

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 23rd December, 2011

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W.P.(C) NO. 13647/2009

NEW DELHI MUNICIPAL COUNCIL

.....Petitioner

Versus

USHA GANGARIA AND ORS.

.....Respondents

Along with

W.P.(C) NO.13648/2009

NDMC v. MOHD. AHSAN & ORS.

W.P.(C) NO.13649/2009

NDMC v. PANKAJ PANDEY & ORS.

W.P.(C) NO.13650/2009

NDMC v. SANJAY BABU GUPTA & ORS.

AND

W.P.(C) NO. 13390/2009

NDMC v. SODAN SINGH & ORS.

Present: Ms. Madhu Tewatia with Ms. Sidhi Arora, Advocates for petitioner
in all
Mr. Anup G. Chaudhary, Sr. Advocate with Mr. N.K. Sahoo, Adv
for R-1 in all
Ms. Shobhana Takiar, Adv. for DMRC in all
Mr. Najmi Waziri, Adv. for GNCTD in all

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGEMENT

RAJIV SAHAI ENDLAW, J.

1. The five petitions question the power of the Vending Committee and the Appellate Authority constituted, initially under the directions of the Supreme Court, as noticed in *Sodan Singh vs. NDMC* (1998) 2 SCC 727 and *Sudhir Madan vs. MCD* 2007 (8) SCALE 339, to regulate hawking, squatting and vending on the streets and under the National Policy on Urban Street Vendors, 2004, replaced by the Policy of 2009. The petitions challenge the orders of the Appellate Authority restraining the petitioner NDMC from disturbing and/or removing the hawkers/squatters/vendors impleaded as respondents in the petitions from their respective squatting places and directing the petitioner NDMC to maintain *status quo*. Notices of the petitions were issued and counter affidavits have been filed by the respondents/vendors. The counsels have been heard.

2. It is not in dispute that the Vending Committee and the Appellate Authority were not constituted by or under a statute but owe their existence either to the judicial pronouncements or the Policy (*supra*). It is also not in

dispute that there is no express provision, neither in the Policy nor in the judicial pronouncements empowering the Vending Committee and/or the Appellate Authority to pass orders as under challenge in these petitions. It is in this background that it needs to be deciphered whether the Vending Committee and/or the Appellate Authority are empowered to pass orders/interim orders impugned in these petitions.

3. Questions as aforesaid have been arising before the Courts from time to time. The Apex Court in *Morgan Stanley Mutual Fund vs. Kartick Das* (1994) 4 SCC 225 was faced with the entitlement of the fora constituted under the Consumer Protection Act, 1986 to grant such interim orders. Finding the Act, to have not conferred any such power to grant any interim relief or ad-interim relief and, having conferred power only to grant the final relief, it was held that the said fora could not be held to be empowered to grant interim injunction.

4. The Supreme Court in *Managing Director, Army Welfare Housing Organization v. Sughanmal Services (P) Ltd.* (2004) 9 SCC 619 reiterated that an Arbitrator under the Arbitration Act, 1940 has no jurisdiction to pass an interim order. It was further held that an Arbitral Tribunal is not a Court

of law, its orders are not judicial orders, its functions are not judicial functions; it cannot exercise its power *ex debito justitiae*.

5. Recently in ***Rajeev Hitendra Pathak v. Achyut Kashinath Karekar*** (2011) 9 SCC 541, again the question was whether the District Forums and the State Commissions under the Consumer Protection Act, 1986 have the power to set aside their own *ex parte* orders or the power to recall or review their own orders. The Apex Court again held that the said fora being creature of the statute derive their powers from the express provisions of the statute and the powers which have not been expressly given by the statute cannot be exercised. Finding that no such power had been vested in the District Forums or the State Commission, it was held that no such power could be exercised by them.

6. This Court also in ***Bhupinder Singh vs. Delhi Commission for Women*** 137 (2007) DLT 411 held that the Delhi Commission for Women constituted under the Delhi Commission for Women Act, 1994 had no power for issuing any direction for payment of maintenance. It was observed that though the said Commission had been vested with all the powers of a Civil Court in carrying out an investigation relating to safeguards provided

for women under the Constitution and other laws as also with regard to the matters relating to deprivation of women's rights but in the absence of any power to pass order or direction for maintenance, the same could not be inferred. It was observed that powers to grant interim orders are vested in the Courts only.

7. Similarly, recently in ***Competition Commission of India vs. Steel Authority of India Ltd.*** (2010) 10 SCC 744, it was held that the power under Section 33 of the Competition Act, 2002, to pass temporary restraint order can only be exercised when the conditions laid down for exercise of the said power were met and not otherwise. So also in ***State Bank of Patiala vs. Vinesh Kumar Bhasin*** (2010) 4 SCC 368, it has been held that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 did not empower the Commissioner under the said Act to issue any interim order directing a person with disability to be continued in service beyond the age of retirement; it was held that an authority functioning under the Disabilities Act has no power or jurisdiction to issue a direction and the fact that the Act clothed the Commissioner with certain powers of Civil Court for discharge of its functions did not enable the Commissioner to assume other powers of a Civil Court which are not

vested in him by the provisions of the Act and the powers of a Civil Court for granting injunctions – temporary or permanent, do not inhere in the Commission nor such a power can be inferred or derived.

8. The Supreme Court in ***Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd.*** (2007) 8 SCC 381 also held that the State Electricity Regulatory Commission constituted under the Electricity Act, 2003 had no power to issue a direction for refund though was empowered to issue a general direction to the licencees to abide by the conditions of the licence and charge only as per the tariff fixed under the Act.

9. Per contra, a Division Bench of this Court in ***Ram Kishan v. NDPL*** 130 (2006) DLT 549 held that this Court would not entertain writ petitions regarding disputes relating to electricity, water, telephone bills etc. when an alternative remedy has been provided by the statutes before some fora; that if this Court were to entertain such petitions, it will be flooded with lakhs and lakhs of such writ petitions and will be doing no other work except deciding such writ petitions. While meeting the pleas that the fora constituted under the Electricity Act, 2003 were not empowered to grant

interim protection and thus could not be said to be providing efficacious alternative remedy, it was observed that the forum and Ombudsman under Sections 42(5) and 42(6) respectively have inherent powers of passing interlocutory orders pending the decision of the representations before them including interlocutory orders for stay. However, the source of such power was traced to Regulation 9(8) of the Delhi Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2003 empowering issuance of interim orders pending final disposal. It would thus be seen that the power was traced to the Regulation (*supra*).

10. This Court in *M.Z. Khan vs. Securities and Exchange Board of India* 77 (1999) DLT 706, though held SEBI to be having a power to pass interim orders, traced the source thereof to Sections 11 and 11B of the SEBI Act, 1992 and did not hold such a power to be an inherent power.

11. In *In Re Cauvery Water Disputes Tribunal* 1993 Supp (1) SCC 96 II, one of the questions referred to the Supreme Court was whether the Water Disputes Tribunal constituted under the Inter-State Water Disputes Act, 1956 is competent to grant any interim relief to the parties to the dispute. It

was held that under Section 11 of the Act read with Article 262 of the Constitution of India, the entire judicial power of the State and therefore, of the Courts including that of the Supreme Court to adjudicate upon original dispute stood vested in the Tribunal and for this reason it was not possible to accept the submission that the question of grant of interim relief falls outside the purview of the said provisions.

12. It would thus appear that in the absence of any express vesting of a power to issue interim orders, even statutory bodies have been held to be having no power to grant interim reliefs.

13. However, a Division Bench of this Court in judgement dated 1st September, 2011 in RFA No. 250/2011 titled ***Music Broadcast Pvt. Ltd. v. Super Cassette Industries Ltd.*** held the Copyright Board constituted under the Copyright Act, 1957 to be possessing power to pass interim orders in proceedings under Section 31 of the Act. Such a power was not traced to any provision of the Act or the Rules but held to be ancillary or incidental and necessary to enable the Board to discharge its functions effectively for doing justice between the parties. A catena of judgments laying down the said principle were noticed by the Division Bench. ***Morgan Stanley Mutual***

Fund (supra) was distinguished observing that the Consumer Protection Act provided for the grant of final relief only. It was further held that if the Board was held to be not empowered to grant interim relief, consequence thereof will be complete frustration of rights under Section 31 of the Act.

14. A Division Bench of the Bombay High Court also in *Viswasrao Chudaman Patil v. Lokayukta, State of Maharashtra* AIR 1985 Bombay 136 justified, a reading of a power in the Lokayukta constituted under the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 to make interim recommendation in tune with the power to make a final recommendation under Section 12 of that Act, to effectual performance of the work for which the Office of the Lokayukta had been created and so that the order or decision of the Lokayukta is not a barren success. I may however add that the power was also traced to Rule 35 of the Rules under the Act.

15. In the aforesaid legal scenario, it needs to be determined whether the Vending Committee and the Appellate Authority aforesaid can be said to be enjoying the power to issue orders – interim or otherwise, restraining NDMC from dispossessing any of the hawkers/squatters/vendors (to whom

no licences/permission has been granted) from the streets on which they claim to be squatting.

16. The 2004 Policy provides for setting up of Vending Committees consisting of representatives of Municipal Authority, Traffic and Local Police, Public Land Owning Authority, Market/Traders/Residents Welfare Association and Association of Street Vendors. The functions of the Vending Committee are described as:-

- (i) Demarcation of vending and non-vending areas;
- (ii) Provision and identification of space for squatting and areas for hawking. Provisions for space may include temporary designations as Vendor markets (e.g. as weekly markets) whose use at other time may be different (e.g. Public Parks, Parking lots) etc.;
- (iii) Timing restrictions on the urban vending. It should correspond to needs of ensuring non-congestion of public spaces;
- (iv) Public hygiene and cleanliness;
- (v) Ensure continuation and upgradation of weekly markets;
- (vi) Quantitative norms i.e. where to allow, how many squatters or persons;
- (vii) Qualitative guidelines: This has to include
 - Provision for solid waste disposals,
 - Public toilets to maintain cleanliness;
 - Aesthetic design of mobile stalls/push carts;
 - Provision for electricity;
 - Provision for protective cover to protect their wares as well as themselves from heat, rain, dust etc;
- (viii) Regulatory Process;

- (ix) Registration system;
- (x) Corrective mechanism against defiance by vendors;
- (xi) Collection of revenues; and
- (xii) Monitoring mechanism

The Policy also entrusts the Vending Committee with the power to register the hawkers/squatters/vendors, issue identity cards to them stating *inter alia* their hawking/squatting/vending site, put up proposals for disposal of solid waste, provision for electricity and public toilets and recommending fee.

17. The 2009 Policy defines Vending Committee, as a body for protecting the livelihood of street vendors while at the same time imposing restrictions for ensuring free flow of traffic and addressing concerns relating to public health and hygiene in public interest. The 2009 Policy however, also makes the Vending Committee responsible for redressal of grievances and resolution of any dispute arising amongst the street vendors or between the street vendors and third parties including Municipal officials and Police in the implementation of the Policy.

18. At this stage, the position under the New Delhi Municipal Council Act, 1994 may also be noticed. Under Section 202 thereof the public streets vest in the NDMC and NDMC is empowered to take action with respect to

obstruction or nuisance in the street. The power to grant permission to hawk/squat/vend on the public street is of the NDMC and neither under the Policy nor the judgements supra, is shown to be vested in the Vending Committee or the Appellate Authority. The Apex Court in *Sodan Singh* (supra) also though holds a right to hawk on the streets to be a Fundamental Right but to be not an absolute right and subject to restrictions. The Apex Court in *Gainda Ram v. MCD* (2010) 10 SCC 715 has held the power to place restrictions in this regard to be vested in the NDMC.

19. It is the contention of the petitioner NDMC that for selection and allotment of *tehbazari* sites, 'G.P. Thareja Committee' was constituted under the directions of the Supreme Court; that NDMC has never encouraged squatting on the streets due to its peculiar geographical position and the *tehbazaris* in the NDMC area up to the year 1989 were limited to 228 only; that at the time of the appointment of G.P. Thareja Committee in 1989, it was estimated that about 1500 persons were unauthorizedly attempting to squat in the NDMC area. The Thareja Committee invited applications for allotment of sites in NDMC area and more than 5000 applications were received; after investigating and scrutinizing each application and inspecting the site, the Committee verified 760 persons eligible for squatting in the

NDMC area and another 16 cases were identified as hardship cases; that the remaining applicants were found to be ineligible for squatting in NDMC area; the Thareja Committee also identified 109 sites for squatting and of which 33 sites were objected to by the NDMC; ultimately the Supreme Court identified and approved 126 sites for squatting and directed removal of all unauthorized squatters. However, subsequently some of the sites identified had to be abandoned for security reasons. Owing to the aforesaid development, the Apex Court vide orders dated 6th February, 2007 and 17th May, 2007 approved new/modified Schemes for permitting hawking and squatting in the NDMC area.

20. The process of identification of vending sites and determining the eligibility for allotment thereof is still on. Infact the matter is still alive before the Supreme Court. I may also notice that a Single Judge of this Court vide judgement dated 24th October, 2011 in W.P.(C) No. 4743/2011 titled *Shiv Nath Choudhary v. NDMC* and in other connected petitions has held that the Supreme Court being seized of the matter, even this Court is not entitled to grant any orders as sought in those petitions restraining NDMC from dispossessing the hawkers/squatters/vendors from the streets. The intra-Court appeals against the said judgement have been dismissed.

21. The question which arises is whether the Vending Committee and/or the Appellate Authority are empowered to stay dispossession from the streets of hawkers/squatters/vendors merely for the reason that their claims for allocation of vending site are pending consideration before the Vending Committee/Appellate Authority.

22. Irrespective of the powers of the Vending Committee/Appellate Authority in this regard, if the same were to be permitted, it will choke the streets leaving hardly any space for pedestrian or vehicular movement. Such a state of affairs cannot be permitted.

23. The respondents/vendors in whose favour the interim protection was granted by the Appellate Authority have in their counter affidavit pleaded that they have been hawking/squatting/vending at their respective sites for years; some of them have, in support thereof, also filed plethora of documents; that on 23rd April, 2008, the Supreme Court had constituted the Vending Committee and the Appellate Authority for adjudication of the claims of hawkers/squatters/vendors and had refused to entertain the applications of the squatters complaining of dispossession and granted them liberty to move appropriate applications before the Vending Committee and

directed the Vending Committee to go into the applications and allot them some site on provisional basis till their claims for a *tehbazari* site were adjudicated; that with the same motive, an Additional District Judge was directed to be appointed in the Vending Committee and on 15th December, 2008, it was clarified that the hawkers/squatters/vendors would be entitled to raise all their contentions before the said Committee; that the Appellate Authority had granted interim protection also in light of Section 3 of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2009.

24. The senior counsel for the respondent hawkers/squatters/vendors relied on the order dated 8th May, 2008 of the Supreme Court in I.A. Nos. 4 and 5 in SLP (Civil) No. 17472/2005 titled as ***Siya Ram v. Union of India*** where the Supreme Court refused to entertain the individual grievances of the hawkers having regard to the fact that the appropriate Vending Committee had already been set up and also directed the appointment of a retired High Court Judge to head the Appellate Authority. He has contended that the Supreme Court having appointed a Retired Judicial Officer, the presumption of the Appellate Authority having power to issue interim directions has to be drawn.

25. The Vending Committee and the Appellate Authority are found to be merely administrative and/or recommendatory bodies. The Vending Committee under the said power is not found to be entitled to adjudicate whether a person who till now has not been found eligible under the Policy for a vending site, be allowed to obstruct the street or not or whether the NDMC is entitled to remove him or not. Admittedly, the Vending Committee or the Appellate Authority are not Courts. It is only Courts which can be said to be enjoying power to issue interim orders/directions. The Vending Committee and the Appellate Authority save for identifying the vending sites and the vendors entitled to priority in allotment thereof, otherwise are only entrusted with taking measures for welfare of the street vendors. Their powers are not found to be in derogation of the duty of the NDMC to maintain the streets and to keep the streets free of obstruction. The observations in the orders of the Supreme Court that the said bodies were intended to provide a complete mechanism for redressal of all grievances of the hawkers/squatters/vendors cannot be read to be vesting the said bodies with the power of passing any interim orders. The said observations have to be read in the context of the entire order. The orders directed the constitution of the Vending Committee and the Appellate

Authority to identify hawking/squatting/vending sites and eligibility / priority of the claimants/applicants/hawkers/squatters/vendors. The complete mechanism has thus been provided on the said aspect only and not for adjudication of whether pending the proceedings before such bodies, any right enures or not.

26. The power of dispute resolution in the Vending Committee vested under the 2009 Policy is also restricted to, in the course of implementation of the Policy and is not found to be an adjudicatory power. Even otherwise, the dispute resolution power conferred on the Vending Committee under the 2009 Policy is akin to and/or in the nature of a conciliatory power. It cannot be lost sight of that both NDMC and the representatives of hawkers/squatters/vendors are members of the Vending Committee. A Committee of adversaries cannot be said to be having adjudicatory powers. The dispute resolution power conferred on the Vending Committee under the 2009 Policy is on the entire Committee which as aforesaid comprises of several members and of whom the Additional District Judge is but one of the members. There is nothing to indicate that the dispute resolution power vested in the Vending Committee (under the 2009 Policy) is to be exercised by the Additional District Judge only. Moreover, a body comprising several

members which can be even in number, cannot be said to be having adjudicatory powers as of a Court. Though the Policy does not provide for an Appellate Authority which appears to be a creature of the judicial pronouncements only but during the course of hearing, it was informed that the Appellate Authority also comprises of several members of whom a Retired High Court Judge is but one. Thus, what has been observed herein qua the Vending Committee applies equally to the Appellate Authority as well.

27. As far as the reference by the Appellate Authority to the provisions of Delhi Special Provisions Act (supra) is concerned, even if it were to be held that the hawkers/squatters/vendors are entitled to any protection under the said Act, such protection has to be sought by approaching a Court of law and not by moving the Vending Committee and/or the Appellate Authority. As aforesaid, the Vending Committee and the Appellate Authority were constituted only to identify the vending sites and to determine eligibility / priority of the hawkers/squatters/vendors.

28. The petitions therefore succeed. The Vending Committees and/or the Appellate Authority are held to be not empowered and entitled to issue any

interim orders/directions restraining NDMC from dispossessing any hawker/squatter/vendor not holding permission/licence, from the NDMC areas. Accordingly, the orders impugned, in so far as directing the *status quo* to be maintained or restraining the NDMC from dispossessing / removing the respondent hawkers/squatters/vendors from the sites on which they claim to be hawking/squatting/vending are set aside / quashed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

DECEMBER 23, 2011
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