

Maharashtra Ekta Hawkers Union & Anr vs Municipal Corporation, Greater ... on 9 September, 2013

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Bench: V. Gopala Gowda, G.S. Singhvi

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.4156-4157 of 2002

WITH

Civil Appeal Nos. 4161-4162 of 2002

AND

Civil Appeal Nos. 4175-4176 of 2002

AND

I.A.Nos.266-285, 288-289, 294-299, 304-309, 312-321 & 324-335

IN

Civil Appeal Nos.4156-4157 of 2002

AND

I.A.Nos.7-8 in Civil Appeal Nos. 4161-4162 of 2002

AND

I.A.Nos.16-17 in Civil Appeal Nos. 4175-4176 of 2002

Maharashtra Ekta Hawkers Union and another

... Appellants

Versus

Municipal Corporation, Greater Mumbai and others

... Respondents

O R D E R

G.S. SINGHVI, J.

1. A street vendor / hawker is a person who offers goods for sale to the public at large without having a permanent structure / place for his activities. Some street vendors / hawkers are stationary in the sense that they occupy space on the pavements or other public / private places while others are mobile in the sense that they move from place to place carrying their wares on push carts or in baskets on their heads.

2. In last four decades, there has been manifold increase in the number of street vendors / hawkers in all major cities in the country. One of the many factors responsible for this phenomena is unabated growth of population without corresponding increase in employment opportunities. The

other factor is the migration of rural population to the urban areas. A large section of the rural population has been forced to leave their habitat because of massive acquisition of land and substantial reduction in the number of cottage industries, which offered source of livelihood to many people in the rural areas and even those living in the peripheries of the urban areas. In recent past, many lakh youngsters have moved from the rural areas to the cities with the hope of getting permanent source of livelihood but a substantial number of them have become street vendors / hawkers because their expectations have been belied. One reason which has contributed to this scenario is that unlike other sections of the urban population, they neither have the capacity and strength to demand that the Government should create jobs for them nor do they engage in begging, stealing or extortion. They try to live with dignity and self-respect by doing the work as street vendors / hawkers.

3. The importance of street vendors and hawkers can be measured from the fact that millions of urban poor across the country procure their basic necessities mainly from street vendors / hawkers because the goods, viz., cloths, hosiery items, plastic wares, household items, food items, etc., sold on pavements or through push carts, etc., are cheap. The lower income groups also spend a large proportion of their income in purchasing goods from street vendors / hawkers.

4. Unfortunately, the street vendors / hawkers have received 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. Perhaps these minions in the administration have not understood meaning of the term “dignity” enshrined in the preamble of the Constitution.

5. The constant threat faced by the street vendors / hawkers of losing their source of livelihood has forced them to seek intervention of the Courts across the country from time to time. In last 28 years, this Court has struggled to find a workable solution of the problems of street vendors / hawkers on the one hand and other sections of society including residents of the localities / places where street vendors / hawkers operate and delivered several judgments including *Bombay Hawkers’ Union vs. Bombay Municipal Corporation* (1985) 3 SCC 528, *Sodan Singh vs. New Delhi Municipal Committee* (1989) 4 SCC 155, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2004) 1 SCC 625, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2009) 17 SCC 151, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2009) 17 SCC 231 (this order was passed on 30.07.2004 but was printed in the journal only in 2009) and *Gainda Ram vs. Municipal Corporation of Delhi* (2010) 10 SCC 715, but the situation has not changed in last four decades. Rather, the problem has aggravated because of lackadaisical attitude of the administration at various levels and the legislative instruments made many decades ago have become totally ineffective.

6. In *Sodan Singh vs. New Delhi Municipal Committee* (supra), L.M.Sharma, J., who authored the main judgment, referred to a number of precedents including *Saghir Ahmad vs. State of U.P.* AIR 1954 SC 728 and observed.

“17. So far as right of a hawker to transact business while going from place to place is concerned, it has been admittedly recognised for a long period. Of course, that also is subject to proper regulation in the interest of general convenience of the public including health and security considerations. What about the right to squat on the roadside for engaging in trading business? As was stated by this Court in *Bombay Hawkers' Union v. Bombay Municipal Corporation* (1985) 3 SCC 528 the public streets by their nomenclature and definition are meant for the use of the general public: they are not laid to facilitate the carrying on of private business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the busy thoroughfares, thereby paralysing all civic life. This is one side of the picture. On the other hand, if properly regulated according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to the comfort and convenience of general public, by making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after day's work can pick up these articles without going out of his way to find a regular market. If the circumstances are appropriate and a small trader can do some business for personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to the others, we do not see any objection to his carrying on the business. Appreciating this analogy the municipalities of different cities and towns in the country have been allowing such traders. The right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and for no other use. Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads — to facilitate traffic — may be defeated. Allowing the right to trade without appropriate control is likely to lead to unhealthy competition and quarrel between traders and travelling public and sometimes amongst the traders themselves resulting in chaos. The right is subject to reasonable restrictions under clause (6) or Article 19. If the matter is examined in its light it will appear that the principle stated in *Saghir Ahmad case* (1955) 1 SCR 707: AIR 1954 SC 728 in connection with transport business applies to the hawkers' case also. The proposition that all public streets and roads in India vest in the State but that the State holds them as trustee on behalf of the public, and the members of the public are entitled as beneficiaries to use them as a matter of right, and that this right is limited only by the similar rights possessed by every other citizen to use the pathways, and further that the State as trustee is entitled to impose all necessary limitations on the character and extent of the user, should be treated as of universal application.” (Emphasis supplied) In his concurring opinion, Kuldip Singh, J. made the following observations:

“33. In India there are large number of people who are engaged in the business of “street trading”. There is hardly a household where hawkers do not reach. The housewives wait for a vegetable vendor or a fruit seller who conveniently delivers the daily needs at the doorstep. The petitioners before us are street traders of Delhi and New Delhi areas. Some of them have licences/Tehbazari from Municipal Corporation of Delhi/New Delhi Municipal Committee but most of them are squatters. There is practically no law regulating street trading in Delhi/New Delhi. The skeletal provisions in the Delhi Municipal Corporation Act, 1957 and the Punjab Municipal Act, 1911 can hardly provide any regulatory measures to the enormous and complicated problem of street trading in these areas.

35. Street trading being a fundamental right has to be made available to the citizens subject to Article 19(6) of the Constitution. It is within the domain of the State to make any law imposing reasonable, restrictions in the interest of general public. This can be done by an enactment on the same lines as in England or by any other law permissible under Article 19(6) of the Constitution. In spite of repeated suggestions by this Court nothing has been done in this respect. Since a citizen has no right to choose a particular place in any street for trading, it is for the State to designate the streets and earmark the places from where street trading can be done. Inaction on the part of the State would result in negating the fundamental right of the citizens. It is expected that the State will do the needful in this respect within a reasonable time failing which it would be left to the courts to protect the rights of the citizens.”

7. In Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai (supra), which was decided on 9.12.2003, a two Judge Bench referred to the judgments in Olga Tellis vs. Bombay Municipal Corporation (1985) 3 SCC 545, Sodan Singh vs. New Delhi Municipal Committee (supra), the recommendations made by the Committee constituted pursuant to an earlier judgment and observed:

“10. The above authorities make it clear that the hawkers have a right under Article 19(1)(g) of the Constitution of India. This right, however, is subject to reasonable restrictions under Article 19(6). Thus hawking may not be permitted where, e.g. due to narrowness of road, 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 worship etc. There is no fundamental right under Article 21 to carry on any hawking business. There is also no right to do hawking at any particular place. The authorities also recognize the fact that if properly regulated, the small traders can considerably add to the convenience and comfort of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. The scheme must keep in mind the above principles. So far as Mumbai is concerned, the scheme must comply with the conditions laid down in Bombay Hawkers’ Union case (1985) 3 SCC 528. Those conditions have become final and there is no changed circumstance which necessitates any alteration.” The Court then enumerated the following restrictions and conditions subject to which the hawkers could do business in Mumbai:

“(1) An area of 1 m × 1 m on one side of the footpath wherever they exist or on an extreme side of the carriageway, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked. We further clarify that even where hawking is permitted, it can only be on one side of the footpath or road and under no circumstances on both sides of the footpaths or roads. We, however, clarify that aarey/sarita stalls and sugarcane vendors would require and may be permitted an area of more than 1 m × 1 m but not more than 2 m × 1 m.

(2) Hawkers must not put up stalls or place any tables, stand or such other thing or erect any type of structure. They should also not use handcarts. However, they may protect their goods from the sun, rain or wind. Obviously, this condition would not apply to aarey/sarita stalls.

(3) There should be no hawking within 100 metres from any place of worship, holy shrine, educational institutions and hospitals or within 150 metres from any municipal or other markets or from any railway station. There should be no hawking on footbridges and overbridges. Further, certain areas may be required to be kept free of hawkers for security reasons. However, outside places of worship hawkers can be permitted to sell items required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candles, agarbattis, coconuts etc. (4) The hawkers must not create any noise or play any instrument or music for attracting the public or the customers.

(5) They can only sell cooked foods, cut fruits, juices and the like. We are unable to accept the submission that cooking should be permitted. We direct that no cooking of any nature whatsoever shall be permitted. Even where cooked food or cut fruits or the like are sold, the food must not be adulterated or unhygienic. All Municipal Licensing Regulations and the provisions of the Prevention of Food Adulteration Act must be complied with.

(6) Hawking must be only between 7.00 a.m. and 10.00 p.m. (7) Hawking will be on the basis of payment of a prescribed fee to be fixed by BMC. However, the payment of prescribed fee shall not be deemed to authorize the hawker to do his business beyond the prescribed hours and would not confer on the hawker the right to do business at any particular place.

(8) The hawkers must extend full cooperation to the municipal conservancy staff for cleaning the streets and footpaths and also to the other municipal staff for carrying on any municipal work. They must also cooperate with the other government and public agencies such as BEST Undertaking, Bombay Telephones, BSES Ltd. etc. if they require to lay any cable or any development work.

(9) No hawking would be permitted on any street which is less than 8 metres in width. Further, the hawkers also have to comply with the Development Control Rules, thus, there can be no hawking in areas which are exclusively residential and where trading and commercial activity is prohibited. Thus hawking cannot be permitted on roads and pavements which do not have a shopping line.

(10) BMC shall grant licences which will have photos of the hawkers on them. The licence must be displayed, at all times, by the hawkers on their person by clipping it on to their shirt or coat.

(11) Not more than one member of a family must be given a licence to hawk. For this purpose BMC will have to computerize its records.

(12) Vending of costly items e.g. electrical appliances, video and audio tapes and cassettes, cameras, phones etc. is to be prohibited. In the event of any hawker found to be selling such items his licence must be cancelled forthwith.

(13) In areas other than the non-hawking zones, licences must be granted to the hawkers to do their business on payment of the prescribed fee. The licences must be for a period of 1 year. That will be without prejudice to the right of the Committee to extend the limits of the non-hawking zones in the interests of public health, sanitation, safety, public convenience and the like. Hawking licences should not be refused in the hawking zones except for good reasons. The discretion not to grant a hawking licence in the hawking zone should be exercised reasonably and in public interest.

(14) In future, before making any alteration in the scheme, the Commissioner should place the matter before the Committee who shall take a decision after considering views of all concerned including the hawkers, the Commissioner of Police and members of the public or an association representing the public.

(15) It is expected that citizens and shopkeepers shall participate in keeping non-hawking zones/areas free from hawkers. They shall do so by bringing to the notice of the ward officer concerned the presence of a hawker in a non-hawking zone/area. The ward officer concerned shall take immediate steps to remove such a hawker. In case the ward officer takes no action, a written complaint may be filed by the citizen/shopkeeper to the Committee. The Committee shall look into the complaint and if found correct, the Committee will with the help of police remove the hawker. The officer in charge of the police station concerned is directed to give prompt and immediate assistance to the Committee. In the event of the Committee finding the complaint to be correct it shall so record. On the Committee so recording an adverse remark re failure to perform his duty will be entered in the confidential record of the ward officer concerned. If more than three such entries are found in the record of an officer it would be a ground for withholding promotion. If more than six such entries are found in the records of an officer it shall be a ground for termination of service. For the work of attending to such complaints BMC shall pay to the Chairman a fixed honorarium of Rs 10,000 p.m. (16) The scheme framed by us will have a binding effect on all concerned. Thus, apart from those to whom licences will now be issued, no other person/body will have any right to squat or carry on any hawking or other business on the roads/streets. We direct that BMC shall bring this judgment to the notice of all courts in which matters are now pending. We are quite sure that the court(s) concerned shall then suitably vacate/modify its injunction/stay order.”

8. By an order dated 30.07.2004, which is reported in (2009) 17 SCC 231 (Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai), the Court modified order dated 09.12.2003 and permitted handicapped persons who were granted licence for running PCOs/Aarey/Sarita stalls to continue to run those stalls even in non-hawking zones with the rider that no further or new licences be granted to any other person.

9. The matter did not stop there. The issue was again examined in the judgment reported in (2009) 17 SCC 151 (Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai). In that case, a two Judge Bench took cognizance of National Policy on Urban Street Vendors, 2004 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.” The two Judge Bench also restrained all other Courts from interpreting its order or passing any order touching upon the subject matter dealt with by this Court. Simultaneously, hearing of the writ petitions pending before all the High Courts was stayed and it was ordained that if any clarification / modification is required then the same must be obtained from this Court.

10. In *Gainda Ram vs. 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 (for short, ‘the 2009 Policy’), 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 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.”

11. When these appeals and applications were taken up for hearing, Shri Prashant Bhushan, learned counsel representing some of the street vendors / hawkers produced Twenty Third Report of the Standing Committee on Urban Development (2012-2013) prepared in the context of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 and submitted that till Parliament enacts appropriate legislation for protecting the rights of the urban street vendors / hawkers, the Court may ordain implementation of the 2009 Policy with liberty to the parties to approach appropriate judicial forums for redressal of their grievance. They and learned counsel representing the municipal bodies / authorities, residents and others lamented that due to the restrictions imposed by this Court, no other Court is entertaining the grievance made by the street vendors / hawkers on the one hand and the residents of various colonies and other people on the other hand and this is the reason why dozens of interlocutory applications are being filed in this Court every year in the decided matters. They suggested that the embargo placed by this Court on the entertaining of writ petitions, etc., by the High Courts should be lifted and a direction be given that till the enactment of appropriate legislation by Parliament or any other competent legislature, the 2009 Policy should be implemented throughout the country. Shri Shyam Divan, learned senior counsel, extensively referred to some of the precedents and submitted that the Bombay High Court should be directed to specifically deal with the issue related to establishment of hawking and non-hawking zones so that the residents may not be adversely affected due to un-regulated street vending and hawking activities in different parts of the city of Mumbai.

12. Shri Pallav Shishodia, learned senior counsel appearing for the Municipal Corporation of Greater Mumbai argued that the street vendors / hawkers cannot be allowed to occupy public spaces at each and every place and the scheme framed by the Corporation in compliance of the directions given by this Court does not require any modification. Shri Vijay Hansaria, Shri Anand Grover, learned

Senior Advocates and Shri Sushil Kumar Jain and other learned counsel emphasized that this Court should direct the municipal authorities to accommodate all the street vendors / hawkers and stop their harassment, exploitation and victimization by the State agencies. Shri Prashant Bhushan emphasized that despite the directions given by this Court from time to time, including the interim order passed in relation to the street vendors / hawkers in Delhi, the concerned authorities are not allowing them to conduct their activities. He further argued that the street vendors / hawkers should be allowed to operate in accordance with the provisions of 2009 Policy and the concerned authorities should ensure that everybody is given licence for carrying out his / her activity. Learned counsel for the parties also suggested that the decision(s) of the Town Vending Committees should be published on regular intervals in print and electronic media and the internet and the High Courts should be asked to monitor implementation of various provisions of the 2009 Policy.

13. At the conclusion of hearing, the Court had given time to the parties to file written submissions / suggestions. On 7th August, 2013, Shri Prashant Bhushan, learned counsel for the applicants in IA Nos. 322-323 of 2013 and 324-325 of 2013 filed written suggestions. On 8th August, 2013, a written note was filed on behalf of Citizen Forum for Protection of Public Spaces (CitiSpace), which was allowed to act as intervenor in the special leave petitions filed by Maharashtra Ekta Hawkers Union.

14. We have considered the respective arguments / submissions. Learned counsel for the parties are ad-idem that the orders passed by this Court from time to time have not solved the problems of the street vendors / hawkers and the residents of the cities of Delhi and Mumbai and almost every year they have been seeking intervention of this Court by filing interlocutory applications. The experience has, however, shown that it is virtually impossible for this Court to monitor day to day implementation of the provisions of different enactments and the directions contained in the judgments noted hereinabove. Therefore, it will be appropriate to lift the embargo placed on the entertaining of matters by the High Courts and we order accordingly. Paragraph 45 of the judgment reported in (2009) 17 SCC 151 shall stand modified and the street vendors / hawkers, the residents and others adversely affected by street vending / hawking shall henceforth be entitled to invoke the jurisdiction of the concerned High Courts for redressal of their grievance.

15. In *Gainda Ram's* case (paragraph 78), this Court had directed that appropriate Government should enact a law on or before 30th June, 2011. Once the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 becomes law, the livelihood of millions would be saved and they will get protection against constant harassment and victimization which has so far been an order of the day. However, till the needful is done, it will be apposite for the Court to step in and direct that the 2009 Policy, of which the salient provisions are extracted below, should be implemented throughout the country:

“1.8 A centre piece of this Policy is the role of Town Vending Committee (henceforth referred to as TVC) to be constituted at City/Town level. A TVC shall be coordinated by a convener who should be nominated by the urban local body concerned. The Chairman of TVC will be the Commissioner/Chief Executive Officer of the concerned urban local body. The TVC will adopt a participatory approach and supervise the entire process of planning, organisation and regulation of street vending activities,

thereby facilitating the implementation of this Policy. Further, it will provide an institutional mechanism for due appreciation of the ground realities and harnessing of local knowledge for arriving at a consensus on critical issues of management of street vending activities. The TVC may constitute, in collaboration with the local authority, Ward Vending Committee to assist in the discharge of its functions.

1.9 This Policy adopts the considered opinion that there should not be any cut off date or limit imposed on the number of vendors who should be permitted to vend in any city/town, subject to registration of such vendors and regulation through the TVC. At any time, an urban poor person can decide that he or she would like to go to a wholesale market, purchase some items and sell these in vending zones during permitted hours to make an honest living. The vendor may not be subject to undue restrictions if he/she wishes to change the trade. In order to make this conceptual right a practically feasible right, 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 TVC.

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 verandahs 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.

iv) 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 be 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.

This Policy attempts to address some of the above concerns, keeping the interests of street vendors in view vis-à-vis conflicting public interests.

3. Objectives 3.1 Overarching Objective The overarching objective to be achieved through this Policy is:

To provide for and promote a supportive environment for the vast mass of urban street vendors to carry out their vocation while at the same time ensuring that their vending activities do not lead to overcrowding and unsanitary conditions in public spaces and streets.

3.2 Specific Objectives This Policy aims to develop a legal framework through a model law on street vending which can be adopted by States/Union Territories with suitable modifications to take into account their geographical/local conditions. The specific objectives of this Policy are elaborated as follows:

a) Legal Status:

To give street vendors a legal status by formulating an appropriate law and thereby providing for legitimate vending/hawking zones in city/town master or development plans including zonal, local and layout plans and ensuring their enforcement;

b) Civic Facilities:

To provide civic facilities for appropriate use of identified spaces as vending/hawking zones, vendors' markets or vending areas in accordance with city/town master plans including zonal, local and layout plans;

c) Transparent Regulation:

To eschew imposing numerical limits on access to public spaces by discretionary licenses, and instead moving to nominal fee-based regulation of access, where previous occupancy of space by the street vendors determines the allocation of space or creating new informal sector markets where space access is on a temporary turn-by-turn basis. All allotments of space, whether permanent or temporary should be based on payment of a prescribed fee fixed by the local authority on the recommendations of the Town Vending Committee to be constituted under this Policy;

d) Organization of Vendors:

To promote, where necessary, organizations of street vendors e.g. unions / co-operatives / associations and other forms of organizations to facilitate their collective empowerment;

e) Participative Processes:

To set up participatory processes that involve firstly, local authority, planning authority and police; secondly, associations of street vendors; thirdly, resident welfare associations 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;

f) Self-Regulation:

To promote norms of civic discipline by institutionalizing mechanisms of self-management and self-regulation in matters relating to hygiene, including waste disposal etc. amongst street vendors both in the individually allotted areas as well as vending zones/clusters with collective responsibility for the entire vending zone/cluster; and

g) Promotional Measures:

To promote access of street vendors to such services as credit, skill development, housing, social security and capacity building. For such promotion, the services of Self Help Groups (SHGs)/Co-operatives/ Federations/Micro Finance Institutions (MFIs), Training Institutes etc. should be encouraged.

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) Spatial planning should take into account the natural propensity of street vendors to locate in certain places at certain times in response to the patterns of demand for their goods/services. For this purpose, photographic digitalized surveys of street vendors and their locations should be conducted by competent professional institutions/agencies. This is to be sponsored by the concerned Department of State Government/Urban Development Authority/Local Authority.

b) Municipal Authorities should frame necessary rules for regulating entry of street vendors on a time sharing basis in designated vending zones keeping in view three broad categories - registered vendors who have secured a license for a specified site/stall; registered street vendors in a zone on a time sharing basis; and registered

mobile street vendors visiting one or the other vending zone;

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.

e) With the growth of cities/towns in response to urbanization, the statutory plans of every new area should have adequate provision for 'Vending/hawking Zones' and 'Vendors Markets.'

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.

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.

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. 6.8 Promoting Vendors' Organisations To enable street vendors to access the benefits of social security schemes and other promotional measures in an effective manner, it is essential that the street vendors are assisted to form their own organizations. The TVC should take steps to facilitate the formation and smooth functioning of such organizations of street vendors. Trade Unions and other Voluntary Organisations should play an active role and help the street vendors to organise themselves by providing counseling and guidance services wherever required."

16. 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 PCO's 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 hereinabove shall apply to all the municipal areas in the country.

17. The aforesaid directions shall remain operative till an appropriate legislation is enacted by Parliament or any other competent legislature and is brought into force.

18. 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.

19. All the appeals and I.As are disposed of in the manner indicated above.

20. The Registry is directed to send copies of this order to the Chief Secretaries of all the States, Administrators of the Union Territories and Registrar Generals / Registrars (Judicial) of all the High Courts, who shall place the order before the Chief Justice for consideration and necessary directions.

.....J. (G.S. SINGHVI)J. (V. GOPALA GOWDA) New Delhi;

September 9, 2013.
