

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.4171 & 4172 of 2018

- | | | |
|-----------------------|------|------------------------------|
| 1. A.T.Mhammed Ismail | | Petitioner in W.P.No.4171/18 |
| 2. K.M.Showkath Ali | | Petitioner in W.P.No.4172/18 |

vs.

- | | |
|---|-------------------------------|
| 1. The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003. | |
| 2. The Chairperson /
Zonal Executive Engineer,
Zone No.XIII,
(The Township Vending Committee),
Greater Chennai Corporation,
L.B.Road, Adyar,
Chennai - 600 020. | ... Respondents in both W.Ps. |

Prayer in W.P.No.4171 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to consider and pass orders on the petitioner's representation dated 12.02.2018 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 Indira Nagar Water Tank, Indira Nagar 2nd Avenue, Indira Nagar, Adyar, Chennai - 600 020, wherein selling Tea, Coffee and Food items by using commercial Gas Cylinder.

Prayer in W.P.No.4172 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to consider and pass orders on the petitioner's representation dated 12.02.2018 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 Indira Nagar Water Tank, Indira Nagar 2nd Avenue, Indira Nagar, Adyar, Chennai - 600 020, wherein selling soup and non veg. items by

using commercial kerosene stove.

For Petitioners: Mr.A.Prakash
in both W.Ps.

For Respondents: Mr.K.Soundararajan,
in both W.Ps. Standing counsel for
Chennai Corporation.

COMMOM ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

Petitioners running a bunk stall at Indira Nagar Water Tank, Indira Nagar 2nd Avenue, Indira Nagar, Adyar, Chennai - 600 020, have sought for a writ of mandamus, directing the Commissioner, Greater Chennai Corporation, Chennai and the Chair Person, Zonal Executive Engineer, Zone NO.XIII, (The Township Vending Committee), Greater Chennai Corporation, Adyar, Chennai, the respondents herein to consider and pass orders on the petitioners' representation dated 12.02.2018, as per the provisions of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (7 of 2014), by granting permission / certificate of vending, and till such time not to disturb with the running of the bunk shop, wherein, food items have been sold. In support of the prayer sought for, petitioners have also relied on an order of this Court made in W.P.No.5000 of 2017 dated 28.02.2017.

2. Considering the limited prayer sought for, Mr.R.Soundararajan, learned standing counsel for Greater Chennai Corporation, is put on notice.

3. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (7 of 2014), has been enacted to protect the rights of urban street vendors and to regulate street vending activities and for matters connected therewith or incidental thereto.

4. Statements of objects and reasons of Act 7 of 2014, are as hereunder:

Street vendors constitute an important segment of the urban population. Street vendors are those who are unable to get regular jobs in the remunerative formal sector on account of their low level of education and skills. They earn their livelihood through their own meagre financial resources and sweat equity.

2. Street vending provides a source of self-employment, and thus acts as a measure of urban poverty alleviation without major Government intervention. Street vending also acts as an instrument to provide

affordable as well as convenient services to a majority of urban population and has a prominent place in the urban supply chain and are an integral part of the economic growth process within urban areas.

3. Given the pace of urbanisation and the opportunities presented through the development of urban areas, the growth of street vendors is likely to have an upward trend. It is vital that these vendors are enabled to pursue their livelihoods in a congenial and harassment free atmosphere.

4. Considering the significant contribution made by street vendors to the urban society as a whole, more specifically to the comparatively poorer sections, and to enable them to earn a livelihood through creation of good working conditions, without causing obstruction to the public, the Government of India brought out revised National Policy on Urban Street Vendors, 2009 which aims at securing right of the citizens to have adequate means of livelihood as enshrined in articles 14, 19(1) (g), 38(2), 39(a), 39(b) and 41 of the Constitution and fostering a congenial environment for the urban street vendors to carry out their activities, without harassment from any quarter. It also aims at providing a mechanism for regulation of street vending activities to avoid congestion on sidewalks and to ensure free flow of traffic on roads by a legislative framework to enable street vendors to pursue a honest living without harassment.

5. Thus, the proposed Bill is aimed at protecting the livelihood rights and social security of street vendors and regulation of urban street vending in the country and ensuring uniformity in the legal framework for street vending across States and Union territories. The proposed Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012, inter alia, seeks to provide for the following, namely:-

- (a) compulsory registration of every person intending to carry out street vending activities;
- (b) issue of a certificate of vending and identity cards to street vendors;
- (c) certain rights of street vendors;
- (d) certain duties of the street vendors;
- (e) constitution of Town Vending Committee in each local authority with minimum forty per cent. representation of street vendors, out of which one-third shall be women vendors and reasonable representation of the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and persons with disabilities;
- (f) making of a plan for street vending once in every five years;

(g) framing of a scheme relating to street vending by the appropriate Government;

(h) redressal of grievances and resolution of disputes of street vendors;

(i) promotional measures for making available credit, insurance and other welfare schemes of social security for the street vendors;

(j) street vendors not to be prevented by any person or police or any other authority from exercising their right to vend when carrying on street vending in accordance with the terms and conditions of certificate of vending.

5. Section 2(1) defines "street vendor" as follows:

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.

6. Chapter II of the Act, deals with 'Street Vending' and Section 3 deals with Survey of street vendors and protection from eviction or relocation and the same is extracted hereunder.

"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."

7. Section 4 deals with issue of certificate of vending and the same is reproduced:

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.

8. Section 5 deals with Conditions for issue of certificate of vending and it reads thus:

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."

9. Section 6 of the Act, deals with Categories of certificate of vending and issue of identity cards and the same is as follows:

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.

10. Section 7 of the Act, sets out the Criteria for issuing certificate of vending and it reads thus:

7. The criteria to be followed by the Town Vending Committee for issuing certificate of vending to a street vendor shall be as specified in the scheme, which may, apart from other things, provide for preference to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, women, persons with disabilities, minorities or such other categories as may be specified in the scheme.

11. Section 10 of the Act, deals with Cancellation or suspension of certificate of vending.

10. Where a street vendor who has been issued a certificate of vending under this Act commits breach of any of the conditions thereof or any other terms and conditions specified for the purpose of regulating street vending under this Act or any rules or schemes

made thereunder, or where the Town Vending Committee is satisfied that such certificate of vending has been secured by the street vendor through misrepresentation or fraud, the Town Vending Committee may, without prejudice to any other fine which may have been incurred by the street vendor under this Act, cancel the certificate of vending or suspend the same in such manner as may be specified in the scheme and for such period as it deems fit:

Provided that no such cancellation or suspension shall be made by the Town Vending Committee unless an opportunity of hearing has been given to the street vendor.

12. Chapter - III deals with Rights and obligations of Street Vendors. Chapter IV deals with Relocation of Street Vendors, their eviction and procedure for confiscation of goods. CHAPTER V deals with Dispute Redressal Mechanism. CHAPTER VII deals with Town Vending Committee.

13. As per Section 22 of the Act,

"(1) The appropriate Government may, by rules made in this behalf, provide for the term and the manner of constituting a Town Vending Committee in each local authority: Provided that the appropriate Government may, if considers necessary, provide for constitution of more than one Town Vending Committee, or a Town Vending Committee for each zone or ward, in each local authority.

(2) Each Town Vending Committee shall consist of:-

(a) Municipal Commissioner or Chief Executive Officer, as the case may be, who shall be the Chairperson; and

(b) such number of other members as may be prescribed, to be nominated by the appropriate Government, representing the local authority, medical officer of the local authority, the planning authority, traffic police, police, association of street vendors, market associations, traders associations, non-governmental organisations, community based organisations, resident welfare associations, banks and such other interests as it deems proper;

(c) the number of members nominated to represent the non-governmental organisations and the community based organisations shall not be less than ten per cent.;

(d) the number of members representing the street vendors shall not be less than forty per cent. who shall be elected by the street vendors themselves in such manner as may be prescribed:

Provided that one-third of members representing the street vendors shall be from amongst women vendors:

Provided further that due representation shall be given to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and persons with disabilities from amongst the members representing street vendors.

(3) The Chairperson and the members nominated under sub-section (2) shall receive such allowances as may be prescribed by the appropriate Government.

14. Though, Mr.K.soundararajan, learned standing counsel for the Greater Chennai Corporation submitted that there is no vending committee, in terms of G.O.(4D) No.5, Municipal Administration and Water Supply (MCI) Department dated 05.10.2016, perusal of the order made in W.P.No.5000 of 2017 dated 28.02.2017, upon hearing the submissions of the parties therein, Hon'ble the First Bench of this Court, has directed the Vending Committee Constituted vide G.O.(4D) No.5, Municipal Administration and Water Supply (MCI) Department dated 05.10.2016, to consider the representation of the petitioner therein dated 27.01.2017 and to pass appropriate orders, in accordance with law, within a period of three months from the date of receipt of a copy of the said order and till such time, no coercive action be taken against the petitioner therein.

15. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (7 of 2014), has come into force from the date on which the Central Government has notified, in the Government Gazette i.e. 05.03.2014.

16. During the course of hearing, submission has been made by one of the learned counsel present in Court that hawking zones have been notified. However, when statute contemplates issuance of certificate, and right to carry on business of street vending in accordance with the terms and conditions mentioned in the certificate of vending, and when a representation is made by the street vendors, it is the duty of the competent authority to consider such representation and pass appropriate orders. Representation of the petitioners viz., Mr.A.T.Mohammed Ismail, differently abled [W.P.No.4171 of 2018] and the other petitioner Mr.K.M.Showkath Ali, a senior citizen [W.P.No.4172 of 2018], is stated to have been acknowledged by the Commissioner, Greater Chennai Corporation, Chennai, on 12.02.2018.

17. Following the orders made in W.P.No.5000 of 2017 dated 28.02.2017 and in the light of the statutory provisions, we direct the respondents to consider the representation of the petitioners dated 12.02.2018, respectively and pass suitable

orders on merits and in accordance with The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (7 of 2014), within a period of two months, from the date of receipt of a copy of this order, till such time, no coercive action be taken.

18. With the above directions, both the writ petitions are disposed of. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.
2. The Chairperson /
Zonal Executive Engineer,
Zone No.XIII,
(The Township Vending Committee),
Greater Chennai Corporation,
L.B.Road, Adyar,
Chennai - 600 020.

+2 Ccs to Mr.A. Prakash Advocate sr 14435, 14436.

+2 Ccs to Mr.K. Soundararajan, Advocate sr 14696 & 14697.

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W.P.Nos.4171 & 4172 of 2018

SP(09/03/2018)

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