



\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 179/2017

MAHESH CHAND

.....Petitioner

Through: Ms. Aastha Dhawan and Mr.
Vedic Thukral, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

& ANR

.....Respondents

Through: Mr. Sriharsha Peechara, SC and
Mr. Akshat Kulshrestha, Adv.
for NDMC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

%

11.12.2024

CM APPL. 65393/2024 (Direction) in W.P.(C)-179/2017

1. This application has been moved for substitution of the legal heirs in a writ petition that has been disposed of. We find that the writ petition had come to be disposed of with the Court proceeding on the premise that the name of the original writ petitioner was included in the list of 628 surveyed street vendors.

2. We bear in mind the principles which came to be laid down by the Court in **Kishwari Begam v. New-Delhi Municipal Council**¹ and more particularly to the following operative directions which were framed:-

“6. Admittedly, no *tehbazari* license had been issued to the petitioner's deceased husband and therefore, the petitioner's claim that she be substituted in place of her deceased husband as a licence holder in the records of NDMC cannot be acceded to. The list of 628 eligible street vendors, which was prepared in the year 2012 was based on the applications made by the street vendors who were found to be carrying on the vending activities at the material time. Several of such street vendors had approached the Court and

¹ 2024 SCC OnLine Del 6376



on the said basis, NDMC had drawn up a list of eligible street vendors. Some of those street vendors who have been continuously carrying on the vending activities were granted protective orders on the principle that all the street vendors who were carrying on activities at the time when the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (hereafter the *Street Vendors Act*) came into force, were entitled to such protection under Section 3(3) of the Street Vendors Act.

7. Except as noted above, the 628 eligible street vendors are not required to be provided any special status. Since the petitioner's deceased husband, whose name is mentioned in the list of 628 street vendors has expired, it cannot be assumed that the petitioner is required to be substituted in his place. It is also important to note that Connaught Place (Rajiv Chowk and Indira Chowk) has been declared as No-Vending Zone. Therefore, the petitioner has no right to carry on street vending activities in the said area only on the ground that she is the legal heir of a street vendor, who she claims was unauthorizedly vending in the said area.

8. Mr. Sahoo, learned counsel appearing for the petitioner has drawn the attention of this Court to Rule 13 of the Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2017 (hereafter the *Vending Rules*) and has stated that all the street vendors whose name find mention in the list prepared by the Chopra Committee and Thareja Committee would be entitled to participate in the elections for the first Town Vending Committee (hereafter *TVC*).

9. He submits that by virtue of Rule 13 of the Vending Rules, the petitioner's deceased husband had a right to participate in the elections. He submits that the petitioner being a sole legal heir of her deceased husband ought to be entitled to exercise the said right. In addition, Mr. Sahoo also referred to Para 3.3 of the Government of National Capital Territory of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2019 (hereafter *Scheme*) which sets out the criteria for issuing certificate of vending (COV) for street vendors. Para 3.3 of the said scheme is set out below:-

“3.3 The criteria for issuing certificate of vending to street vendors

(3.3.1) The certificate of vending shall be issued to a registered street vendor in compliance with Section 2.1.1.

(3.3.2) The allotment of vending space shall be subject to demarcation of vending zones pursuant to Section 8.5, available vacancies on time-sharing basis and holding capacity.

(3.3.3) In case the number of applicants exceeds the



available number of vending spaces determined, or exceeds 2.5% of the total population, the allotment will be made by seniority, that is, based on descending order of duration of vending activities at the current site, subject to categorical reservations described in Section 6.2. For a single vending site, allotment amongst the registered street vendors shall be made by draw of lots in case of oversubscription.

(3.3.4) The preference shall be given to Persons with Disability and Women in accordance with Section 6.2.

(3.3.5) The vendors who could not be issued COY as per their first choice shall be accommodated, subject to availability, from a list of locations ranked in order of vendor preference, to avoid non-issuance altogether.

(3.3.6) Not more than one member of a family (consisting of spouse and dependent children) be given a Certificate of vending.

(3.3.7) The area/street where temporary vending is to take place will be notified by the TYC as outlined in Chapter 8.

(3.3.8) Categorization, demarcation and holding capacity of vending zones shall be decided by the Local Body in consultation with the TVC as outlined in Chapter 8.

(3.3.9) A Certificate of Vending will be subject to limited renewal in accordance with Chapter 4.

(3.3.10) The Local Body shall maintain an updated waiting list for oversubscribed vending zones for consideration in case of future availability of holding capacity. Such a waiting list shall be made available to applicants online ”

10. It is submitted that the petitioner being the sole legal heir of her deceased husband is also entitled to be accorded some seniority for the purpose of allocation of vending spaces. He also relies on Section 5(2) of the Street Vendors Act which reads as under:-

“5. (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”



11. In the present case, the petitioner's deceased husband had not been issued any COV under the Street Vendors Act. However, there is no dispute if such a certificate had been issued, the petitioner would be entitled to have her name included in the COV in place of her deceased husband, as his widow.

12. Although, the petitioner's deceased husband had not been issued any COV, we are of the view that the same benefit ought to be made available to the petitioner as well. The petitioner cannot be prejudiced by the delay in issuance of COV or implementation of the Street Vendors Act. Consequently, we find merit in Mr. Sahoo's contentions that the petitioner would have the right to participate in the elections of the TVC in place of her deceased husband as stipulated under Rules 13 of the Vending Rules.

13. There is also no cavil with Mr. Sahoo's contention that, once the petitioner's claim is verified, she would also be accorded the benefit of the criteria for allocation of *tehbazari* license as stipulated under paragraph 3.3 of the Scheme.

14. In view of the above, we consider it apposite to dispose of the present petition by directing that the petitioner would be entitled to exercise the same rights as her deceased husband was under Rule 13 of the Vending Rules and would be accorded the benefit of seniority as her deceased husband would have been entitled to in terms of paragraph 3.3 of the Scheme, if he was alive, at an appropriate stage.

15. The present petition is disposed of in the above terms.”

3. In view of the aforesaid and since no substitution on that list can possibly be permitted, we find no justification to substitute the writ petitioners in the cause that has been disposed of.

4. However, the writ petitioners would be entitled to take benefit of the liberty which was granted to legal heirs and stands recorded in the penultimate directions which were framed by the Court in *Kishwari Begam*.

5. Subject to the aforesaid, this application stands disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 11, 2024/gunn