

Bench: B Singh, H S Bedi

CASE NO.:

Writ Petition (civil) 1699 of 1987

PETITIONER:

Sudhir Madan and others

RESPONDENT:

Municipal Corporation of Delhi and others

DATE OF JUDGMENT: 17/05/2007

BENCH:

B.P. SINGH & HARJIT SINGH BEDI

JUDGMENT:

JUDGMENT

O R D E R

I.A. NO. 394

IN

I.A. NO. 356

IN

WRIT PETITION (C) NO. 1699 OF 1987

B.P. SINGH, J.

1. This order may be read in continuation of our order of 6th February, 2007.
2. When the matter came up before us on 6th February, 2007, all aspects of the Scheme submitted by the Municipal Corporation of Delhi (hereinafter for short "MCD") were fully discussed. In the course of discussion, certain suggestions were made which the Court found acceptable and directed the MCD to consider whether those suggestions could be incorporated in the Scheme. The MCD finding the suggestions acceptable has submitted before us a scheme incorporating these suggestions.
3. The Scheme envisages the identification of squatting/vending areas by the Ward Vending Committees which has to be approved by the Zonal Vending Committees which is also empowered to make necessary changes and make allotments accordingly. The identification of the hawkers/squatters occupying those sites has necessarily to be done by the MCD. Ms. Indra Jaising, learned senior counsel appearing on behalf of SEWA and Mr. Prashant Bhushan, learned counsel appearing for National Association of Street Vendors of India submitted that the Scheme proposed by the MCD is not satisfactory inasmuch as the survey work to

identify hawking and non-hawking zones and the sites available should have been entrusted to an independent organisation which at one time was considered by the MCD, but which has been rejected on the plea that it involves considerable expense and time.

4. It appears that such a question was raised before this Court in the case of Ramesh Shah Vs. MCD & Ors. (I.A. No. 332-333 in WP(C) No. 1699/1987) and this Court by order dated 6.11.2000 rejected the submission which has been urged before us, in these words :-

"So far as identification of squatting and non-squatting zones are concerned it is an administrative function of the MCD which is done by taking into account various factors namely, public interest depending mainly upon the congestion in the area and public safety which are the main considerations for any Government. No challenge to such identification of squatting and non-squatting zones can be permitted under any

circumstance when the administrative authority has taken all factors in to account. We are not sitting in appeal against any decision made by the administrative authority. We therefore do not permit any challenge to the identification of the squatting and non-squatting zone and to the map as prepared by the MCD showing Green shall be treated as final and shall not be allowed to be questioned."

In this view of the matter, we cannot accede to the request of the learned counsel for the respondents who have contended that fresh survey should be undertaken by an independent expert body or an independent organisation to identify the hawking sites and the existence of hawkers. This is essentially a matter which the Municipal Corporation of Delhi has to consider and take a decision. We cannot issue a writ directing the MCD to do so, this being a matter of policy.

5. We would, however, like to make one small modification in the Scheme so far as it relates to prohibition on cooking of food items. The allottees of Tehbazari/vending sites may be permitted to serve tea or coffee provided it does not result in disposal of any waste and the beverage is served in disposable glasses/cups for which adequate arrangement is made for safe disposal by the allottees of those sites.

6. The Scheme provides for resolution of disputes between allottee and the MCD by the Zonal Vending Committees and an appeal is provided before the Appellate Authority. Mr. Sanjiv Sen, learned counsel appearing for the MCD accepted the suggestion made that the Scheme shall be modified suitably by providing that the Zonal Vending Committees shall be presided over by a judicial officer not below the rank of Addl. District Judge and the Appellate Committee shall be presided over by a retired High Court Judge. He submitted that necessary amendment in the Scheme shall be carried out accordingly. We, therefore, direct the MCD to do so.

7. The MCD has enclosed with the proposed Scheme a proforma of the application form for tehbazari/vending sites which requires an applicant to give all necessary particulars for consideration of his/her application. We approve of the said proforma submitted before us but it will be open to the MCD to require further particulars to be given in case it is considered necessary.

8. In the Scheme the proposed timing for fixed tehbazari/vending sites as well as proposed auto/cycle rickshaw is from 8.00 a.m. to 9.00 p.m. and for vendors moving in residential colonies from 7.00 a.m. to 8.00 p.m. or as fixed by the concerned Residents Welfare Associations. So far as the fixed tehbazari/vending sites are concerned the timings may be changed depending on weather conditions and other relevant considerations. So far as the timings for vendors moving in residential colonies is concerned the scheme itself suggests that the Residents Welfare Association will be consulted. We only wish to emphasise, as suggested by Mr. Prashant Bhushan, that no rigid approach may be adopted in fixing the timings.

9. We would like to make only one exception with regard to timing of squatting/vending activity. There are several places which are visited by the public at large throughout the day and night, such as, railway station,

bus stands, hospitals etc. Sometimes late in the night visitors to these places may require a cup of tea or snacks. At most such places, provision is made for sale of food items/beverages through duly established outlets, shops and restaurants. However, where such facilities are not available, the MCD may consider relaxing the timings for hawkers/vendors who may serve tea/coffee, cold drink, and food items including packed cooked food items in the interest of the persons visiting such places at unearthly hours. This, however, should be an exception and only subject to the conditions stated above.

10. It was also submitted before us by Mr. S.K. Sinha, counsel appearing on behalf of Daryaganj Traders Association that at some places the width of the footpath is only 5 ft. but the same has been declared to be a squatting area. We had in our earlier orders suggested that tehbazari/vending sites should be so located as to give atleast 5 ft. space on the footpath for movement of the pedestrian. The modified Scheme, however, does not clearly bring about this prohibition. We direct that no tehbazari/vending site shall be located on a footpath unless a clear 5 ft. space is made available for pedestrian. This should be made clear in the Scheme.

11. In its submission before us the MCD stated that after this Scheme comes into effect the allottees of tehbazari/vending sites will not be permitted to transfer their sites to any person except in accordance with the Scheme. However, he brought to our notice that large number of transfers have already taken place prior to 6th February, 2007 and it may be difficult for the MCD now to reverse the position as it may give rise to a lot of litigation and at the same time create some unrest. It was suggested that this Court may pass an order that no litigation shall be entertained where action is taken in cases of change of site without the permission of the MCD and the litigation, if any, should be made subject to jurisdiction of this Court only. We do not think it proper to pass such an order. However, we cannot also countenance an illegal transfer of tehbazari/vending sites by the allottees. If such transfer requires the prior permission of MCD and the same has been done in violation of such requirement, the law must take its course because in such manner many persons may be able to secure tehbazari/vending sites over looking the better claims of others. In our view the law must take its course in such cases.

12. In the proposed Scheme under Clause (I) of paragraph (a) there is reference to payment of registration fee and tehbazari/vending charges in addition to road tax, Mr. Sen clarified that payment of road tax is only in respect of four wheelers. The Scheme may clarify this position. However, this will not prevent authorities concerned from collecting road tax from others if under law such road tax is payable.

13. Mr. Prashant Bhushan, learned counsel appearing on behalf of National Association of Street Vendors of India submitted that allotment of sites available is only 2.5% of the total population per Ward based on census of 2001. He submitted that the percentage of 2.5 must be worked out by reference to the current census. We consider the suggestion to be reasonable and direct the MCD to consider such change in number of sites as may become necessary based upon the current census figures as and when available.

14. In sub-paragraph (d) of para B it is provided that the age of an allottee should not be less than 18 years and should not exceed 60 years on the date of application.

15. After hearing counsel for the parties, we are of the view that though an allottee should not be less than 18 years of age on the date of allotment, no maximum upper age limit shall be fixed. In fact, Mr. Sanjiv Sen, learned counsel appearing on behalf of MCD also agreed and submitted that the eligibility based on age should be confined to new entrants and in any case will not apply to those who are being re-located. Having considered this matter, we are of the view that the upper age limit should be deleted since it may create many complications particularly in regard to applicants whose applications have been pending but not considered or whose cases may be found to be justified though no actual allotment has been made in their favour. We, therefore, direct that the upper age limit of 60 years may be deleted from the eligibility conditions.

16. Before parting with this aspect of the matter we may notice the submissions urged on behalf of SEWA by Ms. Indira Jaisingh. She submitted that Daryaganj has not yet been declared to be a weekly market. As a

matter of fact large number of booksellers used to sell books, old and new on a particular day in the week. She submitted that the said weekly market may be recognized only for the sale of books. She also submitted that Lala Qila has not been declared as weekly market and it should be so declared.

17. We are afraid we cannot issue direction to declare a weekly market in a particular area. That is a matter which has to be considered by the Municipal Corporation of Delhi. We may only observe that the concept of weekly market for sale of books only is a suggestion worth considering, particularly in view of the fact that the readership of books is diminishing day by day on account of rising costs of books which many cannot afford. Such a market may provide an opportunity to have avid readers to purchase books at low cost. This would also serve the purpose of a book being read by many, rather than being kept in the shelf of a particular room.

18. She also submitted that some preference should be given to women vendors in the allotment of tehbazari sites. In particular she referred to the daily market at Jahangir Puri which had developed as an all women's vegetable market. This again is a matter of policy and it would not be appropriate for us to direct the Municipal Corporation of Delhi to give preference to women vendors or recognize daily markets only for women. It is no doubt true that women vendors should be given adequate opportunity to supplement their family income. It is also true that they deserve more protection than others. We can only observe that in planning markets in the city, the Municipal Corporation of Delhi may consider whether some space should be reserved exclusively for women who may be allotted sites adjacent to each other in a block. It may also be a good idea to establish markets where sites may be allotted exclusively to women for selling items which primarily interest the women. This may greatly convenience women shoppers who may have an exclusive place to go and shop for all their personal needs. We have no doubt that in the future planning of markets such considerations will weigh with the planners.

19. Subject to these modifications, the Scheme submitted by the MCD in regard to vending sites/tehbazari is approved.

20. We shall now consider the policy relating to weekly bazars.

21. It is submitted by the MCD that as of today as many as 227 weekly bazars are being held. Most of them are held in non-hawking/non-squatting zones. Necessary directions have been sought in this regard from this Court.

22. Ms. Indira Jaising, learned senior counsel appearing on behalf of SEWA submitted that these weekly bazars are held only once a week and, therefore, there can be no objection to weekly bazars being held even in a no hawking zone. The matter requires to be considered from this perspective. She further submitted that collection at such weekly bazars through middlemen should be avoided and in the matter of timing also, no rigid approach must be adopted. She pointed out that the physical demarcation of hawking sites in weekly markets has given rise to lot of disputes. She also highlighted the fact that after the year 2005 no collections are being made from anybody in the weekly bazars. She submitted that some preference must be given to women vendors in the weekly bazars. She also submitted that in Jahangirpuri area there was a market run only by women and this should be revived.

23. Mrs. Usha Kumar, learned counsel appearing on behalf of the Chandni Chowk Sarvvyapar Mandal submitted that in some areas there are two weekly bazars and they are held even on working days of the market of the area. In particular, she referred to Bhogal area where the entire area is converted into something like a weekly bazar on all days.

24. Mr. Sen, appearing on behalf of MCD submitted that most of the weekly bazars are held in non-hawking areas. There is no uniform fixed weekly holidays when markets are closed.

25. We have considered the Scheme proposed by the MCD in relation to weekly bazars and having considered the submissions urged on behalf of counsel appearing for the parties, we are of the view that weekly bazars should be held only once a week in an area which must be the day on which the markets in the area observe a weekly closure under the Shops and Establishments Act. No weekly bazars will be held on a day which is not a closed day for the market of the area. The MCD will identify the area over which weekly bazar may be held and in doing so it must take care to see that no road is blocked and access to any of the premises on the road is not affected. If there be any open space available, excluding the parks, it may permit weekly bazars to be held there. If necessary weekly bazars shall be held at a place other than where it is currently held if it is not possible to hold the bazar at the present location without causing undue inconvenience to the residents of the locality. We again reiterate that such bazars shall be held only on days when the market of that area observes a weekly off day in compliance with the provisions of the Shops and Establishments Act and on no other day.

26. To avoid loss of revenue to the MCD, the collection from these bazars should be made by the MCD itself and middlemen should not be involved in such collection. So far as the timing of such weekly bazars is concerned, as we have observed earlier, the authorities need not be rigid and depending upon the climatic conditions, different timings may be prescribed for holding weekly bazars. Usually different timings are fixed for summer and winter months. That could also be adopted for holding of such markets. However, care should be taken that the weekly bazars do not continue to function after 10.00 p.m.

27. The New Delhi Municipal Committee has also submitted its Scheme. We have considered the scheme submitted before us. The area which falls under the NDMC does not create problems such as those in the areas under the MCD. However, in the said scheme reference has been made to persons who do not have permission under Section 225 or license under Section 330 of the NDMC Act, 1994 but who are unauthorisedly continuing to carry on business as hawkers/street vendors. They have been described as those who are "tolerated" in the NDMC area. We fail to understand why any person who violates the law should be tolerated. Either they should be compelled to obey the law or the law may be suitably amended, if it is found to create undue hardship. The problems need to be addressed by the Legislature or the rule making authority. We, therefore, observe that if it is felt that the persons who fall in this category require special protection, the Act may be suitably amended to cover their cases or else the number of such illegal squatters may increase from time to time.

28. There has been no serious objection to the scheme submitted by the NDMC which is a comprehensive scheme. Certain directions have, however, been sought for from this Court. We approve the scheme submitted by the NDMC.

29. It is submitted before us that the Schemes which have been approved by this Court must be subject to any Act or Rules that may be framed in consonance with the National Policy on Urban Street Vendors. It goes without saying that we have approved the schemes as framed by the MCD and NDMC. If the legislature intervenes and frames another scheme or regulations governing such schemes, that will certainly supersede the schemes prepared by the MCD and NDMC. It is well settled that any administrative action is always subject to law that may be framed by the competent legislature.

30. It was further submitted before us that the authorities must have due regard to the concept of a natural market. We agree. In implementing such schemes, the authorities cannot ignore the concept of a natural market, but many interests have to be balanced so as to cause least inconvenience to the public at large. There is no reason for us to doubt that the authorities concerned will ignore all such relevant considerations in working a scheme of this nature.

31. It was also submitted that the authorities may be directed to identify the non-hawking areas only and rest of the areas should be permitted as hawking areas. In our view such a course will not be practicable. In any event, that is a matter for the concerned authorities to consider and we can express no opinion in the matter. We may, however, observe that since a National Policy on Urban Street Vendors has been formulated, the

authorities concerned will have due regard to the said policy in the implementation of the schemes regulating tehbazari/vending sites etc.

32. Counsel appearing for the MCD as well as the NDMC submitted before us that so far as they are concerned, they have no control over the taxi stands which at times occupy not only the area allotted to them but spill over footpaths and the road. Very often a large number of vehicles of a taxi stand are found parked on the roads, causing dislocation of traffic. We had directed counsel for the Delhi Administration to seek instructions in this regard. We direct the Delhi Administration to take appropriate steps in the matter whenever any complaint is made by MCD or the NDMC with regard to violation of Rules by the taxi stand owners and illegal encroachments on footpaths and roads by parking of vehicles. In such cases complaints may be made by the concerned authorities to the District Magistrate of the area concerned and the SHO of the police station under which the taxi stand falls. Within one week of receipt of such complaint, appropriate action must be taken by the Delhi Administration. In case of persistent defiance and breaches, the Delhi Administration may exercise its power to denotify the taxi stand concerned.

33. We also issue a general direction to the Commissioner of Delhi Police to come to the aid of the MCD/NDMC as and when required for proper implementation of the schemes propounded by them. Any laches on the part of the police will be seriously viewed by this Court, as amounting to a breach of an order passed this Court.

34. Subject to the aforesaid modifications/changes in the Schemes submitted by the MCD and NDMC, the same are approved. The said authorities shall now take appropriate steps to implement the scheme forthwith. In case of any difficulty faced by them in implementing the schemes, they shall have the liberty to apply to this Court.

35. This order only disposes of the matter so far as it relates to the approval of the schemes submitted by the MCD and NDMC and I.As. filed in connection therewith. Individual applications in the matter shall be considered separately by this Court, as directed earlier.