
(2009) 09 OHC CK 0024

In the Orissa High Court

Janpath Khurda Byabasai Sangha and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Constitution of India, 1950 — Article 162, 21, 47

Citation : (2009) 108 CLT 537 : (2009) 2 OLR 1053 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—Petitioner No. 1-Janapath Khurda Byabasai Sangha (hereinafter called, "the Society") along with its office-bearers has filed this Writ Petition seeking directions to Opposite Parties to rehabilitate the members of the Society by providing them adequate space for vending zones and/or kiosks as per the norms prescribed under the National Policy on Urban Street Vendors vide Annexure-2.

2. The brief facts leading to the present Writ Petition are that Petitioner No. 1 is a registered society formed by the street vendors/ hawkers who have been doing their business for years together beside the road in temporary shops of Janpath at Bapuji Nagar and earning their livelihood. According to the Petitioners, they have been paying licence fees regularly for the purpose to the Bhubaneswar Municipal Corporation (for short "the Corporation"). In spite of the same, the members of the Society have been evicted from the said place by the Corporation with the assurance to settle them by providing vending zones. Now the Corporation has backed out of its assurance. Hence, this petition.

3. Mr. Pradipta Mohanty, Learned Counsel appearing on behalf of the Petitioners, submitted that the members of the Society having been evicted from their temporary shops are now doing their business by moving place to place and thereby sustaining loss in business & hardship to their livelihood. Members of the Society are the beneficiaries of the National Policy on Urban Street Vendors. The members are all poor unemployed citizens of the State and have been

maintaining their livelihood by doing small business for the last 20 to 30 years. They also have no substantial source of income to start any big business either by making their own shop premises or by taking shops on rent in Bhubaneswar city. Mr. Mohanty further submitted that realizing such predicament of the street vendors, who are subjected to harassment and humiliation in the guise of eviction, the Apex Court in *Bombay Hawkers' Union and Others Vs. Bombay Municipal Corporation and Others*, while expressing its dissatisfaction over the policies of the Government & various authorities on the question of settlement of street vendors, directed the Union Government as well as the State Governments to form policies in that respect so that the street vendors and small businessmen doing business on the road side can be settled, & they should not be disturbed without affording them such opportunity. Similar view is also expressed by the Apex Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and in *Sodan Singh and Ors. v. New Delhi Municipal Committee and Ors.* AIR 1989 SC 1988. Keeping in view the above directives, the policy, namely, National Policy for Urban Street Vendors was formulated and the main intention of the policy was to give vendors and road-side businessmen the legal status by amending/casting/repealing & implementing appropriate laws & providing legitimate zone/space for such type of businessmen. The said policy was circulated by the Government of India to all the State Governments, which in turn has also been provided to all urban local bodies to work out in the spirit of the principles given in the policy. Unfortunately, the National policy is not implemented in its letter and spirit neither by State Government nor by the Corporation or by Urban Local bodies in the State. The Opposite Parties have miserably failed to give due regard to implement the same. The Petitioners' Society is affiliated to National Street vendor Institutions (for short, "NSVI") A representation was made on 16.10.2006 to the Commissioner before the eviction in the year 2006. O.P. No. 3 provided the space for vending zone, which is hardly adequate for 54 members out of 110. Therefore, a further representation was made on 15.11.2007 (Annexure-6) to the Commissioner to provide sufficient space to accommodate all the members of the Society. It is further argued that being politically biased and influenced by members of the Rajpath Khurda Byabasai Sangh, Bhubaneswar, who are evicted from the place near to the capital market and capital police station, were provided vending zone in Plot No. 338 in Mouza, Bapujinagar, which is the usual business place of the members of the Petitioners' Society. Being aggrieved by such action of the Opposite Parties, the Petitioners met the Commissioner of the Corporation who assured to settle them and, accordingly, directed the Health Officer to make necessary cleaning at the spot, but backed out of such assurance subsequently. It is further argued that plot No. 408 in Bapujinagar is still lying vacant wherein the members of the Society can be settled but the Petitioners have now come to learn that the said plot is meant for beautification and plantation, which has been indicated as the secondary aspects in the National Policy on Street Vendors. Indicating the above fact, Petitioners made a representation on 24.01.2008 to the Commissioner of the Corporation under Annexure-7. It is the onerous duty and responsibility of

the State under the Directive Principles of State Policy as enshrined under Article 47 of the Constitution of India to take adequate measures for improving "the social and economic standard of the citizens and also to ensure the fundamental rights of livelihood as guaranteed under Article 21 of the Constitution. But in the present case, Opposite Parties have failed to discharge their duties and responsibility by not doing social justice to the members of the Petitioners" Society who have been subjected to exploitation by Opposite Parties owing to repeated eviction. Thereafter, several representations were made for settlement of the members of the Society by providing vending zone in available vacant plot. Despite the fact that adequate space is available to settle the members of the Society, Opposite Parties have shown no interest in this regard.

4. Learned Counsel for O.P. No. 3 submitted that the Petitioners have no locus standi to file the Writ Petition. On the other hand, the Corporation is always following the rehabilitation norms according to availability of space and situation. As per Annexure-1, there are 66 members of the Petitioners" Society. Out of them, 54 have already been rehabilitated. Petitioners" claim for rehabilitation of 110 members is quite imaginary & Petitioners" Society by adding fake names has sought for relief on the incorrect facts. The allegation that Opposite Parties are acting partially and showing favouritism to other similarly situated associations thereby settling them in the place of the Petitioners" Society is not correct. Janpath is one of the busiest roads connecting Master Canteen leading to Airport, & the Government have already floated tenders for construction of flyover bridge and widening the road by six lanes taking into account the traffic congestion and public inconvenience. Therefore, no vending zone is possible in Bapujinagar or beside Janpath. Vendors like petitioners" Society cannot claim such relief & on the other hand, the Corporation is also taking all possible steps within its means and providing temporary vending zones at different places. Larger public interest cannot be ignored for the sake of rehabilitation of a few individuals claiming right over the government road.

5. Learned Counsel appearing for B.D.A. (O.P. No. 4) submitted that since no cause of action has arisen against the BDA unlike the other Opposite Parties, the Writ Petition is not at all maintainable as against O.P. No. 4. The BDA has not taken any steps either by initiating unauthorized proceedings u/s 91 of the Orissa Development Authorities Act, 1982 or otherwise against the writ petitioners and its members claiming to have been carrying on their respective business on either side of the street in Janpath area from Rajmahal Square to Sishubhawan Chhak. Since the said National Policy has not been implemented in the State of Orissa or within the area of the Corporation by making necessary amendments of the existing laws and incorporating new provisions in consonance with the said Policy, the existing laws will continue to operate. Therefore, the Writ Petition being premature as against B.D.A. (O.P. No. 4) is liable to be dismissed.

6. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

7. Law is well settled that only legally protected right can be enforced through Court. The existence of such right is the condition precedent to invoke the writ jurisdiction. See *The State of Orissa Vs. Madan Gopal Rungta, , The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, and Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others,).* In *Milk Producers Association, Orissa and Others Vs. State of Orissa and Others*, while dealing with same situation in Bhubaneswar itself, the Apex Court repelled the case of promissory estoppel given to similarly situated persons and held that the question of promissory estoppel in such a case does not arise. The Apex Court held that the rank trespassers cannot claim the right of rehabilitation. The Court observed as under:

There does not exist any legal concept which confers a legal right upon an encroacher to be rehabilitated. The matter may be different where the State comes out with a policy decision which meets the constitutional scheme as envisaged under Article 162 of the Constitution. In the instant case, we have noticed that the Appellants have failed to show the existence of any such scheme, which can be said to be irretrievable in nature. In view of the 2003 Act, even the doctrine of promissory estoppel will have no application.

This Court in W.P.(C) No. 14169 of 2008 (*Footpath Khyudra Byabasai Sangha*), disposed of on 31.07.2009, held as follows:

Needless to say that writ is issued only to advance cause of justice. The Writ Court cannot thwart the cause of justice. An aggrieved person who suffered legal injury can only approach the Writ Court for equitable relief and the Court can only enforce a legal right.

Even *Bombay Hawkers" Union* case (supra) relied upon by the petitioners, the Apex 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.

8. It is not in dispute that no policy has yet been framed by the State in consonance with the National policy (Annexure-2) nor any suitable amendment has been made to the existing laws governing the field. In such situation, the Petitioners have no legally protected right which can be enforced through a Writ Court. However, in the case at hand, considering the representations of the Petitioners"-Society, Opposite Party No. 3 has provided vending zone which stated to be adequate only for 54 members of the Society for their rehabilitation. According to Opposite Party No. 3, 54 members of the Society have already been rehabilitated in the place under consideration. According to the Petitioners, though Opposite Party No. 3 some time ago had offered certain space on the roadside from Rajmahal square to Sishubhawan, it was hardly adequate to settle 54 members of the Petitioners" Society & none of its members has been

rehabilitated in the said place. It was argued that Opposite Party No. 3 is not following any rational & consistent policy for rehabilitation of the evicted street vendors & it is adopting pick and choose method. Though the members of the Society were doing their business on the roadside from Rajmahal to Sishubhawan, the evicted persons from other places have been settled in their place to carry on their business, but the members of the Petitioners' Society have been discriminated. As per Annexure-1 to the Writ Petition, the member strength of the Petitioners-Society is 66, whereas Annexure 6 shows it 54. Similarly, in paragraph-11 of the Writ Petition it is stated to be 110. The Petitioners have nowhere mentioned the names of all the 110 members in the Writ Petition and the basis on which a person is inducted to the list of members of the Society. The member-strength of the Petitioners-Society was 66 at the time of filing of the Writ Petition, i.e., 23.2.2008. Prior to that, eviction proceedings were initiated in the years 2004 and 2006. Therefore, it is not understood as to how the strength could be increased up to 110 after such eviction. This itself projects a shadow on the genuineness of the claim made by the Petitioners in regard to the strength of the Society as 110.

9. In the above fact situation, we feel it proper to give the following directions:

- (i) The Petitioners shall furnish the address and photographs of 66 members whose names appear in Annexure-1 in order of their seniority keeping in view the length of business carried on by them in the place under consideration duly signed by all the 66 members;
- (ii) The O.P. No. 3 shall ensure that the 54 members of the petitioners' Society in order of their seniority, as would members of the Society, if further space is available, O.P. No. 3 is at liberty to provide the same to any other footpath vendor(s); be furnished by Petitioners in a list, are settled in the vending zone already made available by O.P.No.3.
- (iii) It must be ensured by O.P. No. 3 that no outsider is allotted any space in the vending zone provided in between Rajmahal Square & Sishubhawan prior to settlement of the members of the Petitioners' Society.
- (iv) O.P. No. 3 may also take necessary steps for providing vending zone for the remaining 12 members named in Annexure-1, if possible, at any suitable place.
- (v) After allotting the space in vending zone for all the 66 members of the Society, if further space is available, O.P. No. 3 is at liberty to provide the same to any other footpath vendor(s);
- (vi) O.P. No. 3 shall implement the above direction within three months from the date of members as receipt of the list indicated in clause (i) above from the Petitioners;

We make it clear that the allotment of space in the vending zones to Petitioners will not confer any legal right to do their business perpetually. For the purpose of larger public interest they can be evicted from such places by O.P. No. 3.

10. The Writ Petition is disposed of with the above direction. There shall be no order as to costs.

I.M. Quddusi, ACJ.

I agree.