

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

**WRIT PETITION NO.237 OF 2018**

Munir Ahmed Ussene ... Petitioner  
versus  
The State of Maharashtra and Anr. ... Respondents

**WITH  
WRIT PETITION NO.241 OF 2018**

Mulla Mohammed Idris Gulam Rasul ... Petitioner  
versus  
The State of Maharashtra and Anr. ... Respondents

Mr. Vishal Kanade with Mr. Sajjad Patel, for Petitioners.  
Mr. P.G.Sawant, AGP, for State.  
Mr. Shrishailya S. Deshmukh, for Respondent No.2.

**CORAM: AKIL KURESHI &  
S.J. KATHAWALLA, JJ.**

**DATE: 20<sup>th</sup> AUGUST, 2019**

**P.C.:**

1. Rule.
2. Rule made returnable forthwith.
3. The facts are identical, we have heard the learned Counsel for the parties for final disposal of these Petitions. The Petitions would be disposed of finally by this order.
4. Brief facts are as under :

In Writ Petition No.237 of 2018, the Petitioner individual has

been operating his slaughter house situated at 5-256, Chithiyawad, Moti Daman, Daman Urban, Daman, since the year 2002-03, for which license was granted to him by the Chief Officer of Daman Municipal Council and which was renewed from time to time annually. The last renewal was granted under an order dated 2<sup>nd</sup> September, 2016 and the license would be valid till 31<sup>st</sup> March, 2017.

5. It appears that a local leader of a political party wrote a letter dated 14<sup>th</sup> July, 2017 to the Municipal Council, objecting to the operation of the said slaughter house and other similar slaughter houses in the town. The Municipal Council in its meeting dated 14<sup>th</sup> July, 2017, discussed one of the subjects regarding provisional license of the slaughter houses in Daman. In relation to this subject, the following decision was taken :

“5. The Presiding Authority took up for discussion the matter of agenda No.5 namely “To discuss regarding provisional license of Slaughter House at Nani / Moti Daman. The Presiding Authority informed the Council that there are three Slaughter House existing within the municipal areas one at Nani Daman, and two at Modi Daman. He further informed the Council that the Nani Daman Slaughter House is running presently whereas, the Slaughter House at Moti Daman is

presently closed. Necessary decision is required to be taken whether to renew the license of all the three slaughter House or not. During the discussion, 13 Councillors were of the view that if the Nani Daman Slaughter house is running then both the slaughter house existing at Moti Daman should also be given permission to run the business start otherwise, all the three slaughter houses to be closed. Shri Mario Lopes is of the views that since the case of Nani Daman Slaughter house is clear, the Nani Daman Slaughter house should be allowed to operate the business and for Moti Daman Slaughter House, they should fulfill the conditions of the Slaughter House Monitoring Committee and produce the NOC /clearance from the Pollution Control Committee till then, the matter to be kept pending for discussion. Shri Jayantibhai Patel also agreed with the views of Shri Mario Lopes. The Council noted that majority of the Councillors are of the view to close all the three slaughter houses. Hence, the Council after lengthy discussion decided to close all the three slaughter houses existing within the jurisdiction of Daman Municipal Council."

6. This decision was conveyed to the Petitioner under an order dated 4<sup>th</sup> August, 2017 which reads as under :

"In pursuance to the resolution No.5 of the Council

Meeting dated 14<sup>th</sup> July, 2017, the Council has decided to close all the three Slaughter House existing within the jurisdiction of Daman Municipal Council.

In view of the above, Shri Munir Husseinbhai Mulla, owner of Slaughter House at Moti Daman is directed to close the slaughter House with immediate effect.

Non-compliance of the above direction will be viewed scrupulously and necessary action will be initiated against the defaulter as per rules in force.”

7. According to the said order dated 4<sup>th</sup> August, 2017, thus, pursuant to the decision of the Council made in its meeting dated 4<sup>th</sup> July, 2017 to close down all the slaughter houses within the jurisdiction of the Daman Municipal Council, the Petitioner was directed to close down his slaughter house with immediate effect. This order the Petitioner has challenged in the present Petition.

8. In Writ Petition No.241 of 2018, the facts are substantially similar. The Petitioner has been operating his slaughter house almost since the year 1975. He claims to have the necessary license/permission for such purpose. He was also served a similar order dated 4<sup>th</sup> August, 2017 asking him to immediately discontinue his business.

9. Learned Counsel for the Petitioner submitted that the

decision of the Council was unlawful and illegal. The Petitioners have been prevented from carrying out their business. No show cause notice or opportunity of hearing was granted before asking them to discontinue their businesses. The licenses issued by the Council were still valid. The order has the effect of virtually cancelling the licenses. Learned Counsel pointed out that the Petitioners had after 31<sup>st</sup> March, 2017 applied for further extension, and such extension applications were pending. As per the past practice, orders on such extension application would be passed in due course, but would have an effect of renewing the licenses with effect from 1<sup>st</sup> April of the concerned year. Counsel further pointed out that in case of the person operating the third slaughter house, the license has been restored and the validity is extended till 31<sup>st</sup> March, 2020.

10. Learned Counsel for the Municipal Council opposed the Petitions contending that the Council had taken a conscious decision after due deliberation. The license of the similarly situated person was restored on account of appeal being allowed against the Resolution of the Council by the Appellate Authority.

11. The impugned orders can be set aside on various grounds. Firstly, the decision of the Council appears to have been prompted

by a local political leader. We may recall, he wrote a letter dated 14<sup>th</sup> July, 2017 objecting to operation of slaughter houses. The meeting of the Council was held on the same day. The decision was thus actuated by the representation of a political person. Even the Resolution records the view of the 13 Councillors that if the Nani Daman Slaughter house is running, then the slaughter houses existing in Moti Daman should also be given permission to run the business. In the alternative, all three slaughter houses should be closed down. The minutes of the meeting of the Council shows presence of 15 members. Out of which 13 of them were of the opinion that if the slaughter house at Nani Daman is allowed to operate, the other two slaughter houses at Moti Daman should also be given similar treatment. It is not clear how ultimately a decision came to be taken to close down the slaughter houses. No reasons are cited for taking such a decision. Be that as it may, such decision in any case, could not have been operationalized, unless and until the Petitioners were given an opportunity of hearing before shortening the period of validity of their renewed licenses. As noted earlier, the impugned orders had the effect of cancelling the licenses during the validity period itself. No hearing was granted to the Petitioners why such a step should be taken. The Petitioners

were abruptly prevented from carrying out their businesses.

12. There is yet another sound reason why the impugned orders must be set aside. As noted, the third slaughter house operator appears to have filed an Appeal against the decision of the Council and succeeded in such Appeal. His license is restored and renewed upto 31<sup>st</sup> March, 2020. Learned Counsel for the Municipal Council stated that such appellate order is not challenged by the Municipal Council. In other words, the Council has accepted the decision of the Appellate Authority setting aside or permanently staying the decision of the Council in this respect. On the ground of parity also therefore, the Petitioners must receive similar treatment.

13. Under the circumstances, the impugned orders dated 4<sup>th</sup> August, 2017 against both the Petitioners are set aside. Consequently, the directions to the Petitioners to discontinue their business is rendered ineffective. The Respondent No.2 shall issue renewed licenses to both the Petitioners, the validity of which would be upto 31<sup>st</sup> March, 2020 as has been done in the case of the third slaughter house operator. This would be subject to renewals as per rules and regulations and also subject to Petitioners following all safeguards and precautions as required under the law for operating the said business.

14. The Writ Petitions are accordingly disposed of.

**( S.J.KATHAWALLA, J. )**

**( AKIL KURESHI, J. )**