



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 892 OF 2023

Vijay Jagannath Salvi .Petitioner
Age : 59 yrs., Occu : Social Worker
Residing at 302, Tower -2,
Mahavir Nagari,
Khadakpada, Kalyan(West),
District - Thane.

Vs.

1. Kalyan Dombivali Municipal Corporation .Respondents
Having its office at, Kalyan Dombivali,
Municipal Corporation Building,
Shankar Rao Chowk,
Kalyan(W) - 421 301.
Through it's Commissioner
2. The State of Maharashtra

Mr. R. S. Datar a/w Mr. Dushyant Pagare a/w Ms Druti Datar,
Advocate, for the Petitioner
Mr. A. S. Rao, Advocate, for Respondent No. 1 - KDMC
Ms M. P. Thakur, AGP, for Respondent No. 2 - State

**CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, JJ.**

DATE : 20 JANUARY 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

. Heard.

2. Rule.

3. Rule is made returnable forthwith. With the consent of the parties, the Petition is taken up for final disposal at the stage of admission.


4. A letter dated 26.12.2016 and Model Code of Conduct are taken on record and marked as document “A” and document “B” respectively.

5. This is a case wherein the concerned officer of the Kalyan-Dombivali Municipal Corporation (for short “KDMC”) had granted permission to the party of the Petitioner on 11.01.2023 to organize and hold a Body Building Competition at Late Jayanta Nathu Devlekar ground. When this permission was granted on 11.01.2023, the Code of Conduct prescribed by the Election Commission was already in force, but, thereafter, by the communication dated 17.01.2023 issued by the KDMC, almost as an after thought the permission so granted has been withdrawn by the concerned officer of the KDMC on the ground that Code of Conduct of the Election Commission, being in force, no permission can be granted to the Petitioner to organize a Body Building Competition. This communication, it is pertinent to note, does not mention that permission granted earlier was wrong and

was the result of some misconception nurtured by the concerned officer in understanding the provisions of Code of Conduct. It is this communication, cancelling the permission, which is challenged here.

6. Learned counsel for the KDMC, on instructions, submits that the earlier permission was erroneously given and that error has now been corrected. This submission, however, cannot be accepted for the reason that this is not the ground stated in the impugned communication for revoking permission granted earlier. It is well settled that what is not stated as a reason or ground for taking a decision cannot be supplied later on by way of affidavit-in-reply or as a submission made to the Court. A useful reference in this regard can be made to the decision of the Apex Court in the case of ***Mohinder Singh Vs. Union of India***, reported in ***AIR 1978 SC***. The submission of the learned counsel for the KDMC is, therefore, rejected.

7. Now, the question is about merits of the matter. Even, if it is assumed, for the sake of argument, that permission already granted can be cancelled by the concerned officer on the ground of existence of Code of Conduct, still, we are of the view that even for this reason, the impugned communication is not


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sustainable in law as the Code of Conduct does not impact in any way any event like a Body Building Competition, a sport, pure and simple, and not an event arousing public feelings or fanning public sentiments and our reasons for this conclusion are given in ensuing paragraphs.

8. The reason why we say that a Body Building Competition is not affected in any manner by the Code of Conduct is to be found in Model Code of Conduct issued by the Election Commission of India. In this Code, in Chapter having the heading “General Conduct”, there is a clause which throws sufficient light on the scope and extent of the Code of Conduct. So, let us consider this provision, which reads as under :-

“1. General Conduct

(1) No party or candidate shall include in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.”

9. According to the learned counsel for the Petitioner, even under this clause of Code of Conduct, a Body Building Competition is not prohibited, as this clause applies to something sought to be done by a political party or a candidate which amounts to aggravating existing differences between the parties

or creating mutual hatred or causing tension between different castes and communities, religious or linguistic. He submits that by no stretch of imagination, can it be stated that any Body Building Competition, if held, would lead to aggravating the differences between the political parties or creating mutual hatred or causing tension between different castes and communities, religious or linguistic.

10. Learned counsel for the KDMC, however, has a different opinion. He emphasizes upon the aspect of aggravating existing differences between the political parties. He submits, on instructions, that there are already two factions of original Shivsena Party and these factions are at loggerheads and if the Body Building Competition is permitted to be held, the differences between these two factions would increase. In support, he invites our attention to one pamphlet issued by Shivsena Shakha (Uddhav Balasaheb Thackeray), District - Murbad which shows that this Body Building Competition is being organized by Shivsena Shakha (Uddhav Balasaheb Thackeray) of Kalyan-Murbad District. Learned counsel for the Petitioner submits that even if the body building competition is being organized and sponsored by one political party, it would not mean that it is doing so to tease other group with a view to

aggravating any existing differences between the two political groups.

11. In our considered opinion, the submission of learned counsel for the Petitioner is right, and this is because of the fact that the question regarding what constitutes aggravation of existing differences depends for its answer on the acts committed or proposed to be committed and in the present case, the act proposed to be committed i. e. organizing a sports event like Body Building Competition, is not something which could be considered from any angle as amounting to aggravating existing differences. It is only those acts which cause annoyance to other group or which tend to insult or humiliate other group or which spread falsehood or canards or which inflame religious or communal feelings or which praise one group or community and denigrate other group or community on the ground of caste, religion, community or language would fall within the mischief sought to be suppressed by aforesaid Clause 1. These acts are given only by way of illustration and there can be many more such acts. The point that we make here is, it is only such kind of acts that could be said to be aggravating existing differences or creating mutual hatred or causing tension between different castes and communities. A Body Building event does not,

however, fall in any of these categories of acts, which are per se obnoxious; unpleasant; avoidable; even illegal and negative in every sense of the term. A Body Building event is, on the other hand, about positivity; about health, about strength, energy and vigour; about spirit of competition. It is something in which any one can participate, irrespective of his caste, creed, religion or political affiliation. In a way it is a secular and neutral activity and also an activity which promotes overall welfare of the society. Therefore, such an activity cannot be considered to be an activity which aggravates the existing differences between two political parties.

12. Apart from what is stated above, we also have to consider as to whether or not there are really any such differences existing between two political groups of original Shivsena, as are contemplated in Clause 1 of the chapter "General Conduct". According to the officer of the KDMC, who has given instructions to the learned counsel for the KDMC, such differences do exist between these two political groups. The officer has, however, not explained the nature of the alleged differences nor has elaborated upon them nor has disclosed the source of his information. In these circumstances, we find that the information possessed by the officer is his ipse dixit; an

unfounded belief; a mere hunch and hence is not something which is in the nature of existing differences as contemplated under Clause 1 of Chapter “General Conduct”.

13. There is also another aspect involved in this matter. The impugned communication has been issued without giving any opportunity of hearing to the Petitioner, who is a member of the Shivsena party. It is also not the case of the KDMC that the party, the organizer of the event, was given any opportunity of hearing and thereafter, the impugned communication, which cancels the permission already granted to the party for organizing the event, has been issued. Such abrupt, sudden and one sided cancellation of the permission is arbitrary, to say the least. After all, one must fathom that the organizer has gone ahead with making preparations, issuing invitation cards and thereby incurring some expenses in the matter after having received the permission. The invitees to whom the invitations have been sent may also have booked their reservations for travel and accommodation. It was, therefore, necessary for the concerned officer of the KDMC to have issued Show Cause Notice to the organizer of the event and also to have given hearing before arriving at the decision impugned here. But, this has not been done by the Corporation.

14. In the circumstances, we find that the impugned communication is arbitrary, bad-in-law and deserves to be quashed and set aside. Accordingly, we pass the following order.

O R D E R

(i) The Petition is allowed;

(ii) The impugned communication dated 11.01.2023 issued by the Kalyan-Dombivali Municipal Corporation is quashed and set aside.

15. Rule is made absolute in the above terms.

16. The Petition is disposed of accordingly.

17. Authenticated copy of the operative part of the order be furnished to both sides.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)