

Gujarat High Court

Gujarat High Court

Hiren Jashbhai Patel vs (A) on 14 October, 2013

Bench: Mr. Bhaskar J.B.Pardiwala, J.B.Pardiwala

HIREN JASHBHAI PATEL....Applicant(s)V/SBARODA MUNICIPAL CORPORATION <!--

@page { margin-left: 1.5in; margin-right: 1in; margin-top: 0.5in; margin-bottom: 0.5in } P { margin-bottom: 0.08in; direction: ltr; color: #000000; text-align: left; widows: 0; orphans: 0 } P.western { font-family: "Arial", sans-serif; font-size: 12pt; so-language: en-US } P.cjk { font-family: "Arial", sans-serif; font-size: 12pt; so-language: zh-CN } P.ctl { font-family: "Arial", sans-serif; font-size: 12pt; so-language: hi-IN } -->

C/WPPIL/167/2013

CAV JUDGEMENT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL)

NO. 167 of 2013

FOR

APPROVAL AND SIGNATURE:

HONOURABLE

THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA

=====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

=====

HIREN JASHBHAI

PATEL....Applicant(s)

Versus

BARODA MUNICIPAL

CORPORATION & 1....Opponent(s)

=====

Appearance:

MR

KD VASAVADA, ADVOCATE for the Applicant(s) No. 1

MS

VACHA DESAI, AGP for the Opponent(s) No. 2

MR

MAULIK G NANAVATI, ADVOCATE for the Opponent(s) No. 1

=====

CORAM:

HONOURABLE THE

CHIEF JUSTICE MR. BHASKAR BHATTACHARYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA

Date : 14/10/2013

CAV JUDGEMENT

(PER : HONOURABLE

MR.JUSTICE J.B.PARDIWALA)

By

this application in the nature of a Public Interest Litigation, the petitioner, a resident of Vadodara, has prayed for the following reliefs :

(A)

to issue a writ of mandamus and/or any other appropriate writ, order or direction in the nature of mandamus by directing the respondent authorities to forthwith remove the encroachment caused by the vegetable and fruit vendors on 18 meters road near Gorva Talavadi in the area of Baroda under the control of the Baroda Municipal Corporation;

(B)

Your Lordships may be pleased to issue an appropriate writ, order or direction to the respondent Municipal Corporation and the District Collector, Baroda, for taking appropriate strict actions for redressing the grievances of large number of people by removing alleged encroachment;

(C)

Your Lordships may be pleased to grant such other and further relief/s including interim relief as may be just and proper in view of the case of the petitioner.

The

case made out by the petitioner in this petition may be summarised as under :

The

area known as 'Gorva Talavadi', leading from Gorva Refinery to Abhaynar Road, Vadodara, is situated in the vicinity of Gorva Talavadi area of Vadodara. The road adjacent to Talavadi is about 18 meters wide. The road is divided by 9 meters on both the sides, leading from East to West. The Northern side of the road is the Talavadi itself filled with water and adjoining the same there is a garden. The road has been earmarked for vehicular traffic and pedestrians. There are large number of societies in the vicinity including schools and other public utility places.

According

to the petitioner, the road in question is a very busy road in terms of the vehicular traffic. Any encroachment of any nature around the road could cause serious or fatal accident to pedestrians or cyclists or persons travelling on two-wheelers. The petitioner has brought to our notice that exactly opposite to the Talavadi, the road remains occupied and blocked by the vegetable and fruit vendors. In a width of 9 meters road, half of the road is practically encroached upon by the road-side vendors. Every day a quarrel would ensue because of collision of vehicles. Although number of complaints have been lodged with the authorities of the Corporation including the Collector, no effective steps are being taken to take care of the problem of encroachment of the public road by the vegetable and fruit vendors.

It

is the case of the petitioner that he has learnt through reliable sources that the municipal corporation had already earmarked and identified a place for the vegetable and fruit vendors, but instead of selling at the particular place identified for the same, the vegetable and fruit vendors have occupied the public road, thereby creating lots of problems relating to traffic.

It

is also the case of the petitioner that the situation gets worst during festivals like Navratri, Diwali, etc. and the antisocial elements and hooligans of the said area take undue advantage of the same.

According

to the petitioner, the authorities concerned owe a duty to follow the provisions of the Bombay Provincial Municipal Corporations Act, 1949 and are obliged to take all possible steps to remove such encroachments and pave way for smooth flow of vehicles and the pedestrians.

In

such circumstances referred to above, the petitioner has prayed for the reliefs aforementioned.

On

notice being issued, the Baroda Municipal Corporation has entered appearance and filed an affidavit duly sworn by the Deputy Municipal Commissioner.

According

to the respondent no.1 Corporation, at certain hours of a day the vendors, without any authority of law and in brazen violation of law, would gather at the location and park themselves on one side of the public road. Such occupation of the public road would leave no space for the smooth flow of the vehicles as well as the pedestrians. Apart from the problem of traffic, the vendors would leave the place at the end of the day very dirty, which ultimately leads to unhygienic condition.

According

to the Corporation, much prior to the filing of the present petition, a decision was taken to initiate a drive to remove such vendors occupying public streets. The Corporation officials had gone at the place in question on 3rd July 2013 and with the assistance of the local police, had cleared the road by forcing the vendors to leave the place. At that point of time, it was also noticed that a building was also being constructed illegally and such illegal construction was also demolished by the officials of the Corporation.

According

to the Corporation, it was also noticed that several owners of the shops in the buildings located at the side of the road had unauthorisedly put up their display and advertisement boards protruding on the road. Such boards were also removed. According to the Corporation, all necessary steps would be taken for the removal of such encroachments and it would ensure that the problem of vehicular traffic and inconvenience to the pedestrians is taken care of.

Having

gone through the affidavit-in-reply filed by the Baroda Municipal Corporation, we could have closed this Public Interest Litigation by taking note of the same and by issuing some appropriate directions. However, taking into consideration the nature of the problem which is prevailing in the entire State of Gujarat, we have decided to look into the matter in detail so that some appropriate directions in that regard could be issued to the authorities concerned.

Mr.Vasavada,

the learned advocate appearing for the petitioner, submitted that the nuisance and problem of encroachment on public streets by the road-side vendors could be taken care of only if the authorities remain vigilant and act promptly. On one fine day, the authorities may, with the help of the police force, remove such vendors from public streets, but on the very next day, they would again come and occupy the same. It is the constant monitoring and inspection which is essential and not just removal of such encroachments once in two months or three months. This problem is a perennial problem and the Corporation must come forward with some concrete plan or scheme to tackle such problem.

On

the other hand, Mr.Maulik Nanavati, the learned counsel appearing for the Municipal Corporation, very fairly conceded to what has been submitted by Mr.Vasavada. According to Mr.Nanavati, no sooner the staff of the Corporation leaves the place after clearing the encroachment, within hours the vendors would once again occupy the public streets. According to Mr.Nanavati, it is very difficult to keep a constant vigil at different places all over the city. However, Mr.Nanavati submits that as far as possible, steps are being taken to ensure that the public streets are not encroached upon or occupied by the road-side vendors.

It

is well-settled that the hawkers have no fundamental right under Article 21 of the Constitution of India to carry on business at the place of their choice and convenience. The hawkers have a right under Article 19(1)(g) of the Constitution of India but such a right is subject to reasonable restrictions under Article 19(6) of the Constitution of India. Thus, hawking may not be permitted where, for example, due to narrowness of road the free flow of traffic or movement of pedestrians is hindered or where for security reasons an area is required to be kept free or near hospitals, places of worships etc. (see Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and others, AIR 2004 SC 416)

Every

municipal corporation has a statutory obligation to provide free flow of traffic and pedestrians to pass and re-pass freely and safely; as its concomitant, the corporation/ municipality have statutory duty to have the encroachments removed. The corporation is expected to be vigilant and should not allow encroachments of pavements and footpaths. The law in this regard has been well settled by the Supreme Court in catena of decisions. The public roads and sidewalks cannot be blocked or encroached by anyone, not even the

Government and they are to be kept clear for the purposes of passage only and for no other purpose.

In

the case of Municipal Board, Mangalaur v. Mahadeoji Maharaj, AIR 1965 SC 1147, the Supreme Court observed that the roads and its sidewalks are laid for passage only and for no other purpose. It observed that even facilities like a 'piyao' (drinking water kiosk), library or a statue of Mahatma Gandhi cannot be put on a roadside 'patri' (sidewalk). The said decision of the Supreme Court was later on followed in State of U.P. v. Ata Mohd, AIR 1980 SC 1785. The Supreme Court held that if the municipality puts a particular street to any other use than the one for which it was intended, the State as its owner, was entitled to intervene and maintain an action to get any person in illegal occupation evicted.

In

the case of Bombay Hawkers' Union v. Bombay Municipal Corporation, AIR 1985 SC 1206, the Supreme Court held that :

...No

one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. Public streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the center of busy thoroughfares, thereby paralyzing all civic life. Indeed, that is what some of them have done in some parts of the city. They have made it impossible for the pedestrians to walk on footpaths or even on the streets properly so-called.

In

the case of Olga Tallis v. Bombay Municipal Corporation, AIR 1986 SC 180, the Supreme Court held that a municipality is empowered to cause to be removed encroachments on footpaths or pavements over which the public have a right of passage or access. In the said case, the Supreme Court also observed that :

...In

the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets.

The

Supreme Court in the said case rejected the misplaced arguments resting on life and liberty by those who were claiming occupation of the public streets. In that regard, the Supreme Court observed that :

...There

is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up construction on pavements and that of the pedestrians to make use of the pavements for passing and repassing, are competing claims and that, the former should be preferred to the later.

In

the case of Delhi Municipal Corporation of Delhi v. Gurnam Kaur, AIR 1989 SC 38, the Supreme Court reiterated the law that to remove an encroachment of a public road is the obligation of a municipality and that an injunction could not be granted to suffer an encroachment of a public place like a street which is meant for the use of the pedestrians.

In

the case of Sodam Singh v. New Delhi Municipal Committee, AIR 1989 SC 1988, the Supreme Court rejected the plea of life and liberty raised in the context of carrying on trade or business on a public road. In the said case, the Supreme Court also held that there can be no fundamental right of a citizen to occupy a particular place where he can squat and engage in trading business.

In

the case of Ahmedabad Municipal Corporation v. D. Balwantsingh, 1992(2) JT (SC) 363, the Supreme Court negated the plea of an occupier of a public street when he obtained an injunction in a suit to prevent the removal of an encroachment. Reiterating its earlier decisions, the Supreme Court upheld the removal of the encroachment as well as the action of the Municipal Corporation to shift the hawkers to an alternate site.

In

the case of Gobind Pershad Jagdish Pershad v. New Delhi Municipal Committee, AIR 1993 SC 2313, the Supreme Court extended the public street into the verandas in front of a shop which, by long user, had been used by the public as a passage. Accordingly, the shopping arcades or verandas adjoining public streets were given the declaration of a public street. Encroachment of such verandas in front of public streets was held as illegal.

Despite

such legal position being well settled, the Corporations/Municipalities have failed to take care of this problem and the only reason which could be ascribed for such failure is ineffective and improper implementation of the law. In number of cases, we have observed that this country has effective laws but the implementation of the same is extremely poor, as a result of which, the laws would just remain on the statute.

The

Bombay Provincial Municipal Corporation Act, 1949 (for short, 'the BPMC Act') and the Gujarat Municipalities Act, 1961 are the two Laws that directly concern the street vendors. Under the BPMC Act, all public streets vest in the municipal corporation. The Municipal Commissioner, who is the Chief Executive Officer under this Act, has wide powers to regulate streets, remove encroachments and public nuisance, as also to grant or refuse licenses. But, interestingly, there is no obligation to provide space for hawkers or vendors in each part of a city or a town, except the licensed and authorized market places. This aspect is now taken care of by the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012.

The

BPMC Act also prohibits placing stalls, benches, chairs, etc. on a public place or causing any obstruction without the written permission of the Commissioner (Section 230). The Commissioner has the power to forcibly remove any nuisance, obstruction or encroachment from a street or any public place, without giving any notice (Section 231).

The

sale of virtually any commodity by hawking or street vending whether food, fish, vegetables, fruits, etc. requires a license under the BPMC Act. (see Sections 384, 385 (Chapter XVIII and others)

The

Criminal Procedure Code, 1973 and the Bombay Police Act, 1951 both contain provisions for removal of obstruction on a street, or committing a nuisance or obstruction in general. There are penalties provided like a simple fine or even arrest or imprisonment for non-appearance before the court. (see Section 133 of the Code and Section 102 of the Bombay Police Act)

Therefore,

the only question that falls for our consideration in this Public Interest Litigation is as to what should be the solution and what type of directions should be issued to the authorities to ensure that the public roads and sidewalks are not blocked or encroached upon by the hawkers or the vendors.

Before

we proceed to issue appropriate directions in the matter, we should also take notice of the National Policy on Urban Street Vendors, 2009.

The

National Policy recognizes the street vendors as very important segment of the unorganized sector in the country. According to the Policy, it is estimated that in several cities, street vendors count for about 2 per cent of the population. Accordingly, the Policy has recognized the positive role of the street vendors as a starting point in providing essential commodities to people at affordable prices and at convenient places. It also recognizes the need for regulation of street vending by way of designated 'Restriction-free Vending', 'Restricted Vending' and 'No Vending' zones based on certain objective principles. Such regulation is consistent with the imperative to ensure free flow of traffic, smooth movement of pedestrians and maintenance of cleanliness and public hygiene while facilitating vendors/hawkers to sell goods/services at convenient locations frequented by the public.

The

Policy also aims to reflect the spirit of the Constitution of India on the right of the citizens to equal protection before the law (subject to reasonable restriction) as well as their right to practice any profession, occupation, trade or business; and the duty of the State to strive to minimize the inequalities in income, and to adopt policies aimed at securing that the citizens have the right to adequate means of livelihood as enshrined in Articles 14, 19(1)(g), 38(2), 39(a), 39(b) and 41 of the Constitution of India.

In

order to make such a conceptual right a practical feasible right, according to the Policy, the following would be necessary :

i)

Vendor markets/outlets should be developed in which space could be made available to hawkers/vendors on a time-sharing model on the basis of a roster. Let us say that there are 500 such vending places in about a 100 new vendors markets/push cart markets/motorized vending outlets. Let us also assume that there are 5,000 vendors who want to apply for a vending site on a time-sharing basis. Then by a simple process of

mathematical analysis, a certain number of days or hours on particular days could be fixed for each vendor in a vending place on a roster basis through the concerned Town Vending Committee.

ii)

In addition to vendors markets/outlets, it would be desirable to promote week-end markets in public maidans, parade grounds or areas meant for religious festivals. The week-end markets can be run on a first-come-first-serve basis depending on the number of vending sites that can be accommodated in the designated area and the number of vendors seeking vending places. However, in order to be equitable, in case there is a heavy demand from vendors, the number of week-ends a given vendor can be allocated a site on the first-come-first-serve basis can be restricted to one or two in a month depending on demand.

iii)

A registered vendor can be permitted to vend in designated vending zones without restrictions, especially during non-rush hours. Again in places like verandas or parking lots in areas such as central business districts, e.g. Connaught Place in New Delhi, vendors markets can be organized after the closing of the regular markets. Such markets, for example, can be run from 7.30 PM to 10.30 PM as night bazaars on a roster basis or a first-come-first-serve basis, with suitable restrictions determined by the concerned TVC and authorities.

It

is desirable that all City/Town Master Plans make specific provisions for creating new vending markets at the time of finalization/revision of Master Plans, Zonal Plans and Local Area Plans. The space reserved in such plans should commensurate with the current number of vendors and their rate of growth on perspective basis (say 10-20 years) based on rate of growth over a preceding 5-year period.

Some

of the key elements of the Policy are as under :

4.1

Spatial Planning Norms

Following

the Supreme Court orders, some cities have drafted guidelines for regulating urban vending activities. However, the provisions made so far do not generally recognize the fact that demands for the wares/services of street vendors are highly specific and vary with location and time. This manifests in the natural propensity of street vendors to locate at particular places at particular times. Spatial planning norms should not disregard such natural markets but fully take them on board. There is need for the master/zonal/local/layout development plans to be 'inclusive' and address the requirements of space for street vending as an important urban activity through norms for reservation of space for street vendors in accordance with their current population, projected growth of street vendors, based on the rate of growth in the previous five years and the average number of customers that generally visit informal markets in vending zones. It is equally important that the provisions made in zonal, local or layout plans for street vending are implemented in an equitable and efficient manner.

4.2

Demarcation of Vending Zones

The

demarcation of Restriction-free Vending Zones, Restricted Vending Zones and No Vending Zones should be city/town specific. In order to ensure that the city/town master/ development plans provide for adequate space for street vendors to run their activities, the following guidelines would need to be adhered to:

a)

XXXX XXXX XXXX

b)

XXXX XXXX XXXX

c)

Municipal Authorities should allocate sufficient space for temporary Vendors Markets (e.g. Weekly Haats, Rehri Markets, Night Bazaars, Festival Bazaars, Food Streets/Street Food Marts etc.) whose use at other times may be different (e.g. public park, exhibition ground, parking lot etc.). These Vendors Markets may be established at suitable locations keeping in view demand for the wares/services of street vendors. Timing restrictions on vending should be in accordance with the need for ensuring non-congestion of public spaces/maintaining public hygiene without being ad hoc, arbitrary or discriminatory. Rationing of space should be resorted to if the number of street vendors exceeds the number of spaces available. Attempts should also be made to provide ample parking areas for mobile vendors for security of their vehicles and wares at night on payment of suitable fees.

d)

Mobile vending should be permitted in all areas even outside the 'Vendors Markets', unless designated as No-vending Zone in the zonal, local area or layout plans under the master/development plan of each city/town. Restricted Vending and No Vending Zones may be determined in a participatory manner. Restricted Vending Zones may be notified in terms of both location and time. Accordingly, a particular location may be notified as 'No-vending Zone' only at particular times of the day or days of the week. Locations should not be designated as No Vending Zones' without full justification; the public benefits of declaring an area/spot as 'No Vending Zone' should clearly outweigh the potential loss of livelihoods and non-availability of 'affordable' and convenient access of the general public to street vendors.

4.3

Quantitative Space Norms

These

refer to the norms on the amount of space to be provided for Vending Zones in plans and to vendors in designated Vendors Markets. Every land use has a carrying capacity ceiling or threshold limit for the users and the same is true of the number of vendors operating in a clearly demarcated area. Overuse can cause congestion and reduction of public hygiene. Thus, there is a need to fix space norms at both city/zonal development plan and local/layout plan levels. Each city/town may, however, evolve its own quantitative norms but only after conducting proper surveys and evaluating actual needs, and taking the help of professional institutions/agencies. The principle of "natural markets" should be followed in designating areas as Vending Zones and their maximum holding capacity should be determined based on this principle.

4.4

Provision of Civic Facilities

Municipal

Authorities need to provide basic civic facilities in Vending Zones/Vendors Markets which would include:

i)

Provisions for solid waste disposal;

ii)

Public toilets to maintain cleanliness;

iii)

Aesthetic design of mobile stalls/ push carts;

iv)

Provision for electricity;

v)

Provision for drinking water;

vi)

Provision for protective covers to protect wares of street vendors as well as themselves from heat, rain, dust etc;

vii)

Storage facilities including cold storage for specific goods like fish, meat and poultry; and

viii)

Parking areas.

The

Vendors Markets should, to the extent possible, also provide for creches, toilets and restrooms for female and male members.

4.5

Organisation & Participative Processes

4.5.1

Town Vending Committee

a)

Designation or demarcation of 'Restriction-free Vending Zones'/'Restricted Vending Zones'/'No-vending Zones' and Vendors Markets should be carried out in a participatory manner by the Town Vending Committee, to be established at town/city level. A TVC should consist of the Municipal Commissioner/Chief Executive Officer of the urban local body as Chairperson and such number of members as may be prescribed by the appropriate Government, representing firstly, local authority; planning authority and police and such other interests as it deems proper; secondly, associations of street vendors; thirdly, resident welfare associations and Community Based Organisations (CBOs); and fourthly, other civil society organizations such as NGOs, representatives of professional groups (such as lawyers, doctors, town planners, architects etc.), representatives of trade and commerce, representatives of scheduled banks and eminent citizens. This Policy suggests that the representatives of street vendors associations may constitute forty per cent of the number of the members of the TVC and the other three categories may be represented in equal proportion of twenty per cent each. At least one third of the representatives of categories of street vendors, resident welfare associations and other civil society organizations should be women to provide a gender focus in the TVC. Adequate/reasonable representation should also be provided to the physically challenged in the TVC. The process for selection of street vendors representatives should be based on the following criteria:

*

Participation in membership-based organisations; and

*

Demonstration of financial accountability and civic discipline.

b)

The TVC should ensure that the provision of space for vendors markets are pragmatic, consistent with formation of natural markets, sufficient for existing demand for the street vendors goods and services as well as likely increase in accordance with anticipated population growth.

c)

The TVC should monitor the provision of civic facilities and their functioning in Vending Zones and Vendors Markets and bring shortcomings, if any to the notice of the concerned authorities of the urban local body. The TVC should also promote the organisation of weekly markets, festival bazaars, night bazaars, vending festivals on important holidays etc. as well as take up necessary improvement of infrastructure facilities and municipal services with the urban local body concerned.

4.5.2

The TVC shall perform the following functions:

a)

Undertake periodic survey/census to assess the increase or decrease in the number of street vendors in the city/town/wards/localities;

b)

Register the street vendors and ensure the issuance of Identity Cards to the street vendors after their preparation by the Municipal Authority;

c)

Monitor the civic facilities to be provided to the street vendors in vending zones/vendors markets by the Municipal Authority;

d)

Assess and determine maximum holding capacity of each vending zone;

e)

Work out a non-discretionary system and based on the same, identify areas for hawking with no restriction, areas with restriction with regard to the dates, days and time, and, areas which would be marked as 'No Vending Zones';

f)

Set the terms and conditions for hawking and take corrective action against defaulters;

g)

Collect fees or other charges as authorized by the competent civic authority;

h)

Monitor to ensure that those allotted stalls/ vending spots are actually using them and take necessary action to ensure that these are not rented out or sold to others;

i)

Facilitate the organization of weekly markets, festival bazaars, night bazaars, vending festivals such as food festivals to celebrate important occasions/ holidays including city/town formation days etc; and

j)

Ensure that the quality of products and services provided to the public is as per standards of public health, hygiene and safety laid down by the local authority.

4.5.4

Registration System for Street Vending

A

system of registration of vendors/hawkers and non-discretionary regulation of their access to public spaces in accordance with the standards of planning and the nature of trade/service should be adopted. This system is described in greater detail below.

a)

Photo Census of Vendors:

The

Municipal Authority, in consultation with the TVC should undertake a comprehensive, digitalized photo census/survey/GIS Mapping of the existing stationary vendors with the assistance of professional organisations/ experts for the purpose of granting them lease to vend from specific places within the holding capacity of the vending zones concerned.

b)

Registration of Vendors:

The

power to register vendors would be vested with the TVC. Only those who give an undertaking that they will personally run the vending stall/spot and have no other means of livelihood will be entitled for registration. A person will be entitled to receive a registration document for only one vending spot for him/her (and family). He/she will not have the right to either rent or lease out or sell that spot to another person.

c)

New Entrants:

Those

left out in the photo census or wishes to take up street vending for the first time will also have a right to apply for registration as vendors provided they give a statement on oath that they do not have any other means of livelihood and will be personally operating from the vending spot, with help from family members.

d)

Identity Cards:

Upon

registration, the concerned Municipal Authority would issue an Identity Card with Vendor Code Number, Vendor Name, Category of Vendor etc. in writing to the street vendor, through the TVC concerned containing the following information:

(i)

Vendor Code No.

(ii)

Name, Address and photograph of the Vendor;

(iii)

Name of any one Nominee from the family and/or a family helper;

(iv)

Nature of Business;

(v)

Category (Stationary/Mobile); and

(vi)

If Stationary, the Vending Location.

Children

below 14 years would not be included in the Identity Card for conduct of business.

e)

Registration Fee:

All

vendors in each city/town should be registered at a nominal fee to be decided by the Municipal Authority concerned based on the photo census or any other reliable means of identification such as the use of biometric techniques.

f)

Registration Process:

i)

The registration process must be simple and expeditious. All declarations, oath, etc. may be on the basis of self-declaration.

ii)

There should preferably be no numerical restriction or quotas for registration, or prior residential status requirements of any kind.

iii)

Registration should be renewed after every three years. However, a vendor who has rented out or sold his spot to another person will not be entitled to seek re-registration.

iv)

There may be a "on the spot" temporary registration process on renewable basis, in order to allow the street vendors to immediately start their earnings as the registration process and issue of I-card etc. may take time.

4.6

Collection of Revenue

4.6.1.

Street vendors would be charged a monthly fee towards the space they use and the civic services they receive. There should be a direct linkage between the Municipal Authority and street vendors for the collection of:

a)

Registration fee;

b)

Monthly maintenance charges - differentiated according to location/type of business; and,

c)

Fines and other charges, if any.

4.6.2

A TVC should have access to a proportion of revenue generated from registration fees and monthly fees to run its operations but should in addition receive a minimum grant from the Municipal Authority.

4.6.3.

The collection of revenue by the Municipal Authority through TVC should ensure that it is based on a predetermined rate of fee and not amenable to any kind of discretion or extortion. If complaints on this account are registered with the TVC, adequate measures should be taken to redress the same expeditiously.

4.7

Self-Management & Regulation

This

Policy advocates the encouragement of collective arrangements by the street vendors to redress any harmful effects on the locality caused by the occupation of street vending. Such arrangements should cover waste disposal, hygiene in the area of vending as well as in the zone/cluster occupied by street vendors as a whole for their activities, traffic management etc. Quantitative norms of spatial planning should be respected by the street vendors as a measure of self-regulation in terms of the number of a typical trade to be allowed in a particular place. Registration system with the participation of street vendors associations may be used to regulate the scale of operation in vending zones or vendors markets so that the threshold limits on their holding capacity are not exceeded.

5.

Eviction, Relocation and Confiscation

5.1

If authorities come to the conclusion in any given instance that genuine public obstruction of a street, side walk etc. is being caused by street vending, there should be a mechanism of due notice to the street vendors. The vendors should be informed/warned by way of notice as the first step before starting the clearing up or relocation process. In the second step, if the space is not cleared within the notified time, a fine should be imposed. If the space is not cleared even after the notice and imposition of fine, physical eviction may be resorted to. In the case of vending in a 'No-vending Zone', a notice of at least a few hours should be given to a street vendor in order to enable him or her clear the space occupied. In case of relocation, adequate compensation or reservation in allotment of new vending site should be provided to the registered vendors.

5.2

With regard to confiscation of goods (which should happen only as a last resort rather than routinely), the street vendors shall be entitled to get their goods back within a reasonable time on payment of prescribed fee, determined by TVC.

5.3

In case of peripatetic vendors or vendors occupying space on a time sharing basis, the vending activity will be regulated in such a manner that the vendors remove all their wares every day/on expiry of the time-sharing period allotted. In case of mobile vending outlets, suitable regulations should be put in place for ensuring flow of traffic and public health and hygiene in the public interest.

5.4

The appropriate Government may make suitable amendments to their existing laws/rules, with a view to removing impediments in the implementation of this Policy and to prevent the undue harassment of street vendors.

6.

Promotional Measures

6.1

to 6.5 xxxx xxxx xxxx

6.6

Allotment of Space/Stationary Stalls

Stationary

vendors should be allowed space/stalls, whether open or covered, on license basis after photo census/ survey and due enquiry in this regard, initially for a period of 10 years with the provision that only one extension of ten years shall be provided thereafter. After 20 years, the vendor will be required to exit the stationary stall (whether open or covered) as it is reasonably expected that the licensee would have suitably enhanced his/her income, thereby making the said stall available for being licensed to a person belonging to the weaker sections of society. Wherever vending stall/vending space is provided to a vendor on a lease basis for a certain number of years, care should be taken that adequate reservation is made for the SCs/STs in accordance with their share in the total population of the city. Similarly, priority should be given to physically challenged/disabled persons in the allocation of vending stalls/vending spaces as vending space can be a useful medium for rehabilitating physically challenged/ disabled persons. Further, a suitable monitoring system should be put in

place by the TVC to ensure that the licensees of the stationary stalls do not sell/let out their stalls.

6.7

Rehabilitation of Child Vendors

To

prevent vending by children and seek their rehabilitation wherever such practice exists, in conformity with the Child Labour (Prohibition & Regulation) Act, 1986, the State Government and Municipal Authorities should undertake measures such as sending the children to regular or bridge schools, imparting them skills training etc.

The

aforenoted National Policy was considered by the Supreme Court in Maharashtra

Ekta Hawkers Union and another (supra).

In that case, a two-Judge Bench took cognizance of the National Policy on Urban Street Vendors and observed :

41.

After noticing the contents of the statements in the counter, we are happy to note that the State Government is initiating a process for implementation of National Policy on Urban Street Vendors by framing regulations as envisaged in Section 10.1 of the National Policy. We hope and trust that the State Government will pursue the matter with right earnest and bring it to logical conclusion within the time stipulated.

42.

We clarify that the regulations so framed by the State would be in consonance with the aims and objects of the National Policy to render some sort of succour to the urban street vendors to eke out a living through hawking.

43.

We also clarify that the State Government shall frame regulations in order to solve the problem of hawkers independently without being influenced by any scheme framed by us or any direction issued by this Court in the interregnum. We further clarify that the schemes and directions issued by this Court are purely temporary in nature and subject to regulations framed by the State Government in terms of Section 10.1 of the National Policy on Urban Street Vendors. In other words, the schemes and directions issued by this Court shall be valid only till the regulations are framed and implemented.

In

Gainda

Ram v. Municipal Corporation of Delhi, (2010)10

SCC 715, the problem was considered in the context of Delhi. After taking cognizance of the fact that various committees were set up by the administration to solve the problem of street vendors/hawkers, the Bench referred to the National Policy on Urban Street Vendors, 2009, the Master Plan of Delhi, 2012, the Model

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 prepared by the Government of India, Ministry of Housing and Urban Poverty Alleviation and observed:

67.

In the background of the provisions in the Bill and the 2009 Policy, it is clear that an attempt is made to regulate the fundamental right of street hawking and street vending by law, since it has been declared by this Court that the right to hawk on the streets or right to carry on street vending is part of fundamental right under Article 19(1)(g). However, till the law is made the attempt made by NDMC and MCD to regulate this right by framing schemes which are not statutory in nature is not exactly within the contemplation of constitutional provisions discussed above. However, such schemes have been regulated from time to time by this Court for several years as pointed out above. Even, orders passed by this Court, in trying to regulate such hawking and street vending, is not law either. At the same time, there is no denying the fact that hawking and street vending should be regulated by law. Such a law is imminently necessary in public interest.

The

Supreme Court also referred to the mechanism established by the Municipal Corporation of Delhi for redressing the grievance of the street vendors/hawkers and issued the following directions:

77.

In view of such schemes, the hawkers, squatters and vendors must abide by the dispute redressal mechanism mentioned above. There should not be any direct approach to this Court by way of fresh petitions or IAs, bypassing the dispute redressal mechanism provided in the schemes.

78.

However, before 30-6-2011, the appropriate Government is to enact a law on the basis of the Bill mentioned above or on the basis of any amendment thereof so that the hawkers may precisely know the contours of their rights. This Court is giving this direction in exercise of its jurisdiction to protect the fundamental rights of the citizens.

79.

The hawkers and squatters or vendors right to carry on hawking has been recognised as a fundamental right under Article 19(1)(g). At the same time the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19(1)(d). These two apparently conflicting rights must be harmonised and regulated by subjecting them to reasonable restrictions only under a law. The question is, therefore, vitally important to a very large section of people, mostly ordinary men and women. Such an issue cannot be left to be decided by schemes and which are monitored by this Court from time to time.

In

a very recent pronouncement of the Supreme Court dated 9th September 2013 in Civil Appeal Nos.4156-4157 of 2002 and allied matters (Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and others), the Supreme Court took cognizance of the fact that the street vendors/hawkers have received a raw treatment from the State apparatus before and even after the independence. They are a harassed lot and are constantly victimized by the officials of the local authorities, the police, etc., who regularly target them for extra income and treat them with extreme contempt. The goods and belongings of the street vendors/hawkers are thrown to the ground and destroyed at regular intervals if they are not able to meet the demands

of the officials. The Court also took into consideration the various decisions of the Supreme Court, more particularly, the decision in the case of Sodan Singh (supra). The Court also considered the National Policy on Urban Street Vendors, 2009 and the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 prepared by the Government of India, Ministry of Housing and Urban Poverty Alleviation. Ultimately, the Supreme Court thought fit to issue the following directions :

For

facilitating implementation of the 2009 Policy, we issue the following directions:

i)

Within one month from the date of receipt of copy of this order, the Chief Secretaries of the State Governments and Administrators of the Union Territories shall issue necessary instructions/directions to the concerned department(s) to ensure that the Town Vending Committee is constituted at city/town level in accordance with the provisions contained in the 2009 Policy. For the cities and towns having large municipal areas, more than one Town Vending Committee may be constituted.

(ii)

Each Town Vending Committee shall consist of representatives of various organizations and street vendors/hawkers. 30% of the representatives from the category of street vendors/hawkers shall be women.

iii)

The representatives of various organizations and street vendors/hawkers shall be chosen by the Town Vending Committee by adopting a fair and transparent mechanism.

iv)

The task of constituting the Town Vending Committees shall be completed within two months of the issue of instructions by the Chief Secretaries of the State and the Administrators of the Union Territories.

v)

The Town Vending Committees shall function strictly in accordance with the 2009 Policy and the decisions taken by it shall be notified in the print and electronic media within next one week.

vi)

The Town Vending Committees shall be free to divide the municipal areas in vending/hawking zones and sub-zones and for this purpose they may take assistance of experts in the field. While undertaking this exercise, the Town Vending Committees constituted for the cities of Delhi and Mumbai shall take into consideration the work already undertaken by the municipal authorities in furtherance of the directions given by this Court. The municipal authorities shall also take action in terms of Paragraph 4.2(b) and (c).

vii)

All street vendors/hawkers shall be registered in accordance with paragraph 4.5.4 of the 2009 Policy. Once registered, the street vendor/hawker, shall be entitled to operate in the area specified by the Town Vending Committee.

viii)

The process of registration must be completed by the municipal authorities across the country within four months of the receipt of the direction by the Chief Secretaries of the States and Administrators of the Union Territories.

ix)

The State Governments / Administration of the Union Territories and municipal and local authorities shall take all the steps necessary for achieving the objectives set out in the 2009 Policy.

x)

The Town Vending Committee shall meet every month and ensure implementation of the relevant provisions of the 2009 Policy and, in particular, paragraph 4.5.1 (b) and (c).

xi)

Physically challenged who were allowed to operate PCOs in terms of the judgment reported in (2009) 17 SCC 231 shall be allowed to continue to run their stalls and sell other goods because running of PCOs. is no longer viable. Those who were allowed to run Aarey/Sarita shall be allowed to continue to operate their stalls.

xii)

The State Governments, the Administration of the Union Territories and municipal authorities shall be free to amend the legislative provisions and/or delegated legislation to bring them in tune with the 2009 Policy. If there remains any conflict between the 2009 Policy and the municipal laws, insofar as they relate to street vendors/hawkers, then the 2009 Policy shall prevail.

xiii)

Henceforth, the parties shall be free to approach the jurisdictional High Courts for redressal of their grievance and the direction, if any, given by this Court in the earlier judgments/orders shall not impede disposal of the cases which may be filed by the aggrieved parties.

xiv)

The Chief Justices of the High Courts are requested to nominate a Bench to deal with the cases filed for implementation of the 2009 Policy and disputes arising out of its implementation. The concerned Bench shall regularly monitor implementation of the 2009 Policy and the law which may be enacted by the Parliament.

xv)

All the existing street vendors/hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending/hawking zones is completed in terms of the 2009 Policy. Once that exercise is completed, they shall be entitled to operate only in accordance with the orders/directions of the concerned Town Vending Committee.

xvi)

The provisions of the 2009 Policy and the directions contained herein above shall apply to all the municipal areas in the country.

The

Supreme Court further directed that the aforementioned directions would remain operative till an appropriate legislation was enacted by the Parliament or any other competent legislature and was brought into force. In paragraph 8, the Bench observed as under :

The

parties, whose applications have remained pending before this Court, shall be free to institute appropriate proceedings in the jurisdictional High Court. If so advised, the aggrieved person shall be free to file petition under Article 226 of the Constitution.

The

copy of the judgment was ordered to be circulated to all the Chief Secretaries of the States, Administrators of the Union Territories and Registrar Generals/Registrars (Judicial) of all the High Courts.

In

the backdrop of the aforesaid developments, it is now very clear that all the corporations all over the State of Gujarat will have to abide by the directions issued by the Supreme Court aforementioned.

We

propose to close this Public Interest Litigation by issuing the following directions as a stop gap arrangement till the directions issued by the Supreme Court for facilitating implementation of the 2009 Policy are carried out in letter and spirit :

We

direct the Vadodara Municipal Corporation first to identify all those areas in the entire city where hawking/vending on the public streets is carried out on regular basis.

After

identifying all such pockets all over the city, the authorities shall ensure that the hawkers/vendors are asked not to occupy any public street meant for pedestrians and vehicles.

The

authorities should make all possible endeavours to find an alternative site in each of the identified areas where the hawkers/vendors could be asked to shift.

This

exercise should be undertaken with the help of the local police so that, ultimately when it comes to monitoring, not only the staff of the corporation but even the local police i.e. the police of the concerned police station within whose territorial jurisdiction the area falls can also keep watch on such encroachment by the hawkers/vendors on public streets.

We

also direct that the authorities of the Corporation as well as the police shall use minimum of the force required for the purpose of restraining or shifting the hawkers/vendors from public streets to any other place where their activity of hawking/vending would not lead to problem of traffic and congestion including hygiene.

It

will be the duty of the Police Inspector of the concerned Police Station to keep constant monitoring of the area over which he has territorial jurisdiction.

We

also direct the Corporation to enhance the manpower, if necessary, for the purpose of keeping constant check or inspection.

In

the event, if the hawkers/vendors refuse to shift to any other alternative site and thereby occupy public streets, then in such circumstances, it would be open for the authorities to proceed against them in accordance with law but, without taking any coercive steps like confiscation of goods, destroying of goods, etc.

We

also direct that our directions should be implemented in their letter and spirit and any dereliction of duty or negligence on the part of the authorities concern will amount to contempt of this Court's order, for which necessary action shall be initiated.

The

Corporation has filed an affidavit, wherein it has been categorically stated that the hawkers/vendors have been removed from the subject road and that as on today there is no obstruction on the free passage over the road.

In

view of such affidavit filed by the Corporation stating that the hawkers/vendors have been removed from the subject road, this order may not be construed to mean that they shall once again reoccupy the road till such time the policy as directed by the Supreme Court is framed by the Corporation.

With

the above observations and directions, we close this Public Interest Litigation and dispose it off accordingly.

(BHASKAR BHATTACHARYA,

CJ.)

(J.B.PARDIWALA, J.)

MOIN

Page

34

