

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6728 OF 2021**

Maharashtra Pheriwala Kranti Maharasangh ...Petitioner
Versus
Pimpri-Chinchwad Municipal Corporation & Ors ...Respondents

Mr Kaustubh Gidh, with Kranti LC, for the Petitioner.
Mr Rohit Sakhadeo, for Respondents Nos. 1 & 2 -PCMC.
Mr Parag Vyas, for Respondent No. 4- UOI.
Mr SB Kalel, AGP, for the Respondent-State.

**CORAM G.S. Patel &
Neela Gokhale, JJ.**
DATED: 7th February 2023

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1. We are not inclined to continue the ad-interim order. Events have overtaken the Petition and it is not possible to maintain some status quo of several years prior. Apart from anything else, as Mr Sakhadeo Pimpri Chinchwad Municipal Corporation (“PCMC”) points out, routine administrative action against illicit and ineligible hawkers is obstructed because the PCMC is constantly confronted with stay orders. Copies of court orders are shown to Municipal Officers whenever an eviction drive is undertaken.

2. The prayers in the Petition read at pages 43 from prayer clauses (a) to (d) read thus:

“(a) That this Honourable Court may be pleased to issue a writ of mandamus and/ or writ, order or direction in the nature of mandamus to the Respondent No. 1 set and quash aside Order dated 02/09/2021 issued by the Pimpri-Chinchwad Municipal Corporation, Municipal Commissioner at **EXHIBIT E** qua instructions pertaining to Street Vendors.

(b) That this Honourable Court may be pleased to issue a writ of mandamus and/or writ, order or direction in the nature of mandamus directing the Respondent No 3 to;

i. Issue a scheme as per the provisions of Section 38 of the Street Vendors Act.

ii. Issue a Plan as per the provisions of Section 21 of the Street Vendors Act.

c. That this Honourable Court may be pleased to issue a writ of mandamus and/or writ, order or direction in the nature of mandamus directing the Respondent No 2 to issue Vending Certificates to the Street Vendors who though Surveyed have not been issued Vending Certificates are issued vending Certificates within 30 days.

d. That this Honourable Court may be pleased to issue a writ of mandamus and/or writ, order or direction in the nature of mandamus directing the Respondent No. 1 to;

i. Conduct elections to determine Hawker Representative members for the Town Vending Committee.

ii. Notify Hawking and No Hawking Zones on the basis of the recommendations of the Town Vending Committee having elected representatives of Hawkers.”

3. Our attention is also drawn to a judgment of a Division Bench of this Court of AS Oka J (as he then was) and Revati Mohite Dere J in *Shri Vile Parle Kelvani Mandal & Ors v MCGM & Ors*.¹ Our attention is also drawn to the order made by a Bench of BR Gavai J (as he then was) and MS Karnik J in *Azad Hawkers Union & Ors v Union of India & Ors*.²

4. The judgment in *Azad Hawkers Union (supra)* sets out a detailed analysis of the scheme of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 and its preceding street vendors' and hawkers' schemes. From paragraph 61 onwards we find the conclusion in *Azad Hawkers Union*. A procedure is set out involving conducting a survey and holding periodic elections of the street vendors committees as also identification of hawking zones. Eligible hawkers are to be issued hawking licenses. Mr Sakhadeo points out that the prayers sought are vague and in generalities and do not address themselves to the specific conditions in the command area of the PCMC. He points out that in fact the reasoning is circular. On the one hand, the submission is made that there should be vending licenses issued to eligible vendors. It is then said that this should be on the basis of a 2014 survey as referenced in the *Azad Hawkers Union* matter. This excludes others who may be eligible post-2014. Consequently, the demand for license issuance seems to be self-contradictory: it proceeds on the footing that no further eligibility needs to be examined, and that all eligibility is frozen as of 2014.

1 Writ Petition No. 224 of 2011, decided on 23rd October 2015.

2 Writ Petition No. 652 of 2017, decided on 1st November 2017.

5. To answer this, the PCMC has set about conducting a fresh survey, but this is being objected to by these Petitioners themselves. Then there is the question of identifying hawking and non-hawking zones but this has to be on the base of recommendations of the Town Vending Committee. The Town Vending Committee (“TVC”) must have elections. Without those elections being held there is no Town Vending Committee and Zones cannot be identified. But the election process to the TVCs is interrupted because there is now the question of whether the local corporators/councillor should be allowed to be a part of each TVC as a guest, invitee, nominee, ex-officio member or must contest elections. The State Government is said to be considering a uniform policy. For Mumbai, corporators have been permitted to attend as invitees and nothing more. One does not know whether these “invitees” will have a vote or even a say or whether they are there merely as observers.

6. In the meantime, Mr Sakhadeo points out, street vendors who are entirely ineligible seek protection from removal on the basis that there is an ad-interim order that protects them.

7. The 2014 Act requires the preparation of a scheme and a plan.. None of the previous interim orders can come in the way of the Respondent Corporation removing or taking action against any vendor who is found to be ineligible, that ineligibility having been ascertained following a procedure according to law. There is no blanket protection to an unauthorised and ineligible street vendor. If there was, there would be civic chaos. We are making it clear that we

are not prepared to accept generalised submissions, e.g., that none of the hawkers in Pimpri-Chinchwad are ineligible or that none of the eligible ones can be monitored for violation of their Vending Licenses. It is open to the Corporation to take action for violation of the conditions of the license and for hawking without a license in accordance with law. Interim orders cannot and do not protect such cases.

8. Our attention is lastly drawn to an Affidavit dated 10th June 2022, filed by the State Government from pages 149 onwards. In particular, reference may be had to the 12th April 2022 communication by the State Government. The context of this two-page Affidavit is important. Paragraphs 1 to 4 from pages 150 to 151 are reproduced below:

“1. I have perused the above Writ Petition along with Exhibits annexed thereto. I am filing this Affidavit in Reply on the basis of the office record available in my office. I crave leave of this Hon’ble Court to file additional affidavit, if so required

2. I say & submit that, the Maharashtra Street Vendors (Protection of Livelihood and Regulating of Street Vending) (Maharashtra) Rule, 2016 has been published vide Notification dated 03.08.2016. Similarly, the Street Vendors (Protection of Livelihood and Regulating of Street Vending) (Maharashtra) Scheme, 2017 has been published on 09.01.2017.

3. I say and submit that, vide letter dated 23.11.2017 the Urban Development Department has issued instructions to all Municipal Corporations and Municipal Councils that to take action as per the Order dated 01.11.2017 in Writ Petition No. 652/2017 along with other Petitions. Copy of

the letter dated 23.11.2017 of Urban Development Department is annexed herewith and marked as Exhibit-1. According, the present status of 407 Civil Local Bodies is as follows :-

Street Vendor Committee :- Street Vendor Committee has been constituted in 255 Civil Local Bodies and Street Vendor Committee is yet to be constituted in 152 Civil Local Bodies.

The Survey :- Out of 225 Civil Local Bodies who have constituted Street Vendor Committee, 86 Civil Local Bodies have completed the survey of Street Vendors and Survey proceedings in 130 Civil Local Bodies are underway. Survey has not been started yet in 39 Civil Local Bodies.

Also, Survey is not started in 152 Civil Bodies where Street Vendor Committee if not yet formed.

4. I further say and submit that vide letter dated 12.04.2022 the State Government has appointed Commissioner and Director Municipal Council Administration as “Cordinator Officer” to restor the hawker scheme and implement as per the Order dated 01.11.2017 of the Hon’ble court and to seek objections and suggestions in consultation with the Street Vendor Committee. Similarly, by this letter Director Municipal Council Administration has been informed that, to submit draft of the Hawker Scheme to the Government for approval within 6 month Copy of the letter dated 12.04.2022 of the State Government is annexed herewith and marked as Exhibit-2.”

9. This Affidavit is filed by Shankar Jadhav, the then Deputy Secretary Urban Development Department. We have no reason to find fault with that Affidavit. Notably it sets out that two distinct sets of rules have already been brought into force.

10. There is further a letter of 23rd November 2017 to all Municipal Corporations and Municipal Councils to act according to the order of 1st November 2017 in the *Azad Hawkers Union*. The Affidavit sets out of status of 407 civil and local bodies. This clearly mentions the survey/s carried out. Thus the submission that corporations are limited to the 2014 survey is not one that commends itself to us. A coordinating officer has been appointed on 12th April 2022. The draft of the scheme is to be submitted for approval within six months. Mr Sakhadeo explains that there is a delay, but this is because a fresh survey is being done to frame a proper scheme. That fresh survey is almost complete.

11. Mr Sakhadeo draws our attention to 13th January 2023 communication from the PCMC in which there is a listing of recent actions taken (from items 1 to 5 on the second page). A copy of this communication is taken on record and marked “X1” for identification on today’s date.

12. There is no question of continuing any generalise interim protection in this fashion. Like every other citizen, a hawker is protected against the illegal or illicit activity by a public body. There can be no procedural irregularity, or irrationality. But this does not mean that an illegality by a vendor, (for example, vending without a licence or in breach of a licence or in areas not permitted under the Act) will go unnoticed or will be protected.

13. The Petition is disposed of in these terms.

14. We leave it open to individual vendors to approach the Court in appropriate cases if so advised.

15. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)