
(2016) 11 MEG CK 0004
In the Meghalaya High Court
Case No : Writ Petition (C) No. 229 of 2015

Shri E.H. Chen

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Meghalaya Street Vendors (Protection of Livelihood and Regulation of Street Vending)
Act, 2014 — Section 3

Citation : (2017) 169 AIC 459 : (2017) 1 GauLT 283

Hon'ble Judges : S.R. Sen, J.

Bench : Single Bench

Advocate : Mrs. N.G. Shylla, GA and Mr. K. Barua, Advocate, for the Respondents; Mr. H.L. Shangreiso and Mr. K. Paul, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

S.R. Sen, J. (Oral) - Heard learned counsel for the petitioners, Mr. H.L.Shangreiso and Mr. K. Paul and also learned counsel for the respondents, Mrs. N.G. Shylla and Mr. K.Barua.

2. The brief facts of the petitioner's case in a nutshell is that:

"The Writ Petitioner is a registered association namely "Shillong Roadside Hawkers Association" (in short "writ petitioner's association") under the Meghalaya Societies Registration, Act 1983. It has been formed by the members coming from different social, economic, cultural background, tribes, communities etc. with the common objectives to promote their vending business in and around Shillong to sustain their livelihood vis-a-vis collectively adhere to all laws or rules to maintain public convenience and tranquillity. With license issued by the respondent Shillong Municipal Board, the members has been carrying the vending business like selling fabric items, sleepers, shoes, flowers, garments, bedcovers, tools, umbrella, cloth clip etc for the last three decades in the verandah of the private house owners in Police Bazaar, Shillong at the cheap rate

to earned their livelihood.

Having appreciate the fact that the hawkers or squatters have been harassed and victimized by the authorities or police in many part of the country, the Government of India through the Ministry of Housing and Urban Poverty Alleviation, Nirman Bhavan, New Delhi has framed new police namely "National Policy On Urban Street Vendor 2009" to regulate and safeguard the conduct of the hawkers in the approved zone. The aforesaid policy was sought to achieve the purpose of promoting a supportive environment for the vast deprived segment urban street vendors to carry out their vocations while at the same time ensuring that their vending activities do not lead to overcrowding and unsanitary conditions in public places/streets. Accordingly, in the above light, the respondent State of Meghalaya has enacted the Meghalaya Street Vendor's (Protection of Livelihood and Regulations of Street Vending) Act, 2014 (in short Vending Act of 2014) with the basis objective to regulate the vending business within the urban areas including the Shillong (Administer Areas) Municipality.

To implement the above Vending Act of 2014, section 3 commanded the state Government to frame the scheme specifying the details like grant, renewal, suspension or cancellation of registration of hawkers, identity card etc. and the Town Vending Committee formed under Section 4 comprising of Additional Deputy Commissioner or Chief Executive Officer, Shillong Municipal Board as chairperson with other nominated members from traffic police, street vendors association etc. has been assigned the duties under section 7 to grant, renewal, suspension or cancellation of registration certificates issue of library card, collection of fees, identifying and designating vending zone etc. for registered vendors having completed the age of 18 years who obtained registration under section 10. Thus, above Vending Act of 2014 clearly demonstrate that any person who registered as vendors in the above authorities are entitled to conduct their vending business as hawkers in the designated vending zone. Pursuance to the above provisions, the Chairman of the Town Vending Committee who is also Chief Executive Officer of Shillong Municipal Board vide Letter dated 10-June-2015 directed Secretary of the present association to furnish all the names and details of the bona fide members for registration under the Vending Act of 2014 as hawkers.

However, when the office bearers of the association collecting the particulars of its members to furnish the same to the above Chairman, the staffs of the respondent Shillong Municipal Board has conducted the surprised raid on 7th July 2015 at about 4:00 p.m. and seized the goods and forcibly evicted its members though the Town Vending Committee as well as the Magistrate in periodic site inspection has allowed them to conduct the vending business in the verandah of the private houses except any illegal hawkers carrying on vending business in the pavement. Immediately, the above incident was appraised to the Chairman of the Town Vending Committee by the Office Bearers of the association vide letter dated 08th July 2015 with a request to return the above goods as well as to

protect the livelihood of its members/vendors and not to harass them till registration under Vending Act of 2014. Further, in compliance to the direction of the Chairman, the association vide letter dated 22nd July 2015 has also furnished the list and details of its bona fide members as hawkers/vendors with the request to immediately consider for their registration.

Therefore, the principle issue involved in the present writ petition is as to whether the respondents without implementing the provision of the Act of 2014 in framing the statutory scheme and finalizing the registration process was justified to take above coercive action like forceful eviction against the members of the association from their vending zones/verandah when they have already applied for registration under the above Vending Act of 2014 in pursuance to the direction of the Chairman/Chief Executive Officer, Shillong Municipal Board vide Order dated 10th June, 2015 or not. It is humbly submitted that in the case of *Gainda Ram and Others v. Municipal Corporation of Delhi and others* reported in (2010) 10 SCC 715 (kindly see Paras 6, 45 to 48, 79 and 32), Hon''ble Supreme Court has considered and held that the hawkers/squatters has the equal fundamental rights under article 19 (1) (g) of the Constitution of India to carry on vending business on the public streets provided the same should be regulated as they are subject to reasonable restrictions under Article 19(6). The Apex Court also further opined that the right of hawker for carrying on business on the street cannot be denied if they are properly regulated and the streets vested in the municipality have to be used by the municipalities as trustees. The Hon''ble Apex Court further held that hawkers and squatters or vendor's right to carry on hawking under Article 19(1)(g) and the right of the commuters to move freely without any impediments under Article 19(1)(d) must be harmonized and regulated by subjecting them to reasonable restrictions only under a law.

Further, in the recent case of *Maharashtra Ekta Hawkers Union and Another v. Municipal Corporation Greater Mumbai and others* reported in (2014) 1 SCC 490, the Hon''ble Apex Court having considered the raw treatment to the street hawkers/vendors with harassment and victimization by the local authorities, police with extreme contempt, has held that the hawkers/vendors tried to live with dignity and self respect by doing the work as street vendors/hawkers in providing basic necessities like clothes, household items etc, to the millions of urban poor across the country. After considering the National Policy on Urban Street Vendors, 2009 vis-a-vis number of the past decision, the Hon''ble Apex Court, in Para 21.15 in the above Ekta Hawkers case (supra) has held that and quote "All the existing streets vendors/hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of Vending Hawking zone is completed in terms of 2009 policy. Once the exercised is completed, they shall be entitled to operate only in accordance with the order/direction of the Town Planning Committee concerned".

However, in the present case, despite of all the members of the association have furnished their particulars for registration and ready to operate their hawking

business under the above Vending Act of 2014, the respondent Shillong Municipal Board in wilful violation of the above direction of the Hon''ble Apex Court has arbitrarily taken coercive eviction against the members of the association and hence, such action not only runs contrary to the provisions of the above Vending Act of 2014 but ex facie blatant violation of the above direction of the Hon''ble apex Court. Though the members of the association coming from the weak fiscal economic background, they wanted to live and sustain their family by engaging themselves in vending business with dignity, self respect and reliance. Being a law abiding citizen, the member of the association are ever ready to comply all the reasonable restrictions under article 19 (6) of the Constitution of India like payment of fees for registration, civic liability etc. to operate the vending activities in any identified/designated vending zone under the above vending Act of 2014. Therefore, having completely disarmed and deprived their livelihood by the arbitrary action of the Municipal Board, writ petitioner's association has no other option but with folded hands approached before this Hon''ble Court under article 226 of the Constitution of India to seek an appropriate remedies i.e. to direct the respondent states to immediately frame the statutory scheme under Section 3, direct the Town Vending Committee to declare and designate a vending zone and consider the case of the members of the writ petitioner's association for registration as vendors/hawkers under section 10 within a specific time frame."

3. Learned counsel, Mr. H.L.Shangreiso submits that there are two sets of hawkers, one sitting in the verandah of land owners and the other set of hawkers are sitting on public footpaths, so those who are sitting in verandah of the shops should not disturbed till an alternative place is arranged.

4. Learned counsel, Mr. K.Paul also entered appearance only day before yesterday i.e. 08-11-2016 and impleaded "Meghalaya & Greater Shillong Progressive hawkers & Street Vendors & Others" as one of the party and submits that before removing those hawkers from the public footpath etc, the "Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014" to be followed.

5. Initially this instant writ petition was moved on 08-09-2015. While considering the difficulties and keeping in mind the livelihood of the poor people this Court passed an order whereby this Court specifically made it clear that "hence, it is hereby ordered that till disposal of this writ petition, no eviction drive shall follow with immediate effect. It is a settled principle of law that, what is to be done within the framework of law, should be done as prescribed by law or not at all and an endeavour shall be made to dispose of this petition after winter vacation in the month of February, 2016 only. The petitioners are also further directed that, they should not block the main path and to keep the area clean."

6. Now when this matter came up for final disposal, a report was sought from the Deputy Commissioner and Superintendent of Police, East Khasi Hills and in response, they filed a joint report on 07-11-2016 along with certain photographs.

On perusal of the report and after observing the photographs, I find that the order of this Court dated 09-12-2015 has been completely violated and the entire footpath of Shillong city has been captured by the hawkers and they are doing their business as they like without following the direction given by this Court. Mr. M. Kharkhrang, Superintendent of Police, East Khasi Hills informed the Court that due to occupancy of the footpath and main road by the hawkers, every now and then there are many minor accident but nothing fatal till date. He also submits that the manner in which the hawkers are occupying the footpath and the main road is causing real inconvenience to the general public. Thereafter, this Court further decided to constitute a larger committee to study the actual situation and identify any alternate land, in order to accommodate the street hawkers and also suggests additional measures. The said committee was constituted with the Deputy Commissioner, East Khasi Hills as Chairman, the Superintendent of Police, East Khasi Hills, the CEO, Municipal Board, Shillong, CEO, Cantonment Board, Shillong, Mr. T.T. Deingdoh, Sr. Advocate, Mr. H.L. Shangreiso, Advocate and Mr. K.Paul, Advocate as Members. The committee today submitted a report before this Court. While going through the report, it appears that the "hawker business" has become a menace and nuisance to the common people and has affected the cleanliness of Shillong city, though history speaks that "Shillong" was one of the cleanest city. The committee has, therefore, identified certain alternative places which can be declared as hawker zones. They are as follows:

- i. The open space available with the Meghalaya Transport Corporation.
- ii. The ground floor of the Meghalaya Urban Development Authority.
- iii. The parking centre opposite State Bank of India.

7. After considering the facts and circumstances of the case and after seeing the report, I feel that this cannot continue further. The CEO, Shillong Municipal Board, informed this Court that the number of hawkers in the city is approximately 1500, though initially it was 350, but after passing the stay order dated 09-12-2015 the number is found to be increasing day by day.

8. After hearing the submission, reports, I am of the view that, the "common interest" of the general public in Shillong which is around six lakhs cannot be compromised or hampered. The public footpaths are made for free movement of the pedestrian and also for their safety and the metallic roads are meant for movement of vehicles. We all know that Shillong is already congested with vehicles and it was difficult even for the administration to regulate the same. Further with the capturing of the public footpath and metallic roads by the hawkers, the common public are now faced with a more difficult situation. It is worth mentioning here that Shillong roads are very small and having an area of approximately 64.36 square kilometres only.

9. The Hon"ble Supreme Court had in the case of Dharam Chand v. Chairman, New Delhi Municipal Council and Ors. (2015) 10 SCC 612, at para 18, observed

that:

"18. ...Notwithstanding the constitutional right of a citizen to carry on business but such right is subject to certain restrictions." Further, the Supreme Court in the same judgment at para 19, observed that:

"19. ... The purpose involving general interest of the community as opposed to the interest of an individual directly or indirectly has to be balanced."

Further, certain restrictions on hawkers as which were emphasized in Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and Ors. (2004) 1 SCC 625 were also found reproduced, partially in the same judgment.

10. The Hon"ble Supreme Court in the case of Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and Ors. (2004) 1 SCC 625 at para 8 observed that:

"8. It must be mentioned that this Judgment was delivered by Chief Justice Chandrachud (as he then was). Immediately thereafter, a Constitution Bench of this Court headed by Chief Justice Chandrachud, (as he then was) delivered a Judgment in the case of Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors. reported in (1985) 3 SCC 545. This case dealt with the rights of pavement dwellers in Bombay. On behalf of the hawkers strong reliance was placed on various observations made in this Judgment. It was submitted that this case showed that the right to hawk was also a fundamental right under Article 21 of the Constitution of India. However such an argument has been negated by this Court in the case of Sodan Singh and Ors. v. New Delhi Municipal Committee and Ors., (1989) 4SCC 155. This case dealt with hawkers in the city of Delhi. It was held that the hawking on roadsides fell within the expression "occupation, trade or business" in Article 19(1)(g) but that it was subject to reasonable restrictions under Article 19(6) of the Constitution of India. It was held that this right was specifically for poor hawkers and not for sellers of luxury items or goods. It was further held that hawkers had no right to occupy any particular place on the pavement nor could they assert right to occupy permanently specific places demarcated on the pavement. It was held that the Municipality had a right to regulate such businesses and the Municipality was directed to frame rules and schemes regarding street trading. It was also recognised that hawking could be totally prohibited in certain areas. The Court negated an argument, based on Olga Tellis case, that the hawkers had a fundamental right under Article 21. It was held that the right to carry on trade or business was not covered by Article 21 and the hawkers could claim no right under Article 21. It was inter-alia held as follows:- (SCC pp 167-168 para 17)

"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* 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 paralyzing 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."

In the said judgment at para 10, the Hon'ble Supreme Court further observed that:

"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 the *Bombay Hawkers Union's* case. Those conditions have become final and there is no changed circumstance which necessitates any alteration."

11. Therefore, after perusal of the report submitted by the Deputy Commissioner and the Superintendent of Police, East Khasi Hills and the larger committee, I am of the considered view that the hawker's business which is going on in the city of Shillong is actually and totally contrary to the judgment passed by the Hon'ble Supreme Court and it is becoming a menace and nuisance to the common public as well as free movement of vehicles. I have already stated that for 1500 hawkers, the common interest of six lakhs people and cleanliness of the city of Shillong cannot be compromised. Therefore, I find that the interim protection order passed vide order dated 09-12-2015 is not serving any purpose, rather it has been misused by the petitioners. As such, the order dated 09-12-2015 is hereby vacated with immediate effect. Besides that nobody should be allowed to sell articles, goods on parked cars by the road side. In the judgment *Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and Ors.* (2004) 1 SCC 625, Hon'ble Supreme Court has also imposed certain restrictions at para 14 which is quoted herein below:

"14. The restrictions/conditions on which the hawkers shall do the business are:

(1) an area of 1 mtr x 1 mtr on one side of the footpath wherever they exist or on an extreme side of the carriage way, 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 sugar cane vendors would require and may be permitted an area of more than 1 Mt. by 1 Mt. but not more than 2 Mt. by 1 Mt.;

(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 meters from any place of worship, holy shrine, educational institutions and hospitals or within 150 meters from any municipal or other markets or from any railway station. There should be no hawking on foot-bridges and over-bridges. 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, candies, 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 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 am and 10.00 pm;

(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 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 meters in

width. Further the hawkers also have to comply with 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 are 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 concerned ward officer the presence of a hawker in a non hawking zone/area. The concerned ward officer 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 concerned police station 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 concerned ward officer. 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 6 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 licenses 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 the BMC shall bring this Judgment to the notice of all Courts in which matters are now pending. We are quite sure that the concerned Court/s shall then suitably vacate/modify its injunction/stay order.

12. The restrictions and rules imposed by the Hon'ble Supreme Court in the said judgment are to be followed strictly. Besides, that I further add that from one family only one person is entitled for hawker business subject to their financial condition and if they really do not have any means of survival, then only they could be allowed to take up the hawking business. CEO, Shillong Municipal Board will maintain a proper register and issue licences for one year and thereafter to renew the same from time to time if the petitioners deserves. But before issuing any licence, he will have to take the detailed financial status of the persons from the Superintendent of Police. Genuine Petitioners should not be harassed while issuing license by the "Shillong Municipal Board". However, it is also directed that the persons who apply should have a genuine case and they should not be harassed in any manner. Regarding the fee structure, that is to be decided by the CEO, Shillong Municipal Board. Petitioners are to take note that getting license for hawking business will not give them title over the land and will not claim any interest thereon.

13. Before I part with the case record, I express my thanks to the Deputy Commissioner and Superintendent of Police, East Khasi Hills, CEO, Shillong Municipal Board, CEO, Cantonment Board, Mr. T.T. Diengdoh, Sr. Advocate, Mr. H.L. Shangreiso, Advocate and Mr. K. Paul, Advocate for assisting the Court. Further, the Government of Meghalaya should make an endeavour to implement "The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014". The Chief Secretary, Govt. of Meghalaya is to look into the matter as early as possible.

14. In the meantime, the Chief Secretary, Government of Meghalaya and the Deputy Commissioner, East Khasi Hills is directed to make a sincere effort to select the place as identified by the committee which is submitted in the report or any other place for the hawker zone within "1(one) month" from the date of this order.

15. The report filed by the Deputy Commissioner and Superintendent of Police, East Khasi Hills and the larger Committee shall form and be a part of the judgment as Annexure 1 and 2. This judgment and order should be followed strictly with immediate effect, so that no inconvenience is caused or any accident occurs to the common public of the State. Till an alternative place is located, hawkers will have to bear inconvenience for the interest of the common general public. District Administration and CEO, Shillong Municipal Board to comply the order strictly and to make Shillong totally clean. With this observation and directions, the writ petition is dismissed and stands disposed of. No order as to

costs.

Registry to send the copy of this judgment and order immediately to the Chief Secretary, Government of Meghalaya, Deputy Commissioner, East Khasi Hills and Superintendent of Police, East Khasi Hills.