

(2016) 08 GAU CK 0066

In the Gauhati High Court

Case No : PIL 86 of 2013 WP(C) 5801/2010(D/O) with PIL 112 of 2015 with WP(C) 1693 of 2014 with WP(C) 2801 of 2015.

S.S. Road Hawkers Association - Petitioner @HASH State of Assam and Others

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLJ 526 : (2016) 5 GauLR 771

Hon'ble Judges : Ajit Singh, CJ. and N. Chaudhury, J.

Bench : Division Bench

Advocate : Mr. A. Sharma, Mr. C.S. Sarkar, Mr. M. Roy, Mr. B.D. Konwar and Mr. S.B. Rahman, Advocates, for the Petitioner; Mr. K.C. Roy and Mr. S. Bora, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Ajit Singh, C.J. - Mr. B.D. Konwar, learned counsel for petitioner in PIL No.86 of 2013 and WP(C) No.1693 of 2014, Mr. SB Rahman, learned counsel for petitioner in PIL No.112 of 2015 and Mr. A Sarma, learned counsel for WP(C) No.2801 of 2015.

Mr. S. Bora, learned Standing Counsel for Guwahati Municipal Corporation and Guwahati Development Department.

2. WP(C) No.5801/2010 was filed by the S.S. Road Hawkers" Association seeking a direction for implementation of the National Policy on Urban Street Vendors, 2009 in the State of Assam with a further direction to allow the members of the Association to run their trade in the area from Goenka Point to Mahatma Gandhi Road, Fancy Bazar, until the allotment of hawking zones in terms of that Policy. Besides, it was prayed that the orders dated 13/8/2010 and 27/9/2010 passed by the authorities imposing "Special Scavenging Charges" be quashed.

3. The Policy of 2009 was later made as Statute by enacting the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and Section 1(3) of the Act provided that the same shall be applicable in the given State/area

through notification in the official Gazette.

4. The writ was closed vide order dated 4/9/2014 with an observation that since the Act was in the domain of the State, the State would decide as per their policy decision.

5. In the year 2013, one Sri Paragmani Kakoti filed PIL No.86/2013 on similar lines that of the aforesaid writ petition and with similar prayers for implementation of the said Policy in view of the Judgment and order passed by the Hon"ble Supreme Court on 09/09/2013 in Maharashtra Ekta Hawkers" Union v. Municipal Corporation, Greater Mumbai.

6. The facts leading to the case in Maharashtra Ekta Hawkers" Union (supra) are that as far back in 1983 a number of Writ Petitions were filed by and on behalf of a large number of persons who carried on hawking activities in Bombay. These Petitions came to be disposed of by Judgment in the case of Bombay Hawkers" Union v. Bombay Municipal Corporation reported in (1985) 3 SCC 528. By this Judgment, it was held that the right to carry on trade or business conferred by Article 19(2)(g) of the Constitution of India is subject to the provisions of sub-clause (6) of Article 19 which provided that nothing in sub-clause (g) of Article 19(1) would affect the operation of any existing law in so far as it imposed, or prevented the State from making any law imposing, in the interests of general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It was held that no one had 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. It was held that public streets, by their very nomenclature and definition, were meant for the use of the general public. It was held that the public streets are not laid to facilitate the carrying on of private trade or business. It was held that if hawkers were to be conceded the right claimed by them they could hold the society to ransom by squatting on the centre of busy thoroughfares, thereby paralyzing all civic life. It was recognised that in some of the parts of the city the hawkers had made it impossible for the pedestrians to walk on footpaths or even on the streets. The scheme proposed by the Municipal Commissioner was examined and certain modalities for hawking and non-hawking zones were laid down.

7. In the instant case, in the affidavit filed by the Joint Secretary to the Govt. of Assam on 01/02/2016, it has been stated that a notification has been issued on 13/08/2014 and the Governor has been pleased to constitute Town Vending Committees, zone wise and at the city level in Guwahati Municipal Corporation area.

8. Therefore, said S.S. Road Hawkers" Association again preferred WP(C) No. 1693/2014 and WP(C) No. 2801/15. The case of the Association is that the vendors (its members) have been carrying trades in the Sir Sadullah Road of Fancy Bazar area connecting the Mahatma Gandhi Road from Goenka Point. But the authorities have been continuously trying to evict them and in one or two

occasions have even evicted them and they may be allowed to carry on their respective trades without any hindrance or interference in terms of Section 3 (3) of the Act of 2014. In WP(C) No. 2801/15, they have prayed for protection from being evicted from the said road as the authorities had directed them to vend in some areas near the Central Jail, an area meant and used for garbage dumping, without providing suitable vending zones during the survey made u/s 3 (1) of the Act. They are also aggrieved with the fact that no notification u/s 4(1) of the Act notifying the vending zone has been issued by the competent authority and there is always an apprehension of their being confronted with eviction drive. They have therefore prayed that direction may be issued to implement that Act.

9. The respondents have stated in their affidavits that the Guwahati Municipal Corporation has constituted one Town Vending Committee and six Zonal Vending Committees and survey has been concluded and the area near the Central Jail (old) is designated as a vending zone.

10. On the other hand, Wahid Market Kamarpatty Unnayan Committee has filed PIL No. 112/2015 wherein it is alleged that the vendors are illegally occupying the road which is causing much hardship to the commuters and there is hardly any space for movement of any traffic including vehicles of fire brigades etc. as a result of which, in the event of any natural disaster or emergency, the public at large would suffer immensely.

11. It is apparent that the vendors are occupying a major portion of the road and the public at large has been suffering. At the same time it is also incumbent upon the respondents to provide suitable vending zone to the vendors by implementing the Act in its true spirit. It appears that the Act has been duly notified and survey has been done and as such there is no reason as to why the vending zones should not be notified and the vendors are not provided with suitable place to run their trades. In view of the above, it is directed that the competent authorities shall pass necessary orders within 3 (three) months from today specifying the vending zones as indicated above by implementing the Act in its true spirit. Till such notification is published, the vendors of the association shall not be evicted without following due procedure of law. However, the State is also directed to take appropriate measures for maintaining safety of the public at large, commuters of the road in question as well as its vicinity and the residents of that locality.

12. With the above directions, these petitions stand finally disposed of.