



2024 JRC: 614



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

+ **CONT.CAS(C) 667/2023 & CM APPL. 25888/2023**

LAVKUSH

..... Petitioner

Through: Mr. Bibhuti Bhushan Mishra with
Mr. Anjani Kumar Mishra, Mr. Dipak
Raj, Mr. Kamlesh Kr. Mishra,
Mr. Aditya, Mr. Kailash Kr. Jha,
Ms. Samishti Solomon and
Ms. Megha Gupta, Advocates.

versus

MS. AISHWARYA SINGH AND ORS.

..... Respondents

Through: Mr. Dhanesh Relan, SC with
Mr. Aditya Pandey, Advocate for
respondent/MCD.
Ms. Rachita Garg with Mr. Aditya
Malhotra, Advocate for
respondent/SHO/State.
(M): 7838066417

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Date of Decision: 25th January, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present contempt petition has been filed alleging non-compliance of the order dated 10th April, 2023 passed by the Division Bench of this Court in *W.P. (C) No. 4362/2023*.



2. The petitioner had filed the aforesaid writ petition seeking directions to the respondents to ensure that the petitioner is allowed to peacefully vend on his vending site i.e. on the open space near Building No. 17-18, PVR Complex, Saket, South Zone, Ward S-67, New Delhi without any hindrance being caused by any public official. There were other prayers also which were sought by the petitioner.
3. The facts on record show that the petitioner has been issued a Certificate of Vending (“COV”) dated 16th November, 2021 allowing him to vend in South Zone, Ward S-67. The COV shows that in the column under the head “Type of Vendor”, the category of the petitioner has been shown as “*others*”.
4. Since the Municipal Corporation of Delhi (“MCD”) and police officials caused hindrance to the petitioner and the MCD confiscated the goods of the petitioner, the petitioner filed the aforesaid writ petition.
5. In the writ petition, there was a specific prayer by the petitioner for directions to the MCD to correct the nomenclature in the column for vending type from “*others*” to “*stationary street vendor*”. However, the writ petition of the petitioner was allowed partly with the directions that the petitioner shall be permitted to vend within the South Zone, Ward S-67, strictly in compliance with the terms and conditions of the COV and in accordance with the law.
6. Learned counsel appearing for the petitioner submits that by way of the aforesaid order dated 10th April, 2023, the petitioner had been allowed to vend from his vending site. Therefore, the action of the respondent MCD in not allowing him to vend from one particular place and not allowing him to squat for more than 30 minutes by treating him as a mobile vendor, is



absolutely wrong, as the petitioner is a stationary vendor.

7. Learned counsel for the petitioner relies upon Section 6 of *The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014* (“Street Vendors Act, 2014”). He submits that in terms of Section 6, the petitioner is shown in the “other” category and not as a “mobile vendor”. Therefore, he cannot be treated as a “mobile vendor”. He further relies upon *Annexure A* and *Annexure B* of “*The Government of National Capital Territory of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2019*” (“Street Vendors Scheme, 2019”). By reference to *Annexures A and B* of the said Scheme, it is submitted that the “Type of Vendor” and “Type of Vending” are two separate categories. He submits that the respondents in the COV issued to the petitioner, have reflected only the “Type of Vending” and not the “Type of Vendor”. He submits that in the column of “Type of Vendor” in the COV, only type of vending has been noted. Thus, he submits that the petitioner being a “stationary vendor” cannot be disturbed by the respondents.

8. Learned counsel for the petitioner submits that the petitioner ought to have been categorized as “stationary vendor”. He further submits that the condition in the COV pertaining to the “mobile vendors” would not be applicable to the petitioner. To support this argument, he submits that the petitioner, at the time of survey, has been shown vending at a particular site.

9. On the other hand, learned standing counsel for the MCD vehemently disputes the submissions made on behalf of the petitioner. He refers to the COV to show that the petitioner is not a “stationary vendor”. He further relies upon the conditions of the vending certificate, in particular to condition no. 11, wherein it is categorically stipulated that mobile vendors



shall not stay or vend for more than 30 minutes or time prescribed by the Town Vending Committee (“TVC”). He further relies upon the Street Vendors Scheme in order to show that there are different categories of street vendors. He submits that the petitioner is not shown as a “static/stationary vendor” in the COV, therefore, he cannot claim to be a “stationary vendor”. He further relies upon the judgments passed by the Division Bench of this Court in various cases in order to submit that the very concept of vending itself envisages that the vendor shall not squat at one static place.

10. He further refers to the order dated 10th April, 2023 passed by the Division Bench to contend that the prayer of the petitioner with respect to treating him as a “stationary street vendor” has not been allowed by the Division Bench. He further submits that in case the petitioner has any grievance, he ought to approach the TVC, as directed in the order itself.

11. I have heard learned counsel for the parties and perused the record.

12. At the outset, this Court notes the order dated 10th April, 2023 passed by Division Bench in *W.P. (C) No. 4362/2023*, for alleged disobedience of which the present contempt petition has been filed. The said order dated 10th April, 2023 reads as under:-

“The present writ petition under Article 226 of the Constitution of India, has been instituted on behalf of the petitioner, praying as follows:-

‘In the facts and circumstances stated herein above, it is Most Respectfully prayed that this Hon’ble Court may graciously be pleased to:

I. Pass an Order directing the respondents to ensure that that the petitioner is allowed to peacefully vend on his vending site i.e., On the open space, Near Building No. 17-18, PVR Complex, Saket, South Zone, Ward-S-67, Delhi without any hindrance being caused by any public official.

II. Pass an order directing the respondents, their officials, their agents etc. be restrained from harassing



the petitioners from peacefully vending at their vending sites.

III. Pass an order directing the SHO, PS Saket to ensure that the petitioner street vendor shall not be forcefully removed from his vending site.

IV. Pass an order directing the respondent MCD to correct the nomenclature in the column for vending type from others to stationary street vendor as detailed in the vending certificate issued to the petitioner.

V. Pass an order for quashing and setting aside the terms of certificate of vending printed at the back side of the vending certificate to the extent which is not applicable to a stationery street vendor.

VI. Pass any such directions or order that this Hon'ble Court deems fit and proper in the facts and circumstances of the above-mentioned case

Issue notice.

Counsel as above, accept notice on behalf of respondent nos. 1, 2 and 3.

*It is an admitted position that pursuant to the survey carried by the concerned Town Vending Committee, Mr. Lavkush, has been issued a certificate of vending dated 06.11.2021, which is annexed as **Annexure P-2**, to the present writ petition.*

*In view of the foregoing, learned counsel appearing on behalf of the petitioner, limits the relief in the present writ petition, to a direction to the Municipal Corporation of Delhi, to permit Mr. Lavkush to continue to vend within the **South Zone, Ward-S-67**, strictly in compliance with the terms and conditions of the said certificate of vending and in accordance with law.*

In view of the foregoing, the present writ petition is partly allowed; and the Municipal Corporation of Delhi is directed to permit Mr. Lavkush, to vend within South Zone, Ward-S-67, subject to the terms and conditions of the said certificate of vending dated 06.11.2021, without let or hindrance.

Needless to state that the petitioner will be at liberty to articulate the difficulties faced by him, before the appropriate authorities, in accordance with law, in relation to the certificate of vending, insofar as it employs the expression 'Others'.

No further directions are prayed for.

With the above directions, the writ petition is disposed of accordingly. The pending application also stands disposed of.

Copy of the order be uploaded on the website of this Court."



13. Perusal of the aforesaid clearly shows that the petitioner had specifically prayed in his writ petition before the Division Bench that the respondent MCD should correct the nomenclature in the column for vending type from “others” to “stationary street vendor”. However, the said prayer of the petitioner had not been allowed. Rather, the Division Bench had categorically directed that the petitioner would be at liberty to approach the appropriate authorities in accordance with law in relation to Certificate of Vending, in so far as it employs the expression “others”.

14. Further, the order passed by the Division Bench only allowed the petition of the petitioner partly, thereby directing the petitioner to vend in South Zone, Ward S-67, subject to the terms and conditions of the COV dated 06th November, 2021. Therefore, there is no direction by the Division Bench to treat the petitioner as a “stationary vendor”.

15. At this stage, it is also relevant to note the provisions of the Street Vendors Act, 2014, wherein under Section 6, the various categories of vending have been detailed as follows:-

“Section 6. Categories of certificate of vending and issue of identity cards.

(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 restriction 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.”



16. It may also be relevant to note the relevant provisions of the Street Vendors Scheme, 2019 with respect to the various categories of street vendors. Thus, under Chapter 6 of the Street Vendors Scheme, 2019, the various categories of street vendors are articulated, as follows:

“CHAPTER-6

6.1. The categories of street vendors.

(6.1.1) There shall be following categories of vendors:

I. Static/ Stationery Vendors

II. Mobile Vendors or Peripatetic Vendors

III. Others (Daily/weekly/festival /fair market/ temporary etc. as may be categorized by Local Body in consultation with TVC)

The TVC may also recognize new forms of vendors and markets as appropriate in the area served.

(6.1.2) Static Vendors means those who carry out vending from a single place/location throughout the day, without establishing a fixed structure (temporary or permanent) at the place of vending.

(6.1.3) Mobile or Peripatetic vendors means those vendors who carry out vending on foot including those who carry baskets on their heads/ slung on their shoulders. Mobile vendors also include vendors who move from place to place vending their goods or services on pushcarts, bicycle or mobile units on motorized wheels.

(6.1.4) Weekly Bazaar Vendors means vendors who participate in weekly bazaars and sell their goods/ services in weekly Bazaars.

(6.1.5) Temporary Vendors means vendors who in normal course do not perform street vending, but on special occasions and seasons, such as festivals or fairs, vend their wares as street vendors for a short period.

(6.1.6) Night bazaar vendors means vendors who vends in a designated night bazaar during the period notified by the local body in consultation with TVCs.

(6.1.7) The Local Body in consultation with the TVCs shall:

a. allocate sufficient space for temporary 'Vendor Markets' e.g. Weekly haats, Rehri markets, night bazaars, festival bazaars, food streets/ street food marts at suitable locations whose use at other times may be different e.g. public parks, exhibition grounds, parking lot, etc. keeping in view demand for services of the vendors;

b. Establish vending timing restrictions in accordance with the need to ensure non-congestion of public spaces/ maintaining public hygiene

c. Ration hawking space to be resorted if street vendors numbers exceed the space available, with priority must be given to vendors based on length of time vending in the current location as defined in Section 3.3.3.

d. Ensure ample parking area for expected vehicular traffic and for



mobile vendors to store vehicles and wares at night on payment of prescribed fee.

(6.1.8) No vendor shall be entitled for registration/ issuance of COV for more than one category of vending.”

17. Reading of the aforesaid clearly shows that wherever a vendor is considered as a “stationary vendor”, the same is to be specified as a “stationary/static vendor”. Further, this Court notes that there is a category of vendors, who are categorized as “others”. The petitioner in the present case is also categorized as a vendor under the category “others”. Therefore, it is clear that the petitioner has certainly not been categorized as a “stationary vendor”. Therefore, the petitioner cannot as such claim to vend from one particular site.

18. The Division Bench in W.P. (C) No. 3168/2022 in the matter of “*Court on its Own Motion Versus Government of NCT of Delhi and Others*” has categorically held that a vendor has no right to occupy the place of vending round the clock or to keep his or her articles at the place of vending continuously. It has been clearly stated by the Division Bench that a vendor can only come to the vending site allotted to him during the hours of vending, which is permitted under the terms of license. The order dated 21st April, 2022 passed in W.P. (C) No. 3168/2022 (*supra*), reads as under:-

“xxx xxx xxx

CM APPL. 19252/2022

This application has been moved by a set of street vendors who claim that they have been issued certificates of vending by the corporation and the effect of the order dated 24.03.2022 passed by this Court, directing removal of encroachments, will result in them being uprooted from their place of vending. The applicants, therefore, seek leave to intervene in the matter and a restrain against their removal.

*Vide our order dated 24.03.2022, we have only directed removal of encroachments in the area. **A certificate of vending only entitles the street vendor to vend in terms of the conditions on which the license is granted. The vendor has no right to occupy the place of vending***



around the clock and to keep his/her articles at the place of vending continuously. He could only come to the vending site allotted to him during the hours of vending which is permitted under the terms of the license, and he should leave the place at the end of such hours, with all his belonging and goods.

We, therefore, do not find any merit in this application and the same is, accordingly, dismissed
xxx xxx xxx.”

(Emphasis Supplied)

19. Similarly, in the judgment dated 10th October, 2023, in W.P. (C) No. 12827/2023, titled as “**Mukesh Kumar Gupta Vs Municipal Corporation of Delhi and Others**”, the Division Bench of this Court has categorically held as under:-

“xxxx xxx xxx

6. In terms of the Certificate of Vending issued to the petitioner, it is clearly stipulated he cannot vend from any particular location, contrary to the express terms of Clause no. ‘11’, of the said Certificate of Vending. It is further observed that since the Town Vending Committee (TVC) is yet to fix a time limit, providing for a period during which a vendor can vend from any particular spot, the stipulation of 30 minutes time contained in the said clause, is binding on the petitioner at this stage. Learned counsel appearing on behalf of the petitioner states that he does not pray for his relief of running his business from any particular vending site, within the zone where he has been permitted to vend by the Municipal Corporation of Delhi, and further, the solitary relief that is prayed for is to permit the petitioner to vend, strictly in accordance with the terms and conditions of the Certificate of Vending dated 06.11.2021, issued by the Municipal Corporation of Delhi.

7. It is an admitted position that the Town Vending Committee (TVC), has in terms of the directions issued by this Court, from time to time, as well as, in terms of the mandate of **Section 3 (Survey of street vendors and protection from eviction on relocation)** and **Section 4 (Issue of certificate of vending) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014**, carried out a survey, in some of the areas under the MCD zones; pursuant to which, the petitioner, namely **Mr. Mukesh Kumar Gupta**, has been issued a Certificate of Vending dated **07.11.2021 (URI: 1850955)** in the category of “**Food/Snack with gas cylinder/fire**” which is annexed as **Annexure P-3** to the present writ petition.

8. In view of the foregoing, learned counsel appearing on behalf of the



petitioner, limits the relief in the present writ petition, to a direction to the Municipal Corporation of Delhi, to permit the above-mentioned street vendor, to continue to vend within **City-SP Zone, Ward-83-N**, strictly and scrupulously in compliance with the terms and conditions of the said certificate of vending.

9. In view of the above, the present writ petition is partly allowed; and the Municipal Corporation of Delhi is directed to permit the abovementioned street vendor, to vend within his respective zone, subject to the terms and conditions as specified in the certificate of vending, without any let or hindrance.”

20. Thus, it is clear that any vending activity has to be carried out strictly in terms of the conditions as stipulated in the COV.

21. It may also be relevant to note that delving on the aspect of street hawking and vending, in the case of **Suleman Abbas and Others Versus North Delhi Municipal Corporation and Others¹**, it has been held as follows:-

“xxx xxx xxx

13. Secondly, the concept of Tehbazari and Street Hawking and Vending does not envisage that the hawkers or vendors would occupy - round the clock, any particular place, or erect on the allotted site any structure - whether permanent or temporary, much less, on their own. All that the Supreme Court observed in the aforesaid order was that the MCD was proposing to allow the Tehbazari/vending sites to be covered - wherever possible, for which standard design would be evolved by the Corporation. It does not mean that the hawkers and vendors can occupy permanently, or even round the clock, Tehbazari/vending sites. The activity of Tehbazari/vending itself postulates that the activity would be carried out only on the days the said activity is permitted; during the times of the day when such activity is permitted, and within the area, within which the activity is permitted. There is no question of any hawker or vendor, staking a claim to occupy any public space in the name of hawking and vending, round the clock, by placing a lockable structure with shutters-temporary or otherwise, at the site and converting the same into a shop, where the hawker/vendor and his goods can permanently remain round the clock.

xxx xxx xxx”

¹ 2022 SCC OnLine Del 258



(Emphasis Supplied)

22. In view of the aforesaid, it is clear that the petitioner herein cannot seek to vend in violation of the terms and conditions of the COV, that does not show the petitioner as a “stationary vendor”.

23. The order dated 10th April, 2023 passed by the Division Bench in *W.P. (C) No. 4362/2023* is very categorical that in case the petitioner has any grievance, the petitioner has liberty to approach the appropriate authorities. Therefore, this Court holds that the respondents have not committed any willful disobedience or violated the order dated 10th April, 2023 passed by the Division Bench. The respondent MCD has acted within its authority and has not committed any violation of the aforesaid order.

24. It is relevant to note here that while adjudicating contempt proceedings, Court cannot enter into issues that have not been dealt in the judgment, of which compliance is sought. If no specific directions have been issued in the original judgment, then no additional and further directions can be passed in contempt proceedings. Thus, in the case of ***Jhareswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others***², Supreme Court has held as follows:-

“xxx xxx xxx

II. *The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and*

² (2002) 5 SCC 352



caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.

12. Judging the case in hand on the touchstone of the principles noted above, we find that the directions issued by the Division Bench in the impugned judgment in effect granted substantive reliefs not covered by the judgment/order passed in the original proceeding. In the judgment, no direction was issued by the High Court that the writ petitioners will be admitted to the cadre of Upper Division Clerks/Assistants in the Directorate. As noted earlier, they have all along been holding the posts of Clerk-cum-Cash Collector which are ex cadre posts. Entry of such persons into the cadre of Upper Division Clerks/Assistants has to be considered taking into account various aspects of the matter. It is one thing to say that the benefits under the government order may be extended to the writ petitioners also and extending benefits of the government order to the



writ petitioners is one thing and directing their entry into the existing cadre of Office Assistants is a different thing. Such a dispute can only be determined on consideration of all relevant aspects of the matter and cannot be and should not be ordered in the summary proceeding for taking action for contempt of court. If the High Court felt that the grievance of the writ petitioners relating to the question of their entry into the cadre of Upper Division Clerks/Assistants has not been dealt with by the Court and specific direction has not been issued while disposing of the writ petitions/appeals then the appropriate course was to leave it to the parties (writ petitioners) to agitate the matter before the competent forum. Further the question of entry of holders of ex cadre posts, like the writ petitioners, into an existing cadre is a matter of policy which the Government has to decide. Be it noted here that on consideration of the matter the High Court held that no action for contempt of court need be taken against the respondents in the writ petition for deliberate disobedience of the judgment or order passed by the High Court. Thereafter it was not open to the court to pass any order granting substantive relief to the applicants (writ petitioners) on the plea that the question raised was also a part of their grievance in the writ petition.

xxx xxx xxx”

(Emphasis Supplied)

25. Similarly, holding that in a contempt jurisdiction, the Court will not issue any supplementary or incidental direction, Supreme Court in the case of *V. Senthur and Another Versus M. Vijayakumar, IAS Secretary, Tamil Nadu Public Service Commission and Another*³, has held as follows:-

“xxx xxx xxx

15. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order.

xxx xxx xxx”

(Emphasis Supplied)

26. In view thereof, this Court holds that no case of contempt is made out against the respondents. In case the petitioner has any grievance with respect



2024 DRC: 614



to the expression “*others*” used in the Certificate of Vending, the petitioner is at liberty to approach the Town Vending Committee in this regard, in terms of the liberty granted by the Division Bench in its order dated 10th April, 2023.

27. No further orders are required in the present contempt petition.

28. Accordingly, the present contempt petition is disposed of in the aforesaid terms.

**(MINI PUSHKARNA)
JUDGE**

JANUARY 25, 2024

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³ 2021 SCC OnLine SC 846