

HIGH COURT

O. O. C. J.

WRIT PETITION NO.210 OF 1996

Consumer Guidance of India & Anr.

Petitioners

Versus

Bombay. Municipal Corporation & Ors

Respondents

Mr. Colin Gonsalves for the Petitioners

Mr. M. B. Rao for Respondent No.1

Mr: Phiroz Palkhiwala for Respondent No 2

Mr. B.R. Kelkar for Respondent No.3

Mr. S. M. Dandekar for Respondent No.5

CORAM: M. B. SHAH, C &

Y. S. JAHAGIIRDAR, J.

Dated 4th August 1998.

P.C.:

Heard the learned counsel for the parties.

2. This public interest petition is filed by two organisations registered under the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860. It is the contention of Petitioner No.1 that it is established for the protection and promotion of consumer goods and services and to adopt lawful means (or securing and protecting such rights and, services. Similarly,

petitioner No. 2 works for the promotion of road safety, prevention of accidents and to educate the public with regard to such related matters.

3. It has been highlighted in the petition that in the city of Bombay, the plight of pedestrians is worst due to the poor maintenance of pavements or footpaths or sidewalks. Pavements are repeatedly dug up and re-dug up by the respondents for laying/repairing electricity cables, telephone lines, water pipes, drainage etc. After completion of such work, pavements are not restored to their original condition expeditiously and the public is put to great hardship. It is pointed out that it is known fact that in the city of Bombay, encroachment on pavements by hawkers is also causing lot of nuisance and hindrance to the pedestrians. In the petition, various figures of road accidents are mentioned which we are not narrating here. Photographs are produced on record to indicate that several pavements are dug up and they are not re-instated or repaired at the earliest, which causes lot of inconvenience to the pavement users and pedestrians. Hence it is prayed that the respondents ie Municipal Corporation, Bombay Electricity Supply & Transport Undertaking; Bombay Suburban Electric Supply Ltd and Mahanagar Telephone Nigam Ltd, be directed to re-instate or repair pavements which are dug up for doing some work within a specified period of time after completion of the work such as laying of telephone lines, water pipes, electric cables and so on.

4. As against this, it is submitted by Mr. Rao that members of the petitioners are appointed by the Corporation in the Apex Committee of the Corporation and they can raise the said grievances before the said Committee. However, considering the genuine grievances made by the petitioners, the learned Counsels appearing on behalf of the respondents have agreed that as per the provisions of Section 318 of the B. M. C. Act as soon as the work undertaken by the various respondents is completed, the

pavement is required to be re-instated or repaired at the earliest. They also agree that delay in repairing the pavement causes lot of inconvenience to the pedestrians.

9. Section 51 of the B. M.C. Act, inter alia, provides as under:

"It shall be incumbent on the Corporation to make adequate provision, by means of measures which it is lawfully competent to them to use or to take for each of the following matters, namely ;

(m) The construction, maintenance, alteration, and improvement of public streets, bridges, culverts, causeways and the like;"

The term 'public street' includes pavement as provided in Section 3(x). Similarly, the term 'street' includes footways as provided in Section 3(w). Further; Section 318 provides for re-instatement of the pavement on the completion of the work as stated above. It reads as under:

Section 318 -Whereas the soil or pavement of any street is opened or broken up by or under the Order of the Commissioner or of any municipal officer or servant for the execution of any work on behalf of the Corporation, the work on account of which the same shall have been opened up or broken up shall be completed and the soil or pavement filled in, reinstated and made good with all convenient speed, and on completion of the work the surplus of earth, and materials if any excavated and all rubbish occasioned thereby shall be removed without delay".

10. Hence, the Corporation is directed to –

(a) To Act as per the provisions of Section 318 of the B. M. C. Act and to restore and replace properly within the shortest possible time the pavements which are dug up for various work and report of the apex Committee.

(b) In cases where there are no pavement or where the pavements are not constructed in accordance with the provisions of B. M,C, Act or any other law or regulation in force, the Corporation would prepare a plan and undertake to construct such pavements so that there may be reduction in accidents.

(c) With regard to the existing pavements or the newly constructed pavements, the Corporation would see that they are kept free from encroachment as far as possible,

10. Minutes of the order produced by the parties be kept on record.

11. Rule made absolute to the aforesaid extent with not order as to cost.