

(2016) 09 DEL CK 0071

In the Delhi High Court

Case No : C.M. APPL.27040 of 2016 & 33340 of 2016 IN LPA 136 of 2016.

Bhola Ram Patel - Appellant @HASH New Delhi Municipal Council And Another

Date of Decision : 27-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 159 DRJ 494

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Mr. Kirti Uppal, Sr. Advocate with Ms. Aastha Dhawan and Ms. Wamika Trehan, Advocates, for the Appellants in LPA 353/2016; Mr. N.K. Sahoo, Advocate, for the along with appellant in person in LPA 136/2016; Mr. Sri Harsha Peechara, ASC with Mr. Ramit Rana,

Final Decision : Disposed Off

Judgement

Mr. S. Ravindra Bhat - C.M. APPL.27040/2016 in LPA 136/2016 (for clarification of order)

C.M. APPL.30483/2016 in LPA 353/2016 (for clarification of order)

C.M. APPL.30487/2016 in LPA 256/2016 (for directions)

This order will dispose of several applications seeking directions on the one hand and clarifications of the previous judgment of the Court dated 18.05.2016 on the other [hereafter referred to as "the main judgment"]. The main judgment had disposed of a batch of LPAs.

2. For the purpose of this order, it is necessary to recapitulate some of the essential facts. The appellants were aggrieved by various judgments and orders of the learned Single Judges rejecting their pleas and had relied upon Sections 3 and 4 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 [hereafter "the Act"]. The Court had noticed in the final judgment that the Act was an effort to consolidate the law declared by the Supreme Court with respect to securing and regulating livelihood of urban street

vendors in public spaces in cities and towns in India. The final judgment, after considering the submissions and recording analysis of various provisions of the Act as well as the Government of National Capital Territory of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2016 ("the Scheme") stated as follows:

"17. A combined reading of Sections 3 & 4 would show that one, a street vendor is one who is entitled - after due identification in terms of the survey carried out under Section 3 (1) - to be issued a certificate of vending by the concerned TVC subject to the conditions specified under the Act and the Rules. Two, the TVCs are to conduct survey of all existing street vendors within the area of their jurisdiction once every five years. Three, the statutory parameters or mandate which the TVC are to discharge is that existing street vendors - identified in the survey - have to be accommodated in vending zones subject to the norm that 2% of the total population of the ward or zone or town or city is to be taken into account, Four, the existing street vendors - irrespective of their inclusion in the survey under Section 3 (1) but who were recipient of certificate of vending before commencement of the Act - regardless of its nomenclature (in the present case in the City of Delhi which was hitherto known as tehbazari license/right), would be deemed to be street vendor in that category for the period for which such vendors are issued licenses for vending. In Delhi, tehbazari rights were settled in two phases, i.e., during the pre Gaiinda Ram period and thereafter pursuant to the survey and report of the G.P. Thareja Committee. Protection is afforded to street vendors in terms of Section 3 (3) who are to be accommodated till the completion of survey and issuance of licenses/certificates.

18. The expression "street vendor" broadly refers to those engaged in vending of articles, goods, wares, food items or merchandise "of everyday use" or those offering services to the general public. This definition under Section 2 (I) is wide given the fact that such street vendors are permitted to operate and carry on commercial activity in public spaces - some of them used for movement of people such as footpath, pavements sidewalks etc. The Act balances various rights and ensures that members of the public are not inconvenienced - even while ensuring that the street vendors' rights are protected. In this respect Section 29 declares that nothing in the enactment can be construed as conferring upon the street vendors any temporary, permanent or perpetual right to carry out vending activity in the vending zone allocated. Provisions of Section 29 (1) are inapplicable to a stationary vendor if temporary leasehold or ownership rights is conferred upon him through a lease deed by some such instrument or arrangement."

3. The Court then noticed paras 2.1.7 to 2.1.22 of the Scheme and noted that the protection guaranteed under Section 4(1) is finite and not unlimited.

Recognizing the status of such individuals as street vendors, the Court held that, "the status is subject to final verification and allotment in accordance with Section 3." The Court then observed:

"21. The Notification of the TVC of 4.5.2016 would mean that the respondents are now to discharge the obligations by firstly identifying the area and spaces - specifically earmarking them having regard to the provisions of the Act, Rules and the Scheme. This Court would emphasise here that G.P. Thareja Committee and Chaturvedi Committee's reports though useful cannot be treated as conclusive because of the express provisions of the Act and the scheme which indicate the broad regulatory parameters to be taken into account, i.e., the right of way to be made available to the members of the public, length and width of the street sidewalks etc. At the same time, this Court is of the opinion that at least those having any right in terms of the pre-existing schemes including those in G.P. Thareja Committee's report should be clearly ascertained and earmarked. As an interim measure, till the final decision of the TVCs is undertaken and completed, the NDMC - in cooperation with the TVC should first conduct the survey of the existing street vendors and ensure which of them would confirm to the names in the lists prepared in the surveys pursuant to the Thareja Committee and the surveys carried out in 2007 and 2011. While doing so, the TVC may in addition wherever needed indicate those existing vendors who may not be entitled to continue during the completion of process of settlement of street vending rights. In such event, the principle to be applied would be seniority in terms of the inclusion in the list. To put it differently, in the process of verification of spaces and survey, if the TVC is of opinion that there are vendors occupying spaces which cannot prima facie be permitted because of the width of the street, or location of the particular vending site, or other relevant concern, it can indicate that such vendor or vendor may be removed. If the reason for removal is that there are more number of vendors than permissible (or that some of them would impede smooth passage on the pavement etc) the principle to be applied would be "last come first go".

22. The above process shall be conducted in accordance with the Regulation, the method indicated in Chapter-I of the Scheme and the relevant provisions of the Rules. The Court is of the opinion that entire process should be taken up and completed at the earliest and in any case within two months from today.

23. The second stage, i.e., allotment of sites earmarked would have to be taken up either concurrently or immediately after the survey. Here, the TVC shall take into account the criteria spelt out in the Rules and the Scheme to determine the eligibility for allotment. In case there are greater numbers of eligible applicants, the principle indicated in the Act, i.e., Section 4 (3) shall be followed. In doing so, the TVC shall ensure that the process is both transparent and also free from doubt or suspicion."

4. In the light of its conclusions, following directions were issued:

(1) The concerned TVC exercising jurisdiction over NDMC areas shall proceed to conduct the survey in accordance with the Scheme, i.e., with respect to identification of specific sites/spaces and complete it within two months from today.

(2) All pre-existing "right holders" - now defined as street vendors (whether called as tehbazari licensees etc.) shall not be disturbed except to the extent that the TVC determines that space or place occupied by them is prima facie not in accordance with paragraph 2.1.17 - 2.1.22.

(3) In case the TVC is of the opinion that any street vendor in terms of the above directions has to be displaced, the principle of "last come first go", i.e., chronological seniority shall be followed.

(4) The task of compiling the eligible applicants shall be first preceded by an appropriate advertisement and thereafter proceed to allot the specific or particular space to the street vendors, in terms of the Act, Rules or Scheme.

(5) The authorities are at liberty to ensure that the walk way in all the NDMC areas shall be in conformity with the paragraph 2.1.22, i.e., two meter width on the footpath would be left. At the same time, while removing or evicting any existing street vendor, the NDMC shall also ensure that the principle of seniority - referred to earlier in terms of rights of existing holders is maintained. If no document or evidence of long use exists, it is open to the NDMC to remove those obstructing such footpath or way.

5. The clarification which the respondent/NDMC seeks in its present applications filed in various appeals is that the Court should say that para 26(5) of the final judgment is independent of the other steps. NDMC highlights that on account of occurrence of subsequent developments, whereby another Division Bench of this Court stayed the operation of the notification constituting the TVC, the clarification is necessary. NDMC's counsel urges that the clarification is also necessary because the street vendors and others, regardless of their pre-existing rights, claim entitlement to use public space by virtue of Section 3(3). It is submitted that Section 3(3) is dependent upon a determination as to who was legitimately an existing street vendor; since that process of identification of who were existing street vendors and the decision to identify spaces has in a sense become academic, temporarily by reason of order of this Court in W.P.(C) 6622/2015 (dated 08.08.2016), it is in public interest to insist that NDMC's obligation to maintain pavements and passages as places whereby public can move freely, is duly facilitated.

6. Learned counsel for the respondent/appellants urged that no clarification ? or at least the kind of clarification that the NDMC seeks, is necessary. It is submitted that the NDMC is in fact really seeking to get around binding directions in para 26 which has to be read as a whole rather than over-emphasizing on the power to vacate individuals who have existing rights under Section 3(3). Some of the appellants argue additionally that further directions are essential because without the authority of law, the NDMC is obstructing and in some cases removing street vendors from carrying on their vending activities which they are lawfully entitled to, for the purpose of their livelihood.

7. It is quite evident from the extracts of the judgment that this Court was aware

of the background in which the statute was enacted. As stated in the judgment, it is a first time all-India measure that at once recognises the economic activity of street vending and recognises it so far as vendors are allowed to use public spaces. The Act strives to attain a just balance. When this Court delivered its main judgment, the TVCs ? or at least one with respect to NDMC areas had been constituted. The subsequent development by way of the order of 08.08.2016, however, brought in a new dimension whereby the notification which enabled the constitution of TVC in a particular manner was suspended. This means that the later development has the effect of naturally impeding the first phase of the roadmap indicated by the Court in its judgment, i.e. identification of spaces that can be used for vending and the identification of those already carrying on livelihood as street vendors.

8. This Court is of the opinion that given the later development, an appropriate, equitable and balanced approach is to be adopted. This is necessitated by the cessation of work by way of the TVC adjudication in W.P.(C) 6622/2015 dated 08.08.2016. At the same time, the Court also recognises that the rights of those who have been functioning all this while cannot be lost sight of because of Section 3(3), even while ensuring that public pathways, pavements etc. are maintained for their primary use.

9. In these circumstances, this Court is of the opinion that para 26(5) is to be understood as to mean that the NDMC, till final adjudication in the other writ proceedings vis-à-vis the constitution of the TVC (under validity of the concerned notification), should while ensuring smooth passage in public spaces and pavements, ensure the following:

(1) Those with a pre-existing right in the form of mention in any previous list, should not be disturbed as far as possible;

(2) The principle of seniority emphasised in the main judgment should be maintained;

(3) NDMC can, in enforcing smooth passage, remove those carrying on activities as street vendors etc. if their activity impedes or affects movement in the public passage or pavement etc. At the same time, if such individual or street vendor is removed, the NDMC is further directed to ensure that the names and particulars of all such individuals (with pre-existing rights in some form in other previous lists maintained for this purpose and not others) is maintained for use later when the issue is decided and the exercise is carried out by the regular TVC.

10. The application of the NDMC (C.M. APPL.27040/2016 in LPA 136/2016) to the above effect and the applications of the appellants [C.M. APPL.30483/2016 in LPA 353/2016 and C.M. APPL.30487/2016 in LPA 256/2016] in this regard are disposed of.

C.M. APPL.33340/2016 in LPA 136/2016 (for direction)

11. The applicant claims to have been squatting at Bangla Sahib Gurudwara ever

since 1994 and further that his name was listed as one of the eligible individuals after due verification. He relies upon the list said to have been notified in 2011. The applicant urges that on 13.06.2016, the NDMC sought an undertaking from him that he would not vend or squat or hawk thereafter. During the course of hearing, the applicant who appeared and represented himself, stated that he is subject to constant harassment and that his goods are often seized and later released upon payment of substantial fine.

12. The NDMC counters this application by stating that in the guise of street vending, the applicant has in reality sought to set up virtually a large shop. It relies upon photographs to say that the applicant places two large wooden boxes which are designed to operate as almirahs and storages even while enabling him to sell slippers. These articles of storage, it is stated occupy substantial space ? more than what street vendors are permitted to use.

13. This Court has considered the submissions. The final judgment of the Court is clear as to the rights of the existing street vendors. At the same time, till proper identification and settlement of inter se rights of street vendors is concluded, the status quo shall be maintained to a certain extent - that the street vendors are entitled to continue their activities but subject to regulation. In the present case, the material shown to the Court clearly reveals that the applicant proposes to occupy public space meant for passage, on a permanent basis; besides, the coverage is also far more than what is ordinarily acceptable. In the light of these circumstances, the NDMC is at liberty to take appropriate action to ensure that the applicant carries on his activities of selling articles at the places where he had been permitted all the while, within the allotted or permissible area. Consequently, action shall be taken to ensure that the place is free for use by members of the public to that extent, by the NDMC. C.M. APPL.33340/2016 is disposed of in the above terms.