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

% *Date of Judgment: 18th July, 2018*

+ **W.P.(C) 7355/2018**

HAWKERS WELFARE COMMITTEE AND ANR. Petitioners

Through: Mr M.M. Kashyap, Adv

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through: Ms Jyoti Taneja, Adv for NDMC

Mr G.D. Mishra, Adv for R-2

Mrs Sangeeta Chandra, Adv for R-3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No. 28151/2018 (exemptions)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 7355/2018 and CM No. 28150/2018 (stay)

1. This is a petition under Article 226 of the Constitution of India. The same has been instituted by Hawkers Welfare Committee being petitioner No. 1 and Karol Bagh Patri Vyapar Mandal being petitioner No. 2. Both the petitioners claim to be espousing the cause of squatters/hawkers street vendors for the last many years. The petitioners seek the following prayers:-

“(a) Kindly issue a Writ of Mandamus Or Any Other Appropriate Writ, Order and/or direction in favour of members of the Petitioner and against the Respondent giving direction to all the three Respondents EDMC, NDMC and SDMC not to combine the list of eligible tehbazari holders of Chopra Committee with the list of 2007 claimants and new street vendors; and/or

(b) Kindly issue a Writ Of Mandamus Or any other appropriate Writ, Order and/or directions in favour of petitioner and against the Respondent giving direction to all the three Respondents EDMC, NDMC and SDMC in view of the orders passed by the Hon’ble Supreme Court that the Chopra Committee eligible tehbazari holders are not subject to scrutiny and/or in anyway whatsoever;”

2. Mr Kashyap, learned counsel for the petitioners, submits that the necessity of filing this writ petition has arisen on account of an order passed by this Court on 03.07.2018 in W.P(C) Nos. 6672/2018 and 6673/2018 whereby this Court has directed to combine the list of the Chopra Committee eligible teh bazari holders and Thareja Committee teh bazari holders with the other street vendors for forming the Town Vending Committee (TVC) by conducting elections. It is also the grievance of the petitioners that in the aforesaid order, the Court also included other licence holders and permission holders with the normal street vendors who are claimants under the new policy framed by the MCD. The learned counsel also points out that the counsels appearing for the respective three Corporations viz South Delhi Municipal Corporation, East Delhi Municipal Corporation and North Delhi Municipal Corporation made statements before the court for combining the list of eligible teh bazari holder of Chopra Committee members. It is submitted that by passing the aforesaid order, the High Court did not

take into consideration three orders passed by the Supreme Court of India as per which the decision rendered by Sh. Chopra was declared to be final and cannot be a subject matter of scrutiny of any Court. In the light of this background, the prayers which we have extracted above have made.

3. We have heard the learned counsel for the parties. To appreciate the statements so made by the learned counsel for the petitioners, we deem it appropriate to extract the relevant paragraph of the orders passed by the Supreme Court which have been referred to and relied upon by Mr Kashyap. The first order sought to be relied upon is an order dated 01.05.1997. The relevant paragraph of the order relied upon by learned counsel is extracted below:-

“It is clarified that whatever decision is rendered by Shri Chopra on these representations, shall be final and shall not be subject to scrutiny of any court. It is also made clear that his Court will also not undertake any review against the decision of Shri Chopra and the decision of Shri Chopra and the decision of Shri Chopra shall be treated as final and binding on the concerned squatter as well as on the MCD.”

4. The second order relied upon by Mr Kashyap is an order of 16.04.1999. The relevant paragraph relied upon by learned counsel is extracted below:-

“We may reiterate that whatever ultimate report is submitted by Shri Chopra shall be final and shall not be subject to scrutiny of any court including this Court as already decided by us by our earlier order dated 1st May, 1997.”

5. The third order relied upon by Mr Kashyap is an order dated 05.05.2000. The relevant paragraph is extracted below:

“By our order dated 1.5.1997 we have already clarified that whatever decision is rendered by the Chopra Committee shall be final and shall not be subject to scrutiny of any court. It is also made clear that this court will also not undertake any review against the decision of Shri Chopra and the decision of Shri Chopra shall be treated as final and binding on the concerned squatters as well as on the MCD.”

6. The fourth order relied upon by learned counsel for the petitioners is an order dated 25.08.2005. Relevant portion is extracted below:-

“However, that will not affect the rights of those already granted valid licenses under the Scheme finalized by the MCD. However, he states that in executing the National Policy, preference will be given to those squatters/hawkers eligible for allotment under the existing scheme based on their seniority and priority of claim.”

7. We also deem it appropriate to extract the relevant paragraph of the order dated 03.07.2018 passed by the court in W.P.(C) 6672/2018 of which Mr Kashyap is aggrieved of.

“8. Reading of the Rule 13 would show that for the formation of the first Town Vending Committee, the election is to be conducted from amongst the street vendors who had (i) applied in 2007 scheme in MCD/NDMC; (ii) street vendors whose names find mentioned in the list prepared by Chopra Committee and Thareja Committee; and (iii) other vendor who have been issued a license or any other form of permission by the local authorities.

9. After some hearing in the matters, learned counsels appearing for the Corporations submits, on instructions, that as far as prayers (a) and (b) are concerned, the respective Corporations would have no objection. They submit that the list prepared by the Chopra Committee and the common list of applications prepared pursuant to the

*2007 Scheme and also the eligible street vendors whatever is available would be uploaded on the website within two days, if not already done. As far as Prayers (c), (d) and (e) are concerned, learned counsels for the Corporations have drawn the attention of the Court to an order passed by the Supreme court in petition for Special Leave to Appeal (C) No. 7617/2016 dated 07.05.2018 in the case of **Mazhar Ali & Ors. Vs. South Delhi Municipal Corporation & Ors.** The aforesaid order reads as under:*

*“Upon hearing the counsel the Court made the following
ORDER*

The Commissioner of South Delhi Municipal Corporation, i.e. Mr. Puneet Kumar Goel, is present in Court pursuant to our order dated 3rd May, 2018. He states that the electoral roll will be finalized by the end of the month and objections have been invited already.

We made it clear that the date of 31st May, 2018 will not be extended under any circumstances for dealing with the objections.

He further states that the election will take place within a period of three months thereafter, i.e., sometime in the month of August, 2018.

List the matter in the first week of September, 2018.

The Commissioner of South Delhi Municipal Corporation need not remain present o the next date of hearing.”

8. We have repeatedly requested Mr Kashyap to explain how the order passed on 03.07.2018 is in any manner in contravention to the observations made by the Supreme Court of India in the paragraphs which we have extracted hereinabove to which we have received no specific answer.

9. W.P.(C) 6672/2018 in which the order dated 03.07.2018 was passed by this Court was filed by two organisations namely, Delhi Pradesh Rehri Patri Khomcha Hawkers Union and Janodaya Ekta Samiti (Regd.). The prayers so made in the writ petitions are as under:-

- (a) “Issue appropriate writ/order or direction directing the South Delhi Municipal Corporation and East Delhi Municipal Corporation to display the zone wise voter list prepared by the Corporations as on 16.06.2018 on the basis of documents submitted by the street vendors who have applied under the Scheme of 2007.*
- (b) Issue appropriate writ/order or direction directing the South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation to display the zone wise list of all those street vendors who have applied in 2007 and who are eligible for voting under Rule 13 of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2017.*
- (c) Direct the South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation to give public notice announcing 15 more days time for submission of documents to such street vendors who could not submit their documents due to lack of public notice and at the same time allow such street vendors who have submitted their documents to raise objections, if any, against the list already prepared.*
- (d) Direct the South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation to verify the documents of such street vendors who have lost their receipts*

issued in 2007 on the basis of list available with the MCD.

(e) Direct the South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation to take the documents of such street vendors who are dependent of those who applied in 2007 and work at the place of the applicant.”

10. The petitioners in the aforesaid writ petitions were aggrieved by the entire procedure adopted by the Corporations for conducting the first election for the formation of the TVC. The petitioner were aggrieved by the fact that the list of voters was not displayed either on the notice board or uploaded on the website. The Corporations, however, submitted that they proposed to conduct elections by following Rule 13 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2017. In this backdrop, this Court had extracted Rule 13 in paragraph 7 of the order and rendered an explanation in para 8 of the order. Since the order passed is a short order, we deem it appropriate to reproduce the entire order to lend clarity as to what led to the passing of the aforesaid order.

“1. Two organizations, namely, Delhi Pradesh Rehri Patri Khomcha Hawkers Union and Janodaya Ekta Samiti (Regd.) & another have filed W.P.(C) Nos.6672/2018 & 6673/2018 respectively. Mr.Ramesh Kumar Mishra, counsel for the petitioners submits that the prayers made in both the writ petitions are identical. Accordingly, for the sake of convenience, the facts in W.P.(C) 6672/2018 are being noticed and wherever the word ‘petitioners’ is being used, it would relate to W.P.(C) 6672/2018 wherein the

following prayers have been made:

“(a) Issue appropriate writ/order or direction directing the South Delhi Municipal Corporation and East Delhi Municipal Corporation to display the zone wise voter list prepared by the Corporations as on 19.06.2018 on the basis of documents submitted by the street vendors who have applied under the Scheme of 2007.

(b) Issue appropriate writ/order or direction directing the South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation to display the zone wise list of all those street vendors who have applied in 2007 and who are eligible for voting under Rule 13 of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2017.

(c) Direct the South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation to give public notice announcing 15 more days time for submission of documents to such street vendors who could not submit their documents due to lack of public notice and at the same time allow such street vendors who have submitted their documents to raise objections, if any, against the list already prepared.

(d) Direct the South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation to verify the documents of such street vendors who have lost their receipts issued in 2007 on the basis of list available with the MCD.

(e) Direct the South Delhi Municipal Corporation,

North Delhi Municipal Corporation and East Delhi Municipal Corporation to take the documents of such street vendors who are dependent of those who applied in 2007 and work at the place of the applicant.”

2. Counsel for the petitioners submits that the entire procedure adopted by the Corporations for conducting elections fixed on 15.07.2018 for the formation of the Town Vending Committees is flawed as the Corporations have failed to upload and display the complete voters list on the official websites and notice boards of the Corporations. Counsel further submits that the Corporations are proposing to carry out elections without following Rule 13 of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2017. Counsel for the petitioners further contends that as per Rule 13, the first Town Vending Committee is to be formed after conducting elections from amongst the street vendors who had applied in the 2007 scheme in the MCD/NDMC plus street vendors whose names find mentioned in the list prepared by the Chopra Committee and Thareja Committee and also any other vendor who has been issued a licence or any other form of permission by the local authorities. Counsel also contends that the Corporations had given a public notice calling upon the street vendors to produce documents for verification and for which sufficient time was not granted forcing the petitioners in W.P.(C). 6672/2018 to approach this Court and this Court had directed the Corporations to give reasonable notice of 30 days to the street vendors to submit documents for verification. Counsel for the petitioners submits that after the verification as per his information barely 10% persons have been found eligible and, thus further time should be granted to the street vendors to file objections.

3. Another grievance of the petitioners is that the Corporations are not uploading the notices and lists on the website, resulting in great inconvenience to the street

vendors as the lists are displayed on the notice boards which are removed leaving the street vendors completely helpless and at the mercy of the touts.

4. Counsel for the petitioners thus, prays that the Corporations be directed to forthwith display and upload the list of voters on the websites and further reasonable opportunity be granted to the street vendors to file objections.

5. Learned counsels appearing for the Corporations have opposed these petitions, firstly on the ground of delays and latches. It is submitted that the petitioners were well aware of the procedure which is being adopted by the Corporations. The petitioners had filed an earlier writ petition praying that sufficient time be granted to the street vendors to produce documents for verification. Counsels contend that in case of any grievance, the petitioners should have pointed out the same in the writ petition so filed or soon after the first public notice which was issued way back in the month of April, 2018. Counsel further submits that the sole attempt of the petitioners is to derail the elections process. Counsels for the respondents also submit that the Corporations have not flawed Rule 13. It is contended that the procedure for verification is not unknown prior to holding elections. It is submitted that the object of verification of documents of the street vendors is to weed out dead voters and with a view to avoid bogus voting. It is further pointed out that the combined list of Chopra Committee and street vendors who had applied in the 2007 scheme was prior to the division of the Corporation into three zones in the year 2012. Learned counsels submit that to enable the Corporations to prepare the lists zone-wise, the verification was necessary.

6. We have heard the learned counsels for the parties.

7. Rule 13 of Street Vendors (Protection of Livelihood and

Regulation of Street Vending) Act, 2017 reads as under:

“13. Election to the elected member of Town Vending Committee-

(1) The first Town Vending Committee will be formed after conducting elections from amongst Street vendors who had applied in 2007 scheme in MCD/NDMC plus Street Vendors whose names find mentioned in the list prepared by Chopra Committee and Thareja Committee. The electors will also include any other vendor who has been issued a license or any other form of permission by the local authorities whether as a statutory vendor, mobile vendor or under any other category before commencement of the Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

Provided that the initial Town Vending Committee will discharge its function as for the purpose of survey and the issue of certificate of vending and it shall ensure that once the survey is complete, the elections are conducted within six months.

Provided further the Commissioner/CEO/Chairperson of the local authorities may conduct subsequent elections after revision of its electoral rolls from time to time.”

8. Reading of the Rule 13 would show that for the formation of the first Town Vending Committee, the election is to be conducted from amongst the street vendors who had (i) applied in 2007 scheme in MCD/NDMC; (ii) street vendors whose names find mentioned in the list prepared by Chopra Committee and Thareja Committee; and (iii) other vendor who have been issued a license or any other form of permission by the local authorities.

9. After some hearing in the matters, learned counsels

appearing for the Corporations submits, on instructions, that as far as prayers (a) and (b) are concerned, the respective Corporations would have no objection. They submit that the list prepared by the Chopra Committee and the common list of applications prepared pursuant to the 2007 Scheme and also the eligible street vendors whatever is available would be uploaded on the website within two days, if not already done. As far as Prayers (c), (d) and (e) are concerned, learned counsels for the Corporations have drawn the attention of the Court to an order passed by the Supreme Court in petition for Special Leave to Appeal (C) No.7617/2016 dated 07.05.2018 in the case of **Mazhar Ali & Ors. Vs. South Delhi Municipal Corporation & Ors.** The aforesaid order reads as under:

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He further states that the election will take place within a period of three months thereafter, i.e., sometime in the month of August, 2018.

List the matter in the first week of September, 2018.

The Commissioner of South Delhi Municipal Corporation need not remain present on the next date of hearing.”

10. Learned counsels for respondents submit that in case prayers (c), (d) and (e) are considered, it would amount to violation of the order passed by the Supreme

Court of India dated 07.05.2018 wherein the Supreme Court has made it clear that no extension is to be granted under any circumstances for dealing with the objections.

11. Counsel for the petitioners insists that this Court should allow the street vendors to file objections prior to conducting of elections. Counsel for the petitioners submits that objections could not have been decided by 31.05.2018 as objections were not invited by the Corporations. Counsel for the petitioners further submits that despite the orders of the Court, no public notice was given in the newspapers by the North DMC and EDMC. He submits that time was extended and the notice of extension of time was displayed only on their notice boards, websites and not inserted in the newspapers. However, counsels for the EDMC and North DMC submit that notices were displayed on their website and on the notice boards and thus no prejudice was caused to the street vendors.

12. Based on the submissions made by the respective counsels for the Corporations, on instructions of their respective officers present in the Court, Prayers (a) and (b) made in the writ petitions are allowed.

13. However, counsels for the Corporations have opposed prayers (c), (d) and (e) on the ground that in case objections are invited at this stage, the elections will have to be postponed and even otherwise, such a direction would in violation of the orders passed by the Supreme Court.

14. We find force to the submissions made by the counsels for the Corporations. The petitioners were well-aware of the procedure being adopted by the Corporations for conducting the elections which is evident upon the fact that an earlier writ petition was filed by them seeking extension of time for filing of documents for verifications.

In case the petitioners were aggrieved by the procedure which was being followed by the Corporations, they should have approached this Court at the earliest point of time. We are also of the view that in case the objections are invited, at this stage it would not only result in elections being postponed but would also be in violation of the orders passed by the Supreme Court of India. Accordingly, the prayers (c), (d) and (e) are declined.

15. With these directions, the writ petitions stand disposed of.

CM.APPL 25395/2018 in W.P.(C) 6672/2018
CM.APPL 25396/2018 in W.P.(C) 6673/2018

16. The applications stand disposed of in view of the orders passed in the writ petitions.

17. Dasti.”

11. In our view, in the order dated 03.07.2018, we had not issued any direction to any Corporation, in any manner, to revisit the report of the Chopra Committee. We had in no way observed that the names of the Chopra Committee be reviewed. We had not, in any portion of the order, in any manner observed that the list prepared by the Chopra Committee should not be considered. In fact, the rule makes it clear that the list of voters would, amongst others, comprise of members of the Chopra and Thareja Committee.

12. We had, at the very outset, on hearing of this writ petition observed that this petition deserves to be dismissed, but the learned counsel had insisted to argue the matter and took considerable time of the Court. We find this writ petition to be highly misconceived and a gross abuse of the process of the Court.

13. We find no merit in the writ petition. The same is accordingly dismissed.

14. **CM No. 28150/2018 (stay)**

Application also stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 18, 2018
SU