

accident took place before the commencement of the insurance as indicated in the cover note. But, both the Tribunal and the High Court turned down the plea and held the insurance company liable to pay the compensation amount.”

(5) In *United India Insurance Co. Ltd. v. Laxmamma and others*, 2012 ACJ 1307 (SC), the Hon’ble Supreme Court summarized the legal position in Paragraph 19 of its judgment as follows:

“In our view, the legal position in this : where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists...”

In Paragraph 21 of its judgment, the Hon’ble Supreme Court held that—

“In view of the above, the judgment of High Court impugned in the appeal does not call for any interference. Civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to claimants from the insured.”

Conclusion

The view of the Courts has been changed after the passing of judgment in *Swarn Singh’s* case (supra), in the Year, 2004. The provisions contained in the Motor Vehicles Act, 1988, relating to third party risks, are for serving a specific social purpose and are Social Welfare Provisions. The liability of insurer is statutory and the liability of the insurer to satisfy the decree is also statutory. The provisions are of beneficial in nature and third party cannot be put to hardship due to battle between insurance company and the owner. A contract of insurance covering the third party risk must be viewed differently from a contract of insurance. Even if there are lapses under Section 149 of the Act, as per the doctrine of “pay and recover” insurance company is liable to pay compensation to claimants and recover the same from owner. As per Section 64VB of Insurance Act, 1938, the risk is assumed from the date of receipt of premium, irrespective of the date of insurance policy. This legal proposition has been laid down in 2011 ACJ 1728 by the High Court of Bombay after going through the judgments of Hon’ble Supreme Court. The legal position today is that an insurance policy comes into effect on the date of receipt of premium amount which is beneficial to the claimants who have lost their beloved ones and bread winners of their families.

THE STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) BILL, 2012

By

—Dr. PETIKAM SAILAJA*

India has over 10 million street vendors or hawkers, currently at the mercy of local administration. Thus the Union Minister of Urban Housing & Poverty Alleviation has

* Dr. *Petikam Sailaja*, B.Sc., LL.M., Ph.D (Law), Lecturer in Law, MRVRGR Law College, Vizianagaram. I did my Ph.D. as a Full Time Researcher under the esteem guidance of Prof. *A. Rajendra Prasad*, Dr. B.R. Ambedkar College of Law, Andhra University, Visakhapatnam. Email ids : *sailaja.petikam@gmail.com*, *sp.sailaja@yahoo.com*, Mobile # 09441512542

introduced the Street Vendors (Protection of Livelihood & Regulation of Street Vending) Bill, 2012 in the Lok Sabha.

The Bill aims to protect the livelihood rights of street vendors as well as regulate street vending through demarcation of vending zones, conditions for and restrictions on street vending.

Bill defines “street vendor” as a “person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street lane, side walk, foot path, pavement, public park or any other public place or private area or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific”.

Any person intending to undertake street vending needs to register with the Town Vending Committee. He may then apply for a vending certificate that will be issued based on various criteria. The State Government shall frame a scheme for street vendors. The local authority shall, in consultation with the planning authority, frame a street vending plan once every five years. The Town Vending Committee comprises of the municipal commissioner, representatives of street vendors, local authority, Union Minister of Urban Housing & Poverty Alleviation, planning authority, local police, resident welfare association and other traders associations. This Bill shall not apply to Railways land, premises and trains.

The Town Vending Committee cannot reject any application without giving the applicant an opportunity to rectify deficiencies, if any, and affording him an opportunity of hearing. The Bill which also given preference to members of the Scheduled Castes, the Scheduled Tribes, women and physically disabled persons in granting certificate of registration.

Currently, street vending is regulated under municipal laws enacted by State Legislatures. Parliament’s competence to legislate on this issue depends on whether the Bill is interpreted as substantively addressing rights and obligations of street vendors (Concurrent List) or relating to municipal zoning (State List).

The Lok Sabha has passed *the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012*. The Bill provides for protection of livelihoods rights, social security of street vendors, regulation of urban street vending in the country and for matters connected therewith or incidental thereto. The Provisions of the Bill are aimed at creating a conducive atmosphere where street vendors, are able to carry out their business in a fair and transparent manner, without the fear of harassment and eviction.

Main features of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 are as follows:

- (a) The Bill provides for constitution of a Town Vending Authority in each Local Authority, which is the fulcrum of the Bill, for implementing the provisions of the Bill.
- (b) In order to ensure participatory decision making for aspects relating to street vending activities like determination of natural market, identification of vending zones, preparation of street vending plan, survey of street vendors *etc.*, the TVC is required to have representation of officials and non-officials and street vendors, including women vendors with due representation from SC, ST, OBC, Minorities and persons with disabilities. It has been provided that 40% members of the TVC will be from amongst street vendors to be selected through election, of which one-third shall be women.

- (c) To avoid arbitrariness of authorities, the Bill provides for a survey of all existing street vendors, and subsequent survey at-least once in every five years, and issue of certificate of vending to all the street vendors identified in the survey, with preference to SC, ST, OBC, women, persons with disabilities, minorities *etc.*
- (d) All existing street vendors, identified in the survey, will be accommodated in the vending zones subject to a norm conforming to 2.5% of the population of the ward or zone or town or city.
- (e) Where the numbers of street vendors identified are more than the holding capacity of the vending zone, the Town Vending Committee (TVC) is required to carry out a draw of lots for issuing the certificate of vending for that vending zone and the remaining persons will be accommodated in any adjoining vending zone to avoid relocation.
- (f) Those street vendors who have been issued a certificate of vending/license *etc.*, before the commencement of this Act, they will be deemed to be a street vendor for that category and for the period for which he/she has been issued such certificate of vending/license.
- (g) It has been provided that no street vendor will be evicted until the survey has been completed and certificate of vending issued to the street vendors.
- (h) It has also been provided that in case a street vendor, to whom a certificate of vending is issued, dies or suffers from any permanent disability or is ill, one of his family member *i.e.* spouse or dependent child can vend in his place, till the validity of the certificate of vending.
- (i) Relocation of street vendors should be exercised as a last resort. Accordingly, a set of principles to be followed for 'relocation' is proposed to be provided for in the second Schedule of the Bill, which states that (i) relocation should be avoided as far as possible, unless there is clear and urgent need for the land in question; (ii) affected vendors or their representatives shall be involved in planning and implementation of the rehabilitation project; (iii) affected vendors shall be relocated so as to improve their livelihoods and standards of living or at least to restore them, in real terms to pre-evicted levels (iv) natural markets where street vendors have conducted business for over fifty years shall be declared as heritage markets, and the street vendors in such markets shall not be relocated.
- (j) The Local authority is required to make out a plan once in every 5 years, on the recommendation of TVC, to promote a supportive environment and adequate space for urban street vendors to carry out their vocation. It specifically provides that declaration of no-vending zone shall be carried subject to the specified principles namely; any existing natural market, or an existing market as identified under the survey shall not be declared as a no-vending zone; declaration of no-vending zone shall be done in a manner which displaces the minimum percentage of street vendors; no zone will be declared as a no-vending zone till such time as the survey has not been carried out and the plan for street vending has not been formulated. Thus the Bill provides for enough safeguards to protect street vendors interests.
- (k) There is a provision for establishment of an independent dispute redressal mechanism under the chairmanship of

retired judicial officers to maintain impartiality towards grievance redressal of street vendors.

- ① The Bill also provides for promotional measures to be undertaken by the

Government, towards availability of credit, insurance and other welfare schemes of social security, capacity building programmes, research, education and training programme *etc.*, for street vendors.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2012 (LARR, 2012) - AN OVERVIEW

By

—Dr. PETIKAM SAILAJA*

The Government of India claims there is heightened public concern on land acquisition issues in India. Of particular concern is that despite many amendments, over the years, to India's Land Acquisition Act of 1894, there is an absence of a cohesive national law that addresses:

- * fair compensation when private land is acquired for public use, and
- * fair rehabilitation of land owners and those directly affected from loss of livelihoods.

The Government of India believes that a combined law is necessary, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow Government acquisition of land for public purposes. Forty-Fourth Amendment Act of 1978 omitted Article 19(1)(f) with the net result being:

1. The right not to be deprived of one's property save by authority of law has since been no longer a fundamental right.

Thus, if Government issues a fiat to take away the property of a person, that person has no right to move the Supreme Court under Article 32.

2. Moreover, no one can challenge the reasonableness of the restriction imposed by any law the Legislature made to deprive the person of his property.

Article 31(2) in the original Constitution embodied the principle that if the Government makes a compulsory acquisition or requisitioning of private property, then it must take following actions:

- (a) make a law
- (b) such law must be for public purpose
- (c) compensation must be paid to the owner of the property

First, the 25th Amendment Act, 1971 replaced the requirement of 'compensation' by 'an amount', the adequacy of which cannot be challenged in any Court. Then the real killer 44th Amendment Act, 1978

* Dr. *Petikam Sailaja*, B.Sc., LL.M., Ph.D (Law), Lecturer in Law, MRVRGR Law College, Vizianagaram. I did my Ph.D. as a Full Time Researcher under the esteem guidance of Prof. A. Rajendra Prasad, Dr. B.R. Ambedkar College of Law, Andhra University, Visakhapatnam. Email ids : sailaja.petikam@gmail.com, sp.sailaja@yahoo.com, Mobile # 09441512542