

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 391 OF 2014

Azad Hawkers Union & Anr.

.. Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors.

.. Respondents

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- Mr. Rakesh Kumar & Ms. Kajal Thallapalli i/by M/s. Legal Vision for the Petitioners
 - Mr. A.Y. Sakhare, Sr. Advocate a/w Ms. Vandana Mahadik for Respondent Nos. 1 to 4 - BMC
 - Ms. Uma Palsule-Desai, AGP for Respondent No. 5 - State
 - Mr. Bhushan N. Patil, Market Inspector of P/N Ward is present.
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CORAM : AKIL KURESHI &
B.P. COLABAWALLA, JJ.

DATE : NOVEMBER 4, 2019.

P.C.:

1. The petitioner No. 1 is an association of hawkers claiming to be selling fish since long at Sainath Mandai, Malad (W). The petitioners have made multiple prayers, all revolving around their rights emanating from the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 ("**the Act of 2014**" for short). The Corporation has filed reply opposing the prayers made by the

petitioners briefly on the ground that the site at which the members of the petitioner association wish to carry on their businesses is a designated market created by the Municipal Corporation, a portion of which is dedicated to fish selling vendors. According to the Corporation, the members of the petitioner association are carrying on their businesses illegally. In this context, this Court in an order dated 30.1.2013 passed in Notice of Motion No. 8 of 2013 in Writ Petition No. 1922 of 2009 (Coram : A.M. Khanwilkar and K.K. Tated, JJ) had made following observations:-

"4. Counsel for the Corporation, however, submits that much water has flown after the said decisions which are pressed into service. The Corporation has already stopped issuing pavis and instead have started giving licenses to the vendors who are permitted to do business from the stated premises. Those are known as legal vendors and any other occupant of the premises will have to be considered as illegal vendor.

5. The fact as to whether the applicants are legal vendors or illegal vendors is a matter which has to be examined by the Appropriate Authority of the Corporation. The applicants have already made representation vide legal notice dated 17th November, 2012. If so, the authorised officer of the Corporation before taking any action against the applicants, must consider the said representation and pass reasoned order to be communicated to the concerned applicant within two weeks from today and depending on the finding recorded in the said order,

proceed against the concerned person in accordance with law.

6. In our opinion, no further indulgence can be shown to the applicants and in any case, in the pending petition the issue as to whether the applicants are legal vendors or otherwise, cannot be adjudicated which may be a disputed question of fact. That has to be considered as aforesaid by the Appropriate Authority of the Corporation in the first place."

2. In response to the said directions contained in paragraphs 5 and 6 in the above quoted portion of the order of the High Court, the Asstt. Superintendent (Market) of the Corporation passed an order on 4.3.2013 which reads as under:-

" In respect of above subject, it is mentioned here that, you had filed writ petition in the Hon. High Court on 17th November, 2012 about the fish vendors selling wet fish in fish division in Sainath Market, whether they are authorized and / or unauthorized.

Prior to year 2006, the receipts were issued for sale of fish daily to the wet fish vendors regularly. Thereafter, in the year 2006, as per Municipal Corporation Resolution No. 57 dt. 21.4.2006 of Standing Committee Resolution No. 1375 dt. 8.3.2006, the licenses were given to 140 daily wet fish vendors in Market Division with the approval of the Competent Officer and the monthly rent was to be recovered. Therefore, the daily fish selling receipt used for sale of fish daily earlier have been outdated.

Therefore, the Hon'ble Court has informed by their judgments on 30.1.2013 that all other fish vendors other than said 140 fish vendors in Sainath Road Market are unauthorized (petitioners). Therefore, if unauthorized vendor is found while selling fish in Market, then the action will be initiated against them."

3. Perusal of this order would show that instead of considering the representation of the members of the petitioner association and passing a speaking order as directed by this Court, the said Authority has merely proceeded on the basis that the High Court has considered the said vendors as unauthorized vendors and therefore, representation was rejected. In our opinion, this is not a correct way of dealing with the entire issue. When the High Court had required the Competent Authority to examine the representation of the members of the association and pass a speaking order thereon, such exercise would have been carried out. The said authority, instead wrongly proceeded on the basis that the High Court has held them as unauthorized vendor.

4. Under these circumstances, the said order is set aside. The competent authority shall pass a fresh order giving

reasons in support of its conclusions preferably within four weeks from today. All the safeguards provided in the order of the High Court dated 30.1.2013 shall *mutatis mutandis* be applied till the fresh order is passed as directed. If the members of the petitioner association wishes to place any further material before the said Authority, they may do so within a period of two weeks from today.

5. The Writ Petition is disposed of with above directions. We have not expressed any opinion on the contentions of both sides.

[B.P. COLABAWALLA, J.]

[AKIL KURESHI, J]

Ravindra M. Amberkar
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Date: 2019.11.05 10:25:16 +0530