a large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period. What one eats is ones personal affair and it is a part of his right to privacy which is included in Article 21 of our Constitution as held by several decisions of this Court. In R. Rajagopal v. State of Tamilnadu AIR 1995 SC 264 (vide para 28) this Court held that the right to privacy is implicit

in the right to life and liberty guaranteed by Article 21. It is a right to be let alone.

27. However, in the present case, the closure of the slaughter houses is only for 9 days and not for a considerable period of time. We have, therefore, to take a balanced view of the matter.”

7. In paragraph 72, the Supreme Court concluded as under:

“72. As already stated above, it is a short restriction for a few days and surely the non-vegetarians can remain vegetarian for this short period. Also, the traders in meat of Ahmedabad will not suffer much merely because their business has been closed down for 9 days in a year. There is no prohibition to their business for the remaining 356 days in a year. In a multi cultural country like ours with such diversity, one should not be over sensitive and over touchy about a short restriction when it is being done out of respect for the sentiments of a particular section of society. It has been stated above that the great Emperor Akbar himself used to remain a vegetarian for a few days every week out of respect for the vegetarian section of the Indian society and out of respect for his Hindu wife. We too should have similar respect for the sentiments for others, even if they are a minority sect.”

8. The appeal was allowed and the decision of the Gujarat High Court was set aside. The impugned Resolutions passed by the Municipal Corporation of Ahmedabad were held to be valid.

9. The judgment provides a complete answer to the issues raised by the Petitioners.

10. However, we would be failing if not noted the arguments of the counsel for the Petitioners that the aforementioned decision is distinguishable because in the said decision, the ban was of slaughtering the live stocks and in the instant case the ban extends to selling meat.

11. In our opinion, this would make no difference for the reason the ratio of law laid down by the Supreme Court is that for communal harmony and keeping in view the sentiments of a section of the Society, if there is prohibition on slaughtering or sale of meat for short duration being 9 days out of 365 days in a year, the same would not be unconstitutional. It would not infringe the right to privacy, in that, the choice of what kind of food one should eat is not infringed.

12. However, we note that in a subsequent decision reported as (2016) 1 SCC 798 in *Shree Tapagachiya Atma Kamal Labhdisuriswarji Gyanmandir Trust v. Bombay Mutton Dealer Association & Ors.*, the Supreme Court has expressed a reservation on the law declared by the co-ordinate bench in *Hinsa Virodhak Sangh's case (supra)*. Incidentally, the said decision pertained to a challenge to the interim order dated 14th September, 2015 passed in

Writ Petition (L) No.2662 of 2015 which ultimately became Writ Petition No.572 of 2016 i.e. one of the two petitions with which we are dealing today.

13. Granting leave to appeal, the Supreme Court settled the questions required to be answered in paragraph 26 and pending final disposal of the appeal stayed the Government Notification dated 7th September 2004 and the Circulars issued by the Corporations thereunder.

14. Accordingly, we terminate the proceedings in the Public Interest Litigation and the Writ Petition noting that the final opinion would be as per the law declared by the Supreme Court on the questions framed and since the said decision specifically deals with the impugned Circulars, we would be wrong if we issue any directions relying upon the decision in *Hinsa Virodhak Sangh's case (supra)*; notwithstanding the law having been culled out by us as settled in the said decision.

15. Files be consigned to the record.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)