

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26333 of 2017
& WMP.No.27991 of 2017

Mrs.Marimuthu

...Petitioner

Vs

Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.

... Respondent

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, direction forbearing the Respondent, his officials, employees, servants from interfering with the Petitioner's bunk shop business of selling coffee, tea and other allied eatable items at Rathna Nagar, opposite to Tass & Co, Teynampet, Chennai - 600 018 and further direct the Respondent to grant license for the running the bunk shop.

For Petitioner : M/s.K.R.Mahesh
For Respondent : Mr.T.C.Gopalakrishnan

O R D E R

The petitioner has filed this petition to forbear the respondent, his officials, employees, servants from interfering with the petitioner's bunk shop business of selling coffee, tea and other allied eatable items at Rathna Nagar, opposite to Tass & Co, Teynampet, Chennai - 600 018 and further direct the respondent to grant license for running the bunk shop.

2. According to the petitioner, she is a widow and running a bunk shop, selling Coffee, Tea and other eatable items, for her livelihood for the last 4 years, in opposite to TASS & CO, Rathna Nagar, Teynampet, Chennai - 600 018. According to her, the bunk shop is no way disturbing the general public and free flow of traffic and hence the petitioner has made representation that the respondent shall not interfere with the petitioner's bunk shop.

3. The petitioner contended that the business is being carried on in accordance with the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (herein after called as 2014 Act) and the Rules made thereunder. According to the petitioner, every street vendor has the statutory right to claim the right of business and the respondent cannot deprive the livelihood of the petitioner. The petitioner submitted that the officials of the respondent are using police force to evict the bunk shop and her representation does not yield any fruit and it was kept in cold storage. According to the petitioner, the Government of Tamil Nadu is also launching various welfare schemes for the poor widows and there would be no harm to anyone, if the petitioner is allowed to continue her bunk shop business by holding a license.

4. The petitioner has referred to various provisions of the 2014 Act, particularly Section 2 (l) (m) (n) and Sections 4, 5 and 6, which are extracted below:

"Section 2:

.....

(l) "Street Vendor means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words "street vending" with their grammatical variations and cognate expressions, shall be construed accordingly;

(m) "Town Vending Committee" means the body constituted by the appropriate Government under Section 22;

(n) "vending zone" means an area or a place or a location designated as such by the local authority, on the recommendations of the Town Vending Committee, for the specific use by street vendors for street vending and includes footpath, side walk, pavement, embankment, portions of a street, waiting area for public or any such place considered suitable for vending activities and providing services to the general public.

.....

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 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 5.(1) Every street vendor shall give an undertaking to the Town Vending Committee prior to the issue of a certificate of vending under Section 4, that--

- (a) he shall carry on the business of street vending himself or through any of his family member,
 - (b) he has no other means of livelihood:
 - (c) he shall not transfer in any manner whatsoever, including rent, the certificate of vending or the place specified therein to any other person.
- (2) Where a street vendor to whom a certificate or vending is issued dies or suffers from any permanent disability or is ill, one of his family member in following order of priority, may vend in his place, till the validity of the certificate of vending--
- (a) spouse of the street vendor:

(b) dependent child of the street vendor:
Provided that where a dispute arises as to who is entitled to vend in the place of the vendor, the matter shall be decided by the committee under section 20.

Section 6. (1) The certificate of vending shall be issued under any of the following categories, namely:-

- (a) a stationary vendor;
- (b) a mobile vendor; or
- (c) any other category as may be specified in the scheme.

(2) The certificate of vending issued for the categories specified in sub-section (1) shall be in such form, and issued in such manner, as may be specified in the scheme and specify the vending zone where the street vendor shall carry on his vending activities, the days and timings for carrying on such vending activities and the conditions and restrictions subject to which he shall carry on such vending activities.

(3) Every street vendor who has been issued certificate of vending under sub-section (1) shall be issued identity cards in such form and manner as may be specified in the scheme."

5. It is the submission of the petitioner that she may be issued with a vending certificate by the respondent, as she has been carrying on the business for 4 years and trying to dislodge the petitioner from the present place is arbitrary. Hence, the petitioner has filed this writ petition.

6. Eventhough no counter is filed, the learned counsel for the respondent has contended that the writ petition is not maintainable, as there is a Vending Committee, before which, the street vendors can appeal, by following Section 2(1) of the 2014 Act, extracted supra. The petitioner has to approach the Vending Committee, which will identify a place and as per the instructions issued by the Committee, the business will have to be carried on. He further submitted that the petitioner has indirectly approached this Court to dispose of the representation and thereby continue to run the bunk shop in the place, which cannot be permitted. He further submitted that the residents of the said place had already approached the respondent for carrying on the bunk shop.

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that the petitioner is a street vendor carrying on business. It is not known as to whether the petitioner has approached the Vending Committee as referred to under the various Sections of 2014 Act extracted supra. Even assuming that the petitioner has approached the said Committee, as on date, no order has been passed. While considering the representation of the petitioner, the entire provisions of the Act, more particularly, Section 2(1), which is extracted above, has got to be taken note of, for deciding the representation. Unless the Vending zone is identified by the authority on the basis of the recommendations of the Town Vending Committee, the petitioner will not be able to carry on the business. Lot of restrictions have been given in the 2014 Act, more particularly, the Vending Committee will have to issue a certificate of Vending and the days and timings of carrying on such vending activities, will have to be mentioned therein. That apart, every street vendor will have to hold a certificate, by paying the vending fees, apart from renewal of certificate periodically. In case of breach of any of the conditions, there shall be cancellation or suspension of certificate of vending. Referring to Sections 1 and 2 of the 2014 enactment and contending that the petitioner has got a right to be a street vendor, cannot be claimed as a matter of right, as lot of restrictions are given and that unless and until the place is identified in terms of the provisions of the Act. If the petitioner has got a right to do business, then duty is cast on the respondent to issue certificate and not to disturb him. Even though the petitioner has come forward with an innocuous prayer to dispose of the representation, such a prayer is not going to make any useful purpose except creating one more litigation. Hence, this Court has referred to the provisions of the Act and the petitioner is directed to appear before the Vending Committee and if the petitioner does not satisfy the norms and conditions prescribed by the Vending Committee to carry on the business, she cannot be granted the licence. If the petitioner approaches the Vending Committee to carry on the business, her request shall be considered within a period of one month from the date of her appearance before the Committee.

9. The writ petition is disposed of with the above observations and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

pvs

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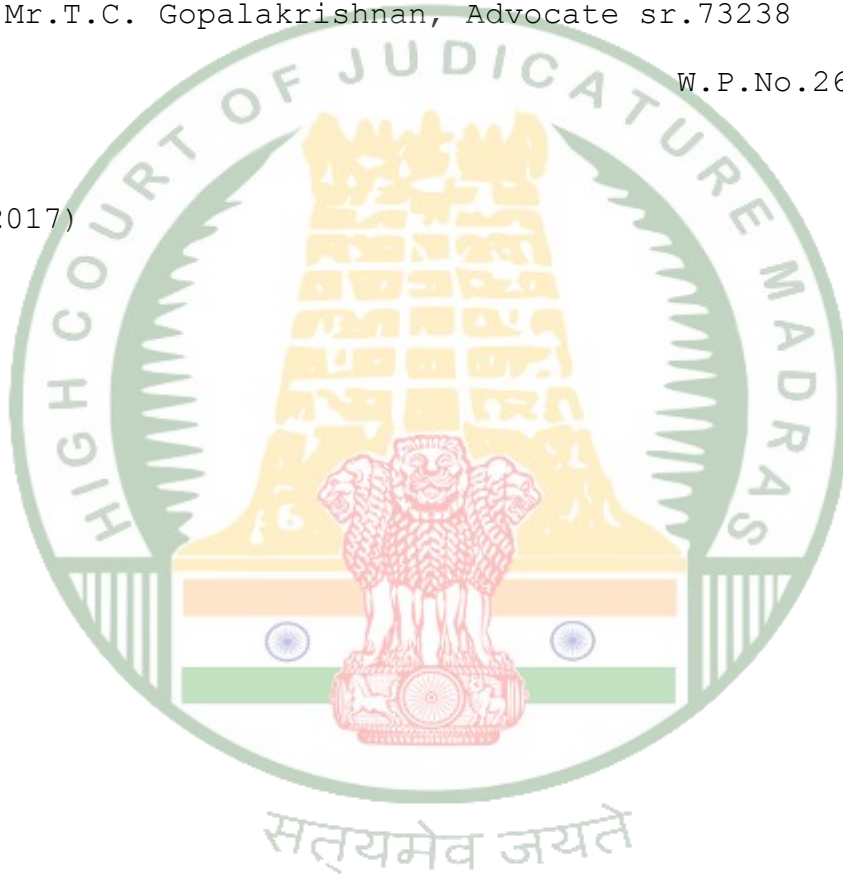
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+ 2 ccs to Mr. K.R.Mahesh, Advocate Sr.73516

+ 1 cc to Mr.T.C. Gopalakrishnan, Advocate sr.73238

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NM(CO)
EU(20/11/2017)



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