

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.27022 of 2017

D.Venkatesan

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Ribbon Buildings,
Chennai-600 003.

2. The Chairperson/
Zonal Executive Engineer Zone VIII,
(The Township Vending Committee),
Corporation of Chennai,
Chennai-600 030

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to consider and pass orders on the petitioner's representation dated 13.09.2017 as per the provisions of the Street Vendors (Protection of Livelihood Regulation) Act, 2014 made for granting permission/certificate of vending and till such time not to disturb with the running of the petitioner's Bunk shop near Shankar IAS Academy, New No.AL-259, 4th Avenue, Shanthi Colony, Anna Nagar, Chennai-600 040.

For Petitioner : Mr.V.Manisekaran

For Respondents : Mr.T.C.Gopala Krishnan

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to consider and pass orders on the petitioner's representation dated 13.09.2017 as per the provisions of the Street Vendors (Protection of Livelihood Regulation and Regulation of Street Vending) Act, 2014 made for granting permission/certificate of vending and till such time not to disturb with the running of the petitioner's Bunk shop near Shankar IAS Academy, New No.AL-259, 4th Avenue, Shanthi Colony, Anna Nagar, Chennai-600 040.

2. It is the case of the petitioner that he is a differently abled person having 60% disability and running a bunk shop in the said place. The Central Government has enacted the said Act for regulating the business of street vendors and in accordance with the said Act, the State Government has to form a Town Vending Committee, which shall declare a zone or part of which to be no vending zone for any street purpose, and the street vendors vending in that area, in such manner as may be specified in the Scheme. As per Section 2(1) of the said Act, the 'street vendors' include the persons who are offering services to the general public in a street, lane, side walk, foot path, pavement etc., in a temporary built up structure also. It is further stated by the petitioner that the State Government and the first respondent formed a Street Vending Committee to regulate the street vending in Chennai, for which, the second respondent is the Chairperson for the Zone and having overall control over the Street Vending Committee. It is the further case of the petitioner that as per Section 3 of the said Act, no 'street vendor' shall be evicted / re-located till the survey specified under sub-section (1) therein had been completed and the Certificate of Vending is issued to all the Street Vendors. On the ground that the bunk shop being run by the petitioner is unauthorised, the officials of the respondents try to interfere with the running of the shop, and hence, the petitioner made a representation dated 13.09.2017 to the second respondent, requesting to grant permission/certificate of vending for continuing his bunk shop business in the said place, and the copy of the said representation has also been sent by the petitioner to the first respondent. Since the petitioner's running of the shop is being interfered with, and since the said representation is still pending, the petitioner has come forward with this Writ Petition for the relief stated supra.

3. Mr.T.C.Gopalakrishnan, learned counsel takes notice for the respondents.

4. Even though no counter affidavit is filed, the learned counsel for the respondents 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 said Act. The petitioner has to approach the Vending Committee, which will identify the place and as per the instructions issued by the Committee, the business will have to be carried on by the petitioner. He further submitted that the petitioner has indirectly approached this Court to dispose of the said representation and thereby continue to run the bunk shop in the place, which cannot be permitted.

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

6. Before dealing with the case, it is useful to extract some relevant provisions of the said Act, as follows:

"Section 2: (1) In this Act, unless the context otherwise requires--

.....
(1) "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 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 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 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 of 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."

6. It is not in dispute that the petitioner is a street vendor carrying on business and it is not known as to whether the petitioner has approached the Vending Committee as per the provisions of the said Act. Even assuming that the petitioner has approached them, as on date, no order has been passed by the respondents. While considering the representation of the petitioner, the entire provisions of the Act, more particularly Section 2(1) of the Act, have got to be taken note of for deciding the issue raised in the Writ Petition. Unless the Vending Zone is identified by the authority on the basis of the recommendations of the Town Vending Committee, the petitioner shall not carry on the business. Lots of restrictions have been given in the said Act, more particularly, that the Vending Committee will have to issue a certificate of vending and the days and timings of carrying on such vending activities will also have to be mentioned therein. That apart, every street vendor will have to hold a certificate, pay the necessary

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 Section 2 of the said Act and contending that the petitioner has got a right to be a street vendor, the petitioner cannot claim it as a matter of right, as lots of restrictions are given and that unless and until the place is identified by the Vending Committee in accordance with the provisions of the said Act, the petitioner cannot claim that he is a street vendor and if he has got right to do business, then duty is cast on the respondents to issue necessary certificate and not to disturb him, and there are detailed procedures to be followed by the respondents to issue such Vending Certificate and there should not be any public disturbances which carrying out the business operations by the street vendor.

7. Even though the petitioner has come forward with an innocuous prayer to dispose of the said representation, such prayer is not going to make any result, except creating one more litigation. Hence, this Court directs the petitioner to approach the Vending Committee in terms of the said Act of 2014, and if the petitioner satisfies with the norms and conditions prescribed by the Vending Committee to carry on the business, then necessary Vending Certificate shall be granted to the petitioner by the Vending Committee in accordance with the provisions of the said Act. If the petitioner approaches the Vending Committee to carry on the street vending business, such request shall be considered within a period of one month from the date of appearance of the petitioner before the Vending Committee.

8. The writ petition is disposed of with the above observations and directions. No costs.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To:

1. The Commissioner,
Corporation of Chennai,
Ribbon Buildings, Chennai-600 003.

WEB COPY

2. The Chairperson/
Zonal Executive Engineer Zone VIII,
(The Township Vending Committee),
Corporation of Chennai, Chennai-600 030

+1 T.C.GOPAL KRISHNAN Advocate SR.NO. 74217

+1 V.MANI SEKARAN Advocate SR.NO. 75023

W.P.No.27022 of 2017

RD 20/11/2017



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