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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.362 OF 2018

ICARPORT & Ors.

... Petitioners

Vs.

Municipal Corporation of Greater Mumbai and Ors.

... Respondents

Mr. Vivek Walawalkar i/by Mr. Sameer R. Bhalekar for the Petitioners.
Ms. Prachi Tatake and Ms. K.H. Mastakar for the Respondent - BMC.
Ms. Deepali Patankar, Honorary AGP for the Respondent No.2.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 7th MARCH, 2018

PC.

1 Submissions of the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent were heard yesterday. The first twelve petitioners are running retail outlets for the sale of petroleum products under the dealership agreements executed by the major oil companies such as Hindustan Petroleum Corporation Limited, Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited, etc. The thirteenth petitioner is an association of such dealers.

2 It appears that letters were addressed to such dealers a copy of which is at Exhibit – A by the Assistant Engineer, K/East ward. It refers to Swachh Bharat Mission adopted by the Government of India. Reliance is placed on guidelines issued by the Government of India to help the Oil Marketing Companies (OMC) to maintain discipline in operation of retail network and provide high customer service standards. By the said letter, a request was made to the petitioners to make available toilets in their respective retail outlets for the use of general public under Swachh Bharat Mission. They were requested to display signage board about the availability of toilets for public use.

3 It appears that on 19th December, 2017 a meeting was convened by the Additional Municipal Commissioner (E.S.) of the Mumbai Municipal Corporation. The meeting was attended by the office bearers and members of Petrol Dealers' Association (PDA), Mumbai. The following was the decision recorded in the minutes of the meeting :-

“The PDA representatives informed that the toilets at their Fuel Pumps are available to the customers, children, women and the use is governed by the safety aspects involved in Fuel Pump premises. Detailed discussions were held and after that it was agreed that appropriate signage/hoardings may be put up regarding the use of toilets at Fuel Pumps by public at large. It was

also agreed to take a periodical review."

4 We may note here that the minutes have not been signed by the office bearers and members of PDA. The minutes are signed only by the Additional Municipal Commissioner (E.S.) and the Deputy Municipal Commissioner (SWM). The signatures of the persons who attended on behalf of the PDA have been obtained on a separate attendance sheet, a copy of which is annexed at page 62. It appears that the Secretary of PDA addressed an e-mail to the Deputy Municipal Commissioner on 21st December, 2017 recording what transpired in the meeting referred above. The relevant portion of the e-mail reads thus :-

"Greetings from Petrol Dealers Association Mumbai.

As per the discussions we had with you on 16th we had agreed to keep the toilets open but with appropriate signboard.

Due to the security and safety threat to lives of customers, staff members and general public it was agreed upon to put the sign board at petrol pump premises with following message "TOILETS OPEN FOR PUBLIC USE ONLY IN EMERGENCY".

This was to minimize any inadvertent mishap by general public who may use cigarettes, match box etc while inside the toilets which are in petrol pump premises full of vapors.

Kindly confirm the message language and oblige."

(underline supplied)

5 Prima facie, it appears that the members of PDA are not bound by what is recorded in the minutes of the meeting at Exhibit – D as the minutes have been signed only by the Municipal Officers and not by the representatives of the PDA. However, the petitioners being

members of the PDA are bound by what is stated in the e-mail which we have quoted above. What was agreed was that the petitioners will put up signage boards at Petrol Pump premises containing the following message "Toilets open for public use only in emergency". The security concerns are also noted in e-mail.

6 By amending the Petition, our attention was invited to the action of the Municipal Corporation of displaying the boards outside the petrol pumps/retail outlets declaring that the toilets in the precincts of the petrol pumps/retail outlets are available for the members of the public at large. The name of the Mumbai Municipal Corporation appears on the said name boards. Thus, the said name boards put up by the Mumbai Municipal Corporation declare private toilets in the service stations/petrol pumps/ retail outlets of the petitioners as public toilets making it available for the members of the public. What was agreed by the Association of the dealers (PDA) was that the dealers will display a board in the premises of the petrol pumps/retail outlets informing that the toilets are open for the public use only in emergency. As stated earlier, the petitioners are bound by the assurance given as aforesaid.

7 Prima facie, it appears that there is no power vesting in the Mumbai Municipal Corporation of putting up boards outside the petrol

pumps/retail outlets declaring in its own name that the private toilets in the premises of petrol pumps/retail outlets are available to all the members of the public. Prima facie, it appears to us that guidelines published under the Swachh Bharat Mission do not authorise the Municipal Corporation to declare that the private toilets available in the precincts of the petrol pumps/ retail outlets are public toilets which will be available for all the members of the public. Such act on the part of the Municipal Corporation is prima facie illegal. It will offend the rights of the dealers under Article 300A of the Constitution of India. Hence, we issue Rule. Rule on interim relief is made returnable on 23rd April, 2018. The learned counsel appearing for the first respondent waives service. The learned AGP waives service for the second respondent.

8 There will be ad-interim relief in terms of prayer clause (b-1) directing the Municipal Corporation to remove signage boards put up by it whether inside or outside the petrol pumps/retail outlets of the petitioners. This action shall be taken by the Municipal Corporation within a period of two weeks from the date on which this order is uploaded subject to condition that all the petitioners (except the thirteenth petitioner) shall file affidavits stating therein that they have complied with the assurances recorded in the e-mail dated 21st December, 2017, a copy of which is annexed as Exhibit – E. Along with

the affidavits, photographs showing compliance shall be annexed. We make it clear that the ad-interim relief will remain operative only in case of those petitioners who comply with the aforesaid requirement of filing affidavits in this Court within a period of two weeks from today. In case of such petitioners, the boards put up by the Municipal Corporation shall be removed within a period of two weeks from the date on which this order is uploaded. We make it clear that this order is passed only for the benefit of 1st to 12th petitioners and this order will not operate for the benefit of the dealers whose names appear in Exhibit – B. It will be open for the dealers mentioned in Exhibit – B to adopt appropriate remedy if they are aggrieved by the action of the first respondent.

9 We also make it clear that if the dealership agreement between 1st to 12th petitioners and the respective petroleum companies require the dealers to convert toilets within their petrol pumps/ retail outlets into public toilets, this order will not prevent the petroleum companies from taking appropriate action against the dealers in accordance with law.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)