

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12593 OF 2022

Mandar Pramod Vichare & Ors.] ... Petitioners

Vs.

Thane Municipal Corporation & Ors.] ... Respondents

...

Mr. Vishwajeet P. Swant, senior advocate with Mr. Abbas Mookhtiar and Mr. V.M. Parkar for the petitioners.

Mr. R.S. Apte, senior advocate with Mr. Harshal Nahata i/b Mr. M.V. Limaye for respondent No.1-TMC.

Mr. Surel S. Shah with Mr. Saurabh Butala, Mr. Harshal Sathe, Mr. Jayesh Tikhe, Mr. Saiprasad Wadkar, Ms. Manvi Sharma, Mr. Omkar Chitale, Mr. Shubham Gangan, Mr. Pratham Shinde and Ms. Kasturi Thorat for respondent Nos.3 and 4.

Mr. P.P. Kakade, G.P. with Mr. Akshay Shinde, 'B' Panel advocate with Ms. A.A. Purav, A.G.P. for respondent Nos.5 to 7-State.

Mr. Rajesh Talekar for respondent No.8.

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**CORAM : R.D. DHANUKA &
 KAMAL KHATA, JJ.**

DATED : 19TH OCTOBER, 2022.

P.C.:-

1. By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus for quashing and setting aside the order dated 13/10/2022 passed by respondent No.2 granting permission to respondent Nos.3 and 4 to erect the stage for 'Diwali Pahat' programme to be held on the premises opposite to Rajawant Jewellers, Talav Pali, Thane (West), on 24/10/2022 between 7.00 a.m. to 10.00 a.m.

2. It is the case of the petitioners that petitioner No.4 is a Registered Public Trust. Petitioner Nos.1 to 3 are Trustees of petitioner No.4-Trust. Petitioner No.4-Trust has been carrying on with 'Diwali Pahat' programme on the day of Diwali for last several years, after obtaining permissions from the concerned authorities, including the Thane Municipal Corporation.

3. Petitioner No.4-Trust proposed to hold similar 'Diwali Pahat' programme on 24/10/2022. It is the case of the petitioners that the petitioners accordingly made an application on 06/10/2022 to the Thane Municipal Corporation under Section 234 of the Maharashtra Municipal Corporation Act for seeking permission to erect a *Pandal*, and Stage and Arch for holding 'Diwali Pahat' programme on 24/10/2022, Opposite Rajawant Jewellers, Talav Pali, Thane (West).

4. On 10/10/2022, petitioner No.4-Trust was duly granted permission for the 'Diwali Pahat' programme, subject to condition of obtaining NOC from (1) Local Police Station, (2) Traffic Division and (3) Fire Division.

5. It is the case of the petitioners that on 10/10/2022, the petitioners submitted an application for seeking permission from the City Traffic Branch, Naupada Division, Thane, for erecting a *Pandal* for the 'Diwali Pahat' programme. On 11/10/2022, the Fire Officer of Kopri Fire Division issued a letter to the petitioners asking them to submit certain documents. The petitioners, accordingly, produced various documents. On 11/10/2022, the Fire Officer of Kopri Fire Division, Thane granted NOC in favour of the petitioners on the terms and conditions mentioned therein.

6. On 13/10/2022, the Office Superintendent of Naupada Office of the Thane Municipal Corporation granted permission to respondent Nos.3 to 4 to erect a *Pandal* and Stage for 'Diwali Pahat' programme on 24/10/2022 from 7.00 a.m. to 10.00 a.m. The petitioners, accordingly, filed this petition for various reliefs.

7. Mr. Sawant, learned senior counsel for the petitioners invited our attention to the application made by his client seeking permission from various authorities, on 06/10/2022. He submitted that the Fire Department of the Thane Municipal

Corporation granted such permission on 11/10/2022. The other permissions are not refused.

8. Mr. Sawant, learned senior counsel submitted that, in the meanwhile, respondent No.4 appears to have ante-dated the application purported to have been made on 19/09/2022 i.e. before the date of petitioner No.4 making an application for such permission. It is submitted that since the application of respondent No.4, purported to have been made on 19/09/2022 was an ante-dated application and was subsequent in point of time than the application made by petitioner No.4, the Thane Municipal Corporation could not have given permission to respondent No.4. He submitted that on the date of making application by petitioner No.4 i.e. on 06/10/2022, there was no application for such permission other than the one made by petitioner No.4.

9. Learned senior counsel invited our attention to the document at page No.89 (Exh.-F to the petition) in support of his submission that Nitin Landge, who is impleaded as respondent No.3 has already been removed as President of the Yuva Sena on 22/07/2022. He also invited our attention to a document at page No.90 (Exh.-G to the petition) in support of his submission that the said Nitin Landge has tendered his resignation to Mr. Aditya Thackeray on 23/07/2022.

10. He submitted that since the said Nitin Landge was no more the President of Yuva Sena with effect from 23/07/2022, the purported application made on 19/09/2022 could not have been made by the said Nitin Landge. He submitted that the said application was made on the letter-head of Yuva Sena, showing Nitin Landge as the President of Yuva Sena, though the same is purported to have been signed by respondent No.4, seeking permission to hold such 'Diwali Pahat' programme at Thane. He submitted that it is thus clear that the application made by respondent No.4 was ante-dated. If respondent No.3 was not the President of Yuva Sena on 19/09/2022, his name would not have reflected on the application purported to have been made on 19/09/2022.

11. Insofar as the condition prescribed in the Guidelines issued by Thane Municipal Corporation that the application has to be made 30 days in advance prior to the date of the function is concerned, it is submitted that such condition is not mandatory and can be relaxed by the Thane Municipal Corporation.

12. Mr. Apte, learned senior counsel for the Thane Municipal Corporation, on the other hand, tendered a compilation of documents for consideration of this Court. He submitted that respondent No.4 had made an application in his individual name on 19/09/2022. Respondent No.4 had produced all the three permissions required i.e. permission from Fire Department dated

11/10/2022, permission from Local Police Station on 15/10/2022 and permission from Traffic Police Department on 30/09/2022. He submitted that as against the permissions submitted by respondent No.4, the petitioners admittedly could obtain only one permission, out of three permissions i.e. from the Fire Department, on 11/10/2022 and admittedly could not obtain other two permissions, which were to be obtained within the time prescribed. He also submitted that the application of petitioner No.4, in this case, was not made prior to 30 days of the date of holding the 'Diwali Pahat' programme.

13. Insofar as the use of letter-head of Yuva Sena by respondent No.4 is concerned, learned senior counsel pointed out that the permission granted by the Thane Municipal Corporation is not in the name of Yuva Sena, but has been granted in the name of respondent No.4, in his individual capacity.

14. He submitted that there is no question of any ante-dated application by respondent No.4 or by respondent No.3 as sought to be canvassed by learned counsel for the petitioners.

15. Upon raising a query as to whether two different parties can be granted fire permission by the Fire Department for holding a function on the same date, he submitted that any person, who qualifies or satisfies the conditions for granting fire permission for holding the function on the same date are granted

permission by the Fire Department as a routine practice. However, such permission by the Fire Department is not a permission to be considered as a permission granted by the Thane Municipal Corporation for holding such functions.

16. Mr. Shah, learned counsel for respondent Nos.3 and 4 submitted that respondent No.3, though was ceased to be an office bearer of Yuva Sena, continues to be a member of Yuva Sena. Similar was the case of respondent No.4. He submitted that his clients did not apply for permission in the name of Yuva Sena, but merely the letter-head of Yuva Sena was used. The Thane Municipal Corporation was very clear that the said application was made by respondent No.4 in his individual capacity and, thus, the permission was granted to respondent No.4. He submitted that his clients has obtained all requisite permissions required for obtaining such permission from the Thane Municipal Corporation.

17. Insofar as the submission of learned counsel for the petitioners that application dated 19/09/2022 made by respondent No.4 was ante-dated is concerned, learned counsel submitted that there was a reference to the application dated 19/09/2022 in all the permissions granted by the three different Departments and also by the Thane Municipal Corporation.

18. Learned counsel for respondent No.8 tenders an affidavit

filed by Kiran Jadhav, stating that he claims to be the President of Yuva Sena, Thane and respondent Nos.4 and 5 are, not in any manner, associated with Yuva Sena, Thane. Respondent Nos.4 and 5 could not have applied for permission on behalf of Yuva Sena.

19. A perusal of the Guidelines made by the Thane Municipal Corporation indicates that the application for seeking such permission under Section 234 of the Maharashtra Municipal Corporation Act shall be made 30 days prior to the date of holding of such function. Petitioner No.4 has applied for such permission on 06/10/2022 and not 30 days prior to the date of holding of such function. We are not proposing to go into the issue as to whether the Thane Municipal Corporation could have relaxed such condition or not, at this stage, and the said issue can be decided in an appropriate case.

20. The submission of Mr. Sawant, learned senior counsel for the petitioners, which is vehemently canvassed before this Court, is that the application dated 19/09/2022 made by respondent No.4 was ante-dated. The next submission is that since the application filed by respondent No.4 itself was ante-dated, as on 06/10/2022 when petitioner No.4 has made an application, there was no other application in the file of the Thane Municipal Corporation.

21. A perusal of the permission produced by Mr. Apte, learned senior counsel for the Thane Municipal Corporation and by Mr. Shah, learned counsel for respondent Nos.3 and 4 would clearly indicate that in all the permissions sought by respondent No.4 and the permissions granted by all the authorities, there was a reference to the application dated 19/09/2022 made by respondent No.4. We are not inclined to accept the submission made by Mr. Sawant that the application made by respondent No.4 was ante-dated.

22. It is not in dispute that petitioner No.4-Trust could obtain only one permission i.e. from the Fire Department. Our attention is invited to the permission granted to respondent No.4 by the Thane Municipal Corporation, who has obtained all the three permissions from different Departments for obtaining such permission from the Thane Municipal Corporation for holding 'Diwali Pahat' programme. Petitioner No.4 was even otherwise not qualified for being granted any permission by the Thane Municipal Corporation on the ground that till date, all the three permissions from the three different Departments are not in place.

23. Insofar as the submission advanced by learned counsel for the petitioners that respondent No.4 could not have made any such application at the threshold on the ground that he was not the President of Yuva Sena on the date of making such

application or that on the letter-head of Yuva Sena, name of respondent No.3 continues to be shown as President on the date of making such application is concerned, in our view, even if for any reason, letter-head of Yuva Sena is used by respondent No.3 or 4 while making the application, the fact remains that the Corporation has granted permission not in the name of Yuva Sena, but in favour of respondent No.4 individually.

24. The name of Yuva Sena mentioned in the permission granted by the Thane Municipal Corporation below the name of respondent No.4 would not indicate that the permission was granted by the Municipal Corporation in the name of Yuva Sena.

25. In our view, since the application filed by respondent No.4 was prior in point of time and respondent No.4 has complied with all terms and conditions for such permission, we do not find any *mala fides* on the part of the Thane Municipal Corporation in granting such permission to respondent No.4.

26. In our view, the writ petition is devoid of any merit and is dismissed as such.

27. No order as to costs.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]