

(1993) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10213 of 1989

Secunderabad Bunks (KIOSKS) Owners Association

APPELLANT

Vs

The Commissioner, Municipal Corporation of Hyderabad, and
others

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

Citation : AIR 1994 AP 35

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : V.V.S. Rao, for the Appellant; Khader Alikhan, S.C. for the Municipal Coprn. of Hyderabad, for the Respondent

Judgement

1. The Writ petition is filed by Secunderabad Bunks (Kiosks) Owners" Association, Secunderabad, represented by its General Secretary, seeking a mandamus or an appropriate writ or order directing the respondents not to interfere with the trade and business of the members of the petitioner-association and to restrain the respondents from demolishing the kiosks of the members of the petitioner association situated on Sarojini Devi Road (for short "S.D. Road"), opposite Swapnalok Complex, Secunderabad, numbering about 76, and a consequential declaration that the action of the respondents in attempting to demolish their kiosks as illegal, arbitrary and hit by Art. 19(1)(g) of the Constitution of India.

2. Petitioner-association claims that it was founded for the purpose of achieving the common object to fight against the municipal authorities in order to protect their bunks numbering about 100 situated on S.D. Road, Secunderabad. It is stated that in and around 1975 to 1980, members of the petitioner-association were allotted place on the basis of applications to the respondents, on condition of paying ground rent of Rs. 48/- per bunk. On the basis of said allotments, bunks were erected by the members of the petitioner-association on an

investment roughly ranging from Rs. 8,000/- to Rupees 15,000/- for each bunk. The holders of these bunks are carrying on business dealing in consumer articles, such as motor parts, carpentry, painting, etc. The bunks have been provided with electricity facility also. Trade licence to members to carry on their business has been provided by the respondents. It is stated that the bunk-holders are members hailing mostly from weaker sections of the society and are unemployed. By catering to the petty business, their families are being maintained on the income derived.

3. It is further slated that prior to obtaining valid licence to have their bunks in the area on S.D. Road, the members of the petitioner-association were doing business at different places putting up small bunks near Secunderabad railway station, market street, Alpha Hotel and S.P.G. Church. In the year 1974-75, the municipal authorities, in order to widen the road leading to railway station, discussed the matter with the members of the petitioner-association and promised that they would be given site on S.D. Road. Pursuant to the understanding arrived at between the authorities and the members of the petitioner-association, notification was issued in news-papers on 18-11-1975 seeking applications for allotment of sites on S.D. Road. As per condition No. 4 of the notification, it was categorically stated that preference would be given to the applicants who vacated their bunks in and around Secunderabad railway station.

4. Pursuant thereto, the members of the petitioner-association applied and, therefore, small extents of land on S.D. Road were allotted, on which the members of the petitioner-association erected bunks and are doing business dealing in petty articles. Pursuant to erecting bunks, some of the members have invested nearly Rs. 40,000/- to Rs. 50,000/- towards stocks to be maintained in the bunks by taking loans from various financial institutions. It is also stated that the area allotted to the members is not on the footpath, but is on the road margin. Therefore, there is no disturbance or nuisance caused to the pedestrians. It is further stated that the roads are sufficiently wide enough to meet the traffic requirement and there is no further need for the respondents to widen the roads. In the year 1992, roads were widened to an extent of 19.6", 20", 21" and 12" at different places. Therefore, it is stated, though the intention of the respondents was to extent the road up to 60", the point where the members of the petitioner-association are doing business, the width on the northern side is 60" and on eastern the 87". It is denied that the members of the petitioner-association have put up bunks on the footpath. It is categorically stated that they are doing business on the road margin, which was earlier used as public lavatory making it very difficult for the passers-by to tolerate the stinking smell. On the place being allotted to the members of the petitioner-association, it is stated, they have cleared the road, put up stones as a passage, planted trees and made it inhabitable and they are paying rent of Rs. 48/- per month. The actual area allotted to each bunk, according to the petitioner, is 6" X 8".

5. While things stood thus, it is alleged, in the year 1989, the respondents tried to remove the bunks at the instance of few rich people who are owners of newly constructed complexes including that of Taj Mahal Hotel, Armugam Complex and the owners of Swa-pnalok Complex and Kondalreddy Complex on S.D. Road. Under these circumstances, the petitioner-association is forced to approach this Court under Art. 226 of the Constitution of India.

6. This Court while admitting the writ petition, by order dated 26-7-1989 granted interim stay of demolition of the bunks.

7. The respondents filed a detailed counter admitting the fact that they have issued licences to members of the petitioner-association in and around 1975 to 1980. It is also admitted that a rent of Rs.48/- per month from each owner of the bunks was collected up to 30-9-1988 and later on members of the petitioner-association were asked to remove the bunks in order to enable the respondents to take up the widening work of the road. It is contended that the respondents have taken up road widening work in order to meet the traffic requirement and, therefore, the petitioner-association cannot and should not have any grievance against such removal. It is also stated that condition No. 2 of allotment letter indicated that the bunks are to be removed as and when required by the respondents within seven days from the date of issuance of notice. When the respondents had undertaken the work of road widening on the funds being released by the Government, the petitioner-association filed the writ petition and obtained interim stay of demolition. It is further stated that the area in question is covered by "Road Widening Scheme" as per the master plan and some part of the road was widened by the Municipal Corporation of Hyderabad by acquiring private properties also. Because of the heavy traffic flow on the road, the existence of bunks on the footpath is not only leading to fatal accidents but also causing hindrance to the pedestrians. Under these circumstances, the respondents stopped collecting rents from the bunk owners of Secunderabad division and also stopped renewal of trade licence. Respondents deny that the bunks are located away from the footpath and the road. Though the area in question was notified for widening the road long back, due to interim orders of this Court, road widening work has come to a standstill. It is stated that when public interest is involved, the interest of the members of the petitioner-association cannot overweigh public interest.

8. In view of the claim and counter-claim, the crucial question that falls for consideration is whether the action of the respondents contemplating to remove the bunks of the members of the petitioner-association is valid and whether such action of the respondents is hit by Article 19(1)(g) of the Constitution of India?

9. Sri V.V.S. Rao, learned counsel for the petitioner-association, has primarily contended that Article 19(1)(g) of the Constitution guarantees right to practice any profession or carry on any occupation, trade or business. Therefore, Sri Rao argues, it is the fundamental right of citizens to carry on their own business in their own manner. It is stated that most of the members of the petitioner-

association are unemployed youth and are dependant on the trade or avocation they are carrying on in the present premises after making huge investment drawn from various financial institutions. Many families are depending on their petty business. It is vehemently contended that there is no necessity for widening the road in that area, as road widening was already done in 1992. It is further contended that at this point of time, if the members of the petitioner-association are asked to remove the bunks, they would be thrown out of job and the dependent members of their families would starve. It is further stated that it is equally the responsibility of the respondents to modulate a scheme for rehabilitating the members of the petitioner-association and till such rehabilitation is done, they should not be disturbed. In support of his contention for evolving a scheme for rehabilitating the members of the petitioner-association, Sri Rao has placed reliance on the decisions in *M.A. Pal Mohd. v. R.K. Sadarangani*, AIR 1984 Mad 23, *K. Sudarsan and Others Vs. The Commissioner, Corporation of Madras and Others*, *Bombay Hawkers' Union and Others Vs. Bombay Municipal Corporation and Others*, *Sodan Singh v. New Delhi Municipal Committee*, AIR 1989 SC 1988 and *Saudan Singh and Others Vs. N.D.M.C. and Others*, Sri Rao contends that this Court could direct the respondents, if they are not volunteering themselves to bring about a scheme, so that the members of the petitioner-association could be rehabilitated properly.

10. On the contrary, Sri Khader Ali Khan, learned Standing Counsel for the Municipal Corporation of Hyderabad, appearing for the respondents, contends that none of the decisions referred to by the learned counsel for the petitioner deals with the contingency of road widening and prevents the authorities from widening the road. Therefore, the interest of the general public has to be given weightage over the interest of a few persons. It is vehemently contended that the area sought for road widening is a busy area and the flow of traffic is very heavy; that in order to meet the growing needs of the population of the twin cities of Hyderabad and Secunderabad, road widening is a must; that the Government has released sufficient funds in favour of the Corporation for this purpose and that the interest of the members of the petitioner-association cannot over-weigh the interest of the general public. It is further contended that the petitioner has not made the Government as a party to the writ petition and, therefore, there cannot be any policy to be framed to rehabilitate the members of the petitioner-association and on that count, the request of the petitioner has to be rejected.

11. The facts of this case are quite akin to the existing circumstances prevailing in Indian cities. In a country of this dimension, where there is population explosion on one hand and poverty and illiteracy are as rampant on the other, the Governments are not in a position to provide employment to its citizens, thereby the situation arising out of unemployment and hunger becomes a social menace to the society. Unemployed men and women flock to towns and cities in search of livelihood. In order to survive, different avocations are taken up, including begging, robbery, hawking, engaging in menial jobs, etc. The towns

and cities in India are overcrowded because of this particular phenomenon prevailing in this country. Rural masses, unable to find out gainful employment in country-side. Flock to cities and towns seeking employment. Indian society is an agrarian society. 70 to 75% of its population depend upon agriculture for their livelihood. Failure of monsoon and other acts of nature also contribute miseries to the sufferings of these masses. Therefore, the only ray of hope for survival is to cities and towns with a fond hope of getting job. The impact of masses floating to cities and towns is felt in all dimensions.

12. It is not disputed that the present roads in the twin cities of Hyderabad and Secunderabad are capable of meeting the needs of only 10 to 15 lakhs population. The population of the twin cities as on today seems to be around 50 lakhs. With this population, the vehicular traffic is enormously increased. Therefore, the pressure on the roads is mounting. The authorities concerned have little scope for deviating the traffic and, therefore, have to necessarily take upon themselves the onerous duty of expanding the roads to meet the growing traffic needs. In that direction, they have to necessarily acquire the buildings and structures which are necessarily to be removed for the purpose of road widening.

13. The submissions made before me by the learned counsel indicate that the respondents acquired lands of some private persons also on payment of huge compensation. The present widening on S.D. Road, where the members of the petitioner-association have erected bunks, is a paramount requirement as per the master plan of the Corporation and, therefore, the respondents have to necessarily remove the bunks of the members of the petitioner-association.

14. As I have stated, the growing population, unemployment and poverty are special features of this country, the influx of unemployed masses from country-side is more on the cities. For instance, in the State of Andhra Pradesh, in cities like Hyderabad and Secunderabad, Vijayawada, Visakhapatnam, etc., the influx of the country population, particularly the unemployed -- young and old -- is more. Our society being more agrarian, the employment potentialities are less. When the horizon of industrial growth is restricted for various reasons, the capacity of agrarian economy to provide more employment is also not encouraging. Therefore, unemployed persons seek shelter in the growing cities and towns, thereby adding problems to the people who have already settled in those cities and towns. In such a situation, the duty of the respective Corporations become more onerous to provide sanitation, drinking water, housing facilities besides providing sufficient roads, meeting the needs of the trafficular population.

15. In a situation of this complex, the Government as well as the bodies functioning under the Government should take note of these problems and modulate schemes by restricting trade activity by hawkers or licensed bunks by way of creating trade zones, etc. This would not only help regulating trafficular population, but also provide employment to families dependant on small and petty trades.

16. Though Article 19(1)(g) of the Constitution guarantees a citizen to profess avocation of his choice, the said right is subject to certain restrictions. Therefore, the liberty of an individual ends when the liberty of another commences. Though the right of the members of the petitioner-association to have their choice of business for maintaining their family members is a right guaranteed under the Constitution, their liberty ends where the liberty of the citizens commences, that is to say, the requirement of general public commences.

17. In the case on hand, petitioner-association seeks a mandamus directing the respondents not to interfere with their trade activity and to restrain from demolishing the bunks which they have on S.D. Road. On the other hand, the case of the respondents is that unless the bunks are removed, road widening cannot be done, which activity is a must in order to meet the traffic requirement of the twin cities.

18. We are aware of the complexity of the unemployment problem in our society. This fact cannot be ignored. We are equally aware that cities in India are equally pressurised for providing amenities to meet the requirements of growing population. Therefore, in order to meet this contingency, it is desired that the concerned authorities to take up the issue with the Government for modulating schemes for rehabilitating the persons similarly placed like the members of the petitioner-association in the twin cities of Hyderabad and Secunderabad. It is desirable that the respondents shall take up the matter with the Government soon and modulate a scheme. For this purpose, Government, if necessary, have to constitute a committee or a forum and seek necessary remedial measure for rehabilitating the affected people as is done in cities like Bombay and Delhi. Governments cannot turn a deaf ear on this burning problem. This problem is not confined to only twin cities of Hyderabad and Secunderabad. It is equally alarming in cities like Vijayawada and Visakhapatnam and other commercially busy towns. Therefore, it is necessary that Government have to tackle this problem on priority basis and come out with some scheme, so that a viable solution could be found.

19. The members of the petitioner-association have erected bunks only on obtaining proper licence. They have also been rents as fixed by the respondents at least up to 1988. Thereafter, the respondents issued notices of removal and have not collected rents due. Petitioner states that its members are prepared to pay the entire rents due at any time. Therefore, it cannot be said that the members of the petitioner-association are carrying on the business in the premises without permission.

20. The need for road widening cannot be equally ignored, as it is to prevent traffic hazards. Therefore, in my view, in order to protect the interest of the society at large, it is necessary to modulate schemes for rehabilitating such persons who are doing small business on footpaths or road-margins. This would not only help the unemployed to make livelihood on their efforts but also reduce traffic congestion. The Corporation could also get some income by way of licence-

fee which would be collected from the petty vendors.

21. Though the petitioner-association tried say that the respondents are trying to remove the bunks at the behest of rich people who have big complexes in that area, I am not inclined to go into that aspect at this stage. It is true, some unauthorised constructions, which have come up contrary to regulations, have been exempted from demolition on collection of compounding fee, whereby such constructions have been regularised. But that itself cannot be a ground for preventing the respondents from taking up the work of road-widening.

22. The object of our Constitution is to ensure "social justice" to all its citizens. Therefore, the onerous task in the pursuit of rendering social justice to its citizens mainly rests on the Government. The changing needs and the requirements of the society have to be met. Governments are obliged to provide work to their citizens. When the resources are meagre, Governments are also handicapped in meeting the requirements. Therefore, schemes for self-employment are to be encouraged. The aspirations of teaming millions to have white-collared jobs cannot be met by the Government when resources are meagre, particularly so in a country with huge population, where more than 50% of its population live below poverty line. Therefore, a pragmatic approach is needed in the endeavour of ensuring social justice to all citizens.

23. In view of the discussion and in the facts and circumstances of the case, in my view, the following directions would meet the ends of justice:

(1)The respondents shall restrain themselves from interfering with the trade or business activity of the members of the petitioner-association till a scheme or modalities for rehabilitating the members of the petitioner-association is or are worked out.

(2) The respondents are entitled to collect rents from the members of the petitioner-association, including arrears at the rates applicable, till they continue to operate business in the present premises.

24. While giving the above directives, this Court is conscious of the fact of the urgent need for road widening and equally conscious of the fact that if the members of the petitioner-association are not rehabilitated, we would be depriving them of their livelihood, resulting in unseen miseries on their dependants. Therefore, keeping the entire issue in view and considering the humanitarian problems involved, the above directives are issued hoping that the respondents, including the Government of Andhra Pra-desh, would realise the complexity of the problems and soon come forward with an appropriate scheme, so that a workable solution could be found meeting the twin problems of unemployment and trafficular hazards.

25. The writ petition is disposed of in the above terms. No order as to costs.

26. Order accordingly.