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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 22.01.2020

+ W.P.(C) 1386/2014 and CM No. 34618/2019

DELHI MEAT MERCHANT ASSOCIATION..... Petitioner

Through Mr.S.P. Jha and Ms. Ramandeep
Kaur, Advs.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS... Respondent

Through Mr.Jagdish Sagar, Adv. for R-1 & 3.
Mr.Anuj Aggarwal and Mr.Tehzing
Thinlay Lepcha, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This writ petition is filed by the petitioner seeking quashing of the office order/notification dated 07.02.2014 passed by respondent No. 1. The said resolution dated 07.02.2014 reads as follows:-

“East Delhi Municipal Corporation vide its Resolution No. 221 dated 20.01.2014 has resolved to revise the slaughtering fee i.e. from Rs.300/- to Rs.450/- per buffalo and from Rs. 45/- to Rs.75/- per sheep/goat at Ghazipur Slaughter House. The revised rate of slaughtering fee will be effective from the date of notification.”

2. The case of the petitioner is that Idgah slaughter house was set up at Pahar Ganj, Sadar Bazar, Delhi in 1940 which was meant for slaughtering sheep and goat for the supply of meat to the non-vegetarian population of Delhi. On 27.01.1995, in a writ petition filed in this court being W.P. (C)

2161/1992, this court had directed the MCD to close this slaughter house at Idgah on or before 31.12.1995. In appeal, the Supreme Court directed the MCD to construct a temporary slaughter house in Ghazipur within six months and later on, a permanent slaughter house having the facility of modern mechanized process for slaughtering of animals. Pursuant to the said directions of the Supreme Court, the MCD constructed a modern mechanized slaughter house at Ghazipur, and the slaughtering activities which were being carried out at Idgah Slaughter House were shifted to Ghazipur.

3. It turns out that the MCD has appointed a licensee, namely, M/s. Frigorifico Allana Ltd. (hereinafter referred to as Licensee) for the purpose of running of the slaughter house on the agreed license fee. The respondent has now in 2014 enhanced the chargeable slaughtering fee as noted above by the impugned Resolution/Office Order. This Resolution/office order is challenged by this petition.

4. EDMC has filed a counter affidavit. It has been pointed out that a resolution was adopted by the MCD on 21.11.2005 vide resolution No. 492 titled as “Framing of Byelaws/Rules for proper functioning of Ghazipur Slaughter House”. The said byelaws were framed for proper functioning of the said slaughter house at Ghazipur as per the directions of Idgah Abattoir Committee which consisted of Justice (Retd.) Sh. J.D. Jain and Sh. C.K. Chaturvedi. The said Committee was constituted under the directions of this court. Reliance is placed on part IV of the said bye laws which states as follows:-

“Fee Payable in respect of animals slaughtered in Abattoir:

A fee shall be charged for each animal, which is to be slaughtered at the municipal slaughter house. The fee for slaughtering of each animal will be ¼ of the market price of the meat per kg in case of sheep and goats and four times the market price of the meat per kg in case of buffalo /buffalo calf. The fee required for slaughtering of animals may be reviewed every year."

5. It is pleaded that the bye laws fixed a formula on the basis of which slaughter fee for animals was to be fixed. The bye laws also provide that the fee for slaughtering of animals may be reviewed each year. It is stated that the MCD revised the fee for slaughtering of animals in 2008. Now again in 2014, the MCD has revised the fee vide said impugned order. In order to arrive at the appropriate slaughter fee, a technical committee was constituted on 15.03.2013 to find out the market price of sheep/goat/buffalo meat in various markets in Delhi. The Technical Committee collected market price from 24 different markets of Delhi and gave its recommendations on the basis of the meat price prevailing in different markets of Delhi. It was recommended that the slaughter fee for goat/sheep be increased from Rs.45/- to Rs. 85/- per sheep/goat and for buffalo from Rs.300/- to Rs. 530/- per buffalo.

Reliance is also placed on Section 412 of the Delhi Municipal Corporation Act, (hereinafter referred to as the DMC Act) which grants the DMC power for raising fee for slaughtering of animals. Reliance is also placed on the judgment of the Supreme Court in case of *Municipal Corporation of Delhi & Ors. vs. Mohd. Yasin, (1983) 3 SCC 229* where it is pleaded that enhancement of slaughtering fee was upheld by the Supreme Court.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner has vehemently urged as follows:-

(i) He submits that by increasing the slaughtering fees, no benefit will be attained by the MCD but the said benefit will accrue to the licensee to whom the MCD has licensed out the slaughter house. This he submits cannot be done.

(ii) He further states that there is no such power to enhance the slaughtering fee which will go to the pocket of the licensee.

(iii) He further urges that there is no nexus between the increase in the slaughtering fees and the existing market conditions. Hence, the same is arbitrary.

(iv) It is further stated that the option of revision of slaughtering fee is only available if the MCD is running the slaughter house itself and not through an agent or a licensee.

8. The learned counsel for the respondent pleaded that the revision of the slaughtering fee is required from time to time on account of increased costs, namely, labour cost, electricity charges etc. and for running and efficiently operating a modern slaughter house. In the absence of such revision in slaughter fee, it would be financially difficult to operate a modern slaughter house.

Learned counsel for the respondent has also pointed out that after 2014, no fee has been increased till date. He also submits that the license of the licensee, which was for a period of 10 years was granted in 2009 and has expired. Further, tenders were called but other than the stated licensee, no other bids were received by the respondent.

9. I may now deal with the above pleas of the petitioner.

10. I may first deal with the contention of the learned counsel for the petitioner who has vehemently urged that by increasing the slaughtering fee, no benefit will accrue MCD and that this move is only for the benefit of the licensee of the slaughter house. I may note that as per the agreement entered into with the licensee on 04.08.2009, under Clause 5.4 of the agreement, the licensee is bound to pay royalty to the MCD on quarterly basis. The amount of royalty is as per the financial bid submitted by the licensee which is annexure A of the bid. Annexure A of the bids reads as follows:-

“Year	Royalty/Lease rent offered by M/s. Frigorifico Allana Ltd.	
	In figures (Rs. In Crore)	In Words
(1 st year)	05	Rs.five crore only
(2 nd year)	05	Rs.five crore only
(3 rd year)	05	Rs.five crore only
(4 th year)	06	Rs.six crore only
(5 th year)	06	Rs. six crore only
(6 th year)	06	Rs. six crore only
(7 th year)	07	Rs.seven crore only
(8 th year)	07	Rs. seven crore only
(9 th year)	07	Rs. seven crore only
(10 th year)	08	Rs. eight crore only
Average	6.2	Rs.six crore twenty lacs only

11. Hence, as per the agreement between EDMC and the licensee, the license fee in the first year was Rs. 5 crores and the said fee has now gone up to Rs.8 crores in the 10th year.

12. It is manifest that over a period of time, the license fee payable to MCD has been going up as noted above. Hence, to state that there is no

benefit going to the MCD and therefore, the impugned order revising rates is illegal, is an argument that cannot be accepted, being untenable.

13. I may also only note that fresh bids have now been invited on expiry of the Agreement of the License but other than the existing licensee, no other bid has been received despite bids having been invited two times.

14. Further when the bid was awarded in 2009. At that stage also a single bid had been received. Justification for granting the bid to the said licensee was stated as follows:-

“Since it was a single bid, the committee asked the consultant M/s. IL&FS to examine the justification for the lease rent offered by the M/s. Frigorifico Allana Ltd. The IL&FS has calculated total expenditure to be incurred on operation, management and maintenance of Ghazipur Slaughter House amounting to Rs.35.66 Crores (approx.) per annum where as the lessee will earn revenue from the Slaughter House to the tune of Rs. 49.42 crores (approx.) per year by operating the Slaughter House in two shifts for local consumption and third shift for slaughtering of his own animals. Thus he would earn the gross profit of Rs.13.77 crores (approx.) per year. After deducting taxes, the net profit would be around Rs.9-10 crores. Out of this net profit of Rs. 9-10 crores, he will pay an amount of Rs.6.2 crores per year (Average of all 10 years) to the MCD. Hence, his own profit would come to Rs.3-4 crores (approx.) per year. The justification/assessment prepared by IL&FS are annexed herewith as Annexure “E”.”

15. Hence, as per the estimates given by M/s. Frigorifico Allana Ltd., the profit would only be of about Rs. 3 to 4 cores per year of the said licensee.

16. Learned counsel for the respondent also points out that the slaughter house is not working to its full capacity and is said to be working at 30% of its capacity meaning thereby that the Licensee is unable to generate the estimated revenue/Profit

17. Reference may also be had to Section 412 of the MCD Act. The same reads as follows:-

“412. Levy of stallages, rents and fees-

The Commissioner with the previous approval of the Standing Committee, may -

(a) charge such stallages, rents or fees as may from time to time be fixed by him in this behalf -

- (i),
- (ii),
- (iii), and
- (iv) for the right to slaughter animals in any municipal slaughter house and for the feed of such animals before they are ready for slaughter; or
.....”

18. Hence, in terms of the aforesaid statutory provision, MCD has a right to levy rent and fees for the right to slaughter animals in any municipal slaughter house. The present levy of fees is clearly done within the statutory framework.

Reference may also be had to the judgment of the Supreme Court in the case of *Municipal Corporation of Delhi & Ors. vs. Mohd. Yasin, (supra)*. That was a case where by notification the MCD sought to enhance the fee for Slaughtering animals. The notification was quashed by this court on the ground that the MCD was levying a tax in the guise of enhancing fees. The Supreme court set aside the order of this court holding as follows:-

“10.Apparently the High Court was under the impression that the fees collected should be shown to be related to expenditure incurred directly and exclusively in connection with the slaughtering of animals in its slaughterhouses and also,

shown as such in the municipal budget. This was a wholly erroneous approach, in the light of what we have said earlier. We have explained earlier that the expenditure need not be incurred directly nor even primarily in connection with the special benefit or advantage conferred. We have also explained that there need not be any fastidious balancing of the cost of the services rendered with the fees collected. It appears to have been common ground before the High Court that the price of meat had gone up about 10 to 12 times since the rates were originally fixed. If so, one wonders how the Municipal Corporation could be expected to effectively discharge its obligations in connection with the supervision of the slaughtering of animals in the slaughterhouses maintained by it by merely raising the rates two-fold and three-fold. The increase from Re 0.50 to Rs 2 per animal in the case of small animals and from Re 1 to Rs 8 in the case of large animals appears to us to be wholly justified in the circumstances of the case. The appeal is therefore, allowed with costs, the judgment of the High Court set aside and the writ petition filed in the High Court dismissed with costs.”

19. Hence, fees that is collected under Section 412 of the MCD Act need not be shown to relate to the expenditure incurred directly and exclusively in connection with the slaughtering of animals. That was a case in which there was an increase in the fees for slaughtering and the fees enhancement was held to be justifiable in the facts of the case.

20. The facts of the present case are that the fees has been enhanced after a Technical Committee was constituted to find out the different market prices of sheep/goat/buffalo meat in various markets, the fees has been fixed based on the recommendations of the Technical Committee. The fees have been enhanced after a gap of five years.

21. In my opinion, the enhancement of the fees, as effected on 07.02.2014, cannot be termed to be unfair, unreasonable or harsh.

22. It is settled law that a writ court does not sit in appeal over an administrative decision until and unless, it is grossly arbitrary. Reference in this context may be had to the judgment of the Supreme Court in the case of ***West Bengal Central School Service Commission and Ors. vs. Abdul Halim & Ors., 2019 SCC OnLine SC 902*** wherein the Supreme Court held as follows:-

“28. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.....

.....

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.”

23. In view of the above legal position, it is not for this court to dwell deep into the economics of the increase in the price affected after lapse of six years inasmuch as the original price was fixed in 2008 which was sought to be increased only in 2014. The price increase affected after 5 years cannot

be said to be grossly arbitrary or unreasonable. There is no merit in the petition and the same is accordingly dismissed.

24. Pending applications also stand dismissed.

JAYANT NATH, J

JANUARY 22, 2020/rb
Corrected and released
on 07.02.2020

