

***HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.8070 of 2015

% 20-07-2015

R.Prashanti D/o. R.Krishnaiah, Aged about 31 years
Occu: Business, r/o.40 Peta, Near Children Park,
Kurnool, Kurnool District and others.

... Petitioner

Vs.

\$ State of A.P., rep.by its Principal Secretary,
Municipal and Administrative Department, Secretariat,
Hyderabad and others.

.

.... Respondents

!Counsel for the petitioner : Sri B.naga Jaya Chandra Reddy

Counsel for the Respondents: 1)Government Pleader for
Municipal Admn. & Urban
Development (AP) for
respondent No.1
2) Sri S.D.Goud, standing
counsel for respondents 2
and 3

<Gist :

>Head Note:

? Cases referred:

1. (2014) 1 SCC 490

HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION No.8070 of 2015

ORDER:

Petitioners are the street vendors doing their business of selling Ice-creams, Fast

Foods, Fruit Chats, Chat Bandar etc., near the children park in Kurnool. According to the petitioners, they were granted licences as early as in the year 1995 and they have been doing this business to eke out their livelihood all through. They were granted licences by the municipal corporation and collecting annual licence fee from the petitioners. Petitioners have subsisting licences. While so, municipal corporation is trying to forcibly dispossess them from the business premises No.40 Peta, near children park even though licences were subsisting. Hence, this writ petition.

2. Heard learned counsel for the petitioners and learned counsels for the respondents.

3. Learned counsel for the petitioners contends that petitioners have been doing their business since the year 1995 by paying licence fee to the municipal corporation and the licence is valid till March, 2016 and, therefore, before expiry of licence period, petitioners cannot be removed from the place where the business is being carrying out. Learned counsel further submits, in response to averments in the counter-affidavit, that the licences were granted to them after satisfying the quality of food being supplied by the petitioners and contrary to the licences granted, vague statement is made that the food supplied by the petitioners is dangerous and said statement is without any basis. They were never put on notice on such allegation.

4. Learned counsel further contends that having granted licences to operate vending units near the children park, it is not permissible for the respondent corporation to remove the vending units. He further submits that though in W.P.No.28966 of 2011, this Court directed to remove the vending units after 31.3.2012 on the premise that the licence granted to the petitioners was valid till that day only, subsequently the licences were renewed from time to time and the petitioners have valid licences subsisting and as long as valid licences subsisting, they are entitled to undertake the business. He further submits that subsequent to the disposal of the said writ petition by this Court, the entire issue was considered by the Supreme Court in the case of **Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and others**^[1] and gave several directions. These directions issued by the Supreme Court are violated in this case. Subsequent to the above judgment, "Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014" (for short, 'Act 7 of 2014') is enacted. Consequent to the above enactment, the street vending has been regulated strictly in terms of the provisions contained therein and present action of throwing the petitioners out of place where petitioners are carrying out their livelihood is in violation of the provisions of the Act and, therefore, illegal.

5. Respondent corporation filed counter-affidavit.

6. Relying on the averments made in the counter-affidavit, learned standing counsel

Sri S.D.Goud submits that petitioners were not granted licence to undertake sale of food products near children park. He further submits that petitioners have suffered order by this Court in W.P.No.28966 of 2011 and in accordance with the orders contained therein, petitioners are not entitled to carry on business at the present place after 31.03.2012.

He further submits that respondent corporation has been preventing the petitioners from undertaking the vending of food products after March, 2012. Whenever it came to the notice of the respondent corporation that stalls are put up near the children park, the corporation has taken steps to remove. On 20.03.2015 the last time the bunks were removed. Along with counter affidavit, photographs are filed showing the removal of bunks. Learned standing counsel contends that licence granted to the petitioners to do business is anywhere within the territorial jurisdiction of the Corporation, but they cannot do business at children park.

7. Admittedly, petitioners are granted licence to carry on sale of food products on the road margins. According to the petitioners, they have been doing business to eke out their livelihood since the year 1955 by obtaining licences from the municipal corporation and have been paying licence fee year after year. In the licences granted to the petitioners, the place where petitioners are entitled to carry on the respective businesses is mentioned as No.40 Peta, near children park. It is not in dispute that the petitioners have valid licences to undertake sale of self-made food items from the pavements through the Mobile units.

8. The issue of street vending is common in all urban areas in the country. In **Maharashtra Ekta Hawkers Union** case, Supreme Court has taken judicial note of the fact that there has been manifold increase in the number of street vendors/hawkers in all major cities in the country. Supreme Court observed that one of the major factors responsible for this phenomena is unabated growth of population without corresponding increase in employment opportunities. The other factor noticed by the Supreme Court was migration of rural population to the urban areas. For many low paid employees/daily wage workers or other persons with meagre financial resources the regular provisional stores or eateries are not within their means. For millions of people in the country, they can afford to buy food or other necessities only from the street vendors, where several items of daily need are available at affordable prices. The Supreme Court recognized the fact that street vendors and hawkers cannot be dispensed with in this country. By the time the matter was considered by the Supreme Court, there was no statutory frame work to regulate street vending/ hawking. The Court noticed that street vendors are being exploited and harassed by the various authorities, such as, police, local body, authorities, etc., and issued series of directions to regulate street vending activity in urban areas till statutory mechanism comes into force. It is useful to extract the relevant directions of the Supreme Court in **Maharashtra Ekta Hawkers** case. Few of the directions which are relevant for this case read as under:

“21. For facilitating implementation of the 2009 Policy, we issue the following directions:

21.1. Within one month from the date of receipt of copy of this order, the Chief Secretaries of the State Governments and Administrators of the Union Territories shall issue necessary instructions/directions to the department(s) concerned to ensure that the Town Vending Committee is constituted at city/town level in accordance with the provisions contained in the 2009 Policy. For the cities and towns having large municipal areas, more than one Town Vending Committee may be constituted.

21.2 xxxxx

21.3 xxxxx

21.4 xxxxx

21.5 xxxxx

21.6. The Town Vending Committees shall be free to divide the municipal areas in vending/hawking zones and sub-zones and for this purpose they may take assistance of experts in the field. While undertaking this exercise, the Town Vending Committees constituted for the cities of Delhi and Mumbai shall take into consideration the work already undertaken by the municipal authorities in furtherance of the directions given by this Court. The municipal authorities shall also take action in terms of Paras 4.2(b) and (c).

21.7. All street vendors/hawkers shall be registered in accordance with Para 4.5.4 of the 2009 Policy. Once registered, the street vendor/hawker, shall be entitled to operate in the area specified by the Town Vending Committee.

21.8. The process of registration must be completed by the municipal authorities across the country within four months of the receipt of the direction by the Chief Secretaries of the States and Administrators of the Union Territories.”

9. On 05.03.2014, comprehensive legislation has come into existence, i.e., Act No.7 of 2014. This Act deals with all aspects of street vending/hawking. Chapter-II deals with regulation of street vending. Chapter-III deals with rights and obligations of street vendors. Chapter-IV deals with relocation and eviction of street vendors. Relevant provisions necessary for consideration of this case are, Sections 3, 4, 12, 13, 14, 15, 16, 17 and 18 of the Act of 2014. They read as under:

“Section 3. (1) The Town Vending Committee shall, within such period and in such manner as may be specified in the scheme, conduct a survey of all existing street vendors, within the area under its jurisdiction, and subsequent survey shall be carried out at least once in every five years.

(2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent. of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.

(3) No street vendor shall be evicted or, as the case may be, relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors.

Section 4. (1) Every street vendor, identified under the survey carried out under sub-section (1) of section 3, who has completed the age of fourteen years or such age as may be prescribed by the appropriate Government, shall be issued a certificate of vending by the Town Vending Committee, subject to such terms and conditions and within the period specified in the scheme including the restrictions specified in the plan for street vending:

Provided that a person, whether or not included under the survey under sub-section (1) of section 3, who has been issued a certificate of vending before the commencement of this Act, whether known as licence or any other form of permission (whether as a stationary vendor or a mobile vendor or under any other category) shall be deemed to be a street vendor for that category for the period for which he has been issued such certificate of vending.

(2) Where, in the intervening period between two surveys, any person seeks to vend, the Town Vending Committee may grant a certificate of vending to such person, subject to the scheme, the plan for street vending and the holding capacity of the vending zones.

(3) Where the number of street vendors identified under sub-section (1) or the number of persons seeking to vend under sub-section (2) are more than the holding capacity of the vending zone and exceeds the number of persons to be accommodated in that vending zone, the Town Vending Committee shall carry out a draw of lots for issuing the certificate of vending for that vending zone and the remaining persons shall be accommodated in any adjoining vending zone to avoid relocation.

Section 12. (1) Every street vendor shall have the right to carry on the business of street vending activities in accordance with the terms and conditions mentioned in the certificate of vending.

(2) Notwithstanding anything contained in sub-section (1), where any area or space, as the case may be, has been earmarked as no-vending zone, no street vendor shall carry out any vending activities in that zone.

Section 13. Every street vendor, who possesses a certificate of vending, shall, in case of his relocation under section 18, be entitled for new site or area, as the case may be, for carrying out his vending activities as may be determined by the local authority, in consultation with the Town Vending Committee.

Section 14. Where a street vendor occupies space on a time sharing basis, he shall remove his goods and wares every day at the end of the time-sharing period allowed to him.

Section 15. Every street vendor shall maintain cleanliness and public hygiene in the vending zones and the adjoining areas.

Section 16. Every street vendor shall maintain civic amenities and public property in the vending zone in good condition and not damage or destroy or cause any damage or destruction to the same.

Section 17. Every street vendor shall pay such periodic maintenance charges for the civic amenities and facilities provided in the vending zones as may be determined by the local authority.

Section 18. (1) The local authority may, on the recommendations of the Town Vending Committee, declare a zone or part of it to be a no-vending zone for any public purpose and relocate the street vendors vending in that area, in such manner as may be specified in the scheme.

(2) The local authority shall evict such street vendor whose certificate of vending has been cancelled under section 10 or who does not have a certificate of vending and vends without such certificate, in such manner as may be specified in the scheme.

(3) No street vendor shall be relocated or evicted by the local authority from the place specified in the certificate of vending unless he has been given thirty days' notice for the same in such manner as may be specified in the scheme.

(4) A street vendor shall be relocated or evicted by the local authority physically in such manner as may be specified in the scheme only after he had failed to vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice. Appeal from decision of Town Vending Committee. Rights of street vendor. Right of street vendor for a new site or area on relocation. Duty of street vendors. Maintenance of cleanliness and public hygiene. Maintenance of civic amenities in vending zone in good condition. Relocation or eviction of street vendors. Payment of maintenance charges.

(5) Every street vendor who fails to relocate or vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice, shall be liable to pay for every day of such default, a penalty which may extend up to two hundred and fifty rupees, as may be determined by the local authority, but shall not be more than the value of goods seized. "

10. The Act mandates constitution of Town Vending Committee (Section 22) in each of the urban areas. The Act mandates Town Vending Committee to conduct survey of all existing street vendors, identify all street vendors, identify vending zones and accommodate them in the vending zones (Section 3). Sub-section (3) of Section 3 mandates that no street vendor should be evicted, or relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors. The cumulative reading of the above provisions of the Act 7 of 2014 makes it clear that unless the specific area is earmarked as not a vending zone, the street vendors cannot be prohibited from carrying out the vending activity in that zone and no street vendor can be relocated from the place where he was carrying out his vending activity without first undertaking the exercise. As seen from the certificate issued by the municipal corporation to each of the petitioners, they were allowed to carry out street vending in No.40 Peta near children park of Kurnool town and they have been carrying out their avocation at that place. In the instant case, it is not stated by the respondent corporation that in due compliance of the directions issued by the Supreme Court in ***Maharashtra Ekta Hawkers Union case and Act 7 of 2014***, the Town Vending Committee was constituted, committee has surveyed and identified the street vendors/hawkers and places and adjusted the street vendors and started regulating the street vending in a systematic manner.

11. The Act 7 of 2014 vests substantive right in the street vendors and their right to carry on street vending business and their licences cannot be taken away without following due process as mandated by Act 7 of 2014. In the instant case, counter affidavit is silent on the steps taken by the respondent corporation in compliance of the mandate issued by the Supreme Court in ***Maharashtra Ekta Hawkers Union case and the Act 7 of 2014***. Thus, unless and until that exercise is carried out, the petitioners cannot be thrown out from their place of street vending.

12. Except harping on directions issued by this Court in W.P.No.28966 of 2011 and except making vague statement that petitioners' food products are hazardous, no material is placed on record to show that appropriate steps are taken before prohibiting the petitioners from carrying out street vending at the place where licences were granted to them. In view of the specific mention of the place in the licences, it is also not valid for the municipal corporation to contend that the vending licence granted to them is to carry on their street vending activity in the entire municipal corporation limits and that is not prohibited, but they cannot do vending at children's park. No material is brought on record to show that competent authority has taken a decision prohibiting street vending/hawking at children park where petitioners claim to have been carrying on such activity for a long time. Admittedly, corporation has granted renewal of licences after 31.03.2012 and valid licences are subsisting.

13. In view of the subsequent judgment of the Supreme Court in **Maharashtra Ekta Hawkers Union** case and the Act 7 of 2014, it is no more open to the respondent corporation to rely upon earlier orders of this Court and to seek to throw out the petitioners from carrying on their avocation near children park. Thus, though the petitioners sought a vague relief, the categorical assertion of the respondent corporation that they have been removing street vending units of the petitioners wherever they attempt to vend near children park, substantiate their contention that petitioners are harassed and prevented from carrying on street vending by unlawful means. Thus, the action of the respondent corporation in removing petitioners vending units from the children park area is *ex facie* illegal and the writ petition deserves to be allowed.

14. However, petitions have to be mindful that they are encroaching upon the footpaths. Though Act 7 of 2014 vests substantive right in them to carry out vending operations from the place where they have been doing business till appropriate policy is evolved and the vending zones are identified by the respondent corporation, but petitioners cannot convert vending mobile units into permanent establishments. They cannot put up permanent structures and cannot provide seating arrangements to the customers blocking the footpaths. The footpaths are meant for pedestrians and they have a right to use them. Petitioners shall ensure that they do not occupy the footpaths by blocking the right of way of pedestrians. They shall not put up any permanent structures and shall not make seating arrangements blocking the footpaths. It is also the responsibility of the petitioners to maintain hygienic conditions. If the petitioners violate any of these conditions, it is open to the respondent corporation to take appropriate action as warranted by law by following due process of law and observing principles of opportunity of hearing.

15. Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date : 20.07.2015

Note: L.R. copy to be marked
B/o.
kkm

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Date:20.07.2015

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[\[1\]](#) (2014) 1 SCC 490.