

BOMBAY HAWKERS' UNION AND ORS.

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v.

BOMBAY MUNICIPAL CORPORATION AND ORS.

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July 3, 1985.

[Y.V. CHANDRACHUD, C.J. AND A.P. SEN, JJ.]

Bombay Municipal Corporation Act, 1888 sections 313, 313—A, 314(3) and 497, whether violative of Article 19(1) (g) of the Constitution—Right to carry on trade, business or calling by hawkers on footpaths and on public streets—Merits and feasibility of a scheme for the licencing of hawkers in Greater Bombay by creating hawking zones by the Municipal Commissioner, dated 23 November, 1983—Modalities to be adopted for the purpose of hawking and non-hawking zones.

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There are about 1,50,000 hawkers in the city of Bombay, one sixth of them being women. Broadly, there are three types of hawkers—those who have four-wheeled carts, those squat on the streets numbering about 1,20,000 and the rest who have stalls to enable them to stand and sell their wares. They sell almost everything under the sun, from hairpins to hot food and vegetables to video cassettes. They hawk their wares standing or squatting on public streets, which constitutes a serious impediment to the free movement of pedestrian and vehicular traffic. Some of the streets in Bombay are so incredibly flooded with merchandise sold by hawkers that it is impossible for the pedestrians to walk on those streets. The Bombay Municipal Corporation has been making herculean efforts to clear the streets of these and other obstructions but, those efforts have met with intense opposition from several quarters.

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The Bombay Hawker's Union, a trade which has a large number of hawkers on its membership roll and which has been unsuccessfully negotiating with the Municipal authorities for the creation of a hawker's zone and for granting adequate number of licences to hawkers to enable them to carry on their trade and business, along with petitioner No. 2 the President of the Bombay Hawker's Union and incidentally a corporator has challenged the Constitutional validity of the provisions of sections 313, 313-A, 314(3) and 497 of the Bombay Municipal Corporation Act, 1888 on the ground that they confer upon the respondents unguided power to refuse to grant or renew licences for hawking and to remove the goods without affording to the hawkers an opportunity to be heard. There writ petitions were filed by those who carry on the business of hawking, contending that they have a fundamental right to carry on their trade business or calling, with which the respondents are unlawfully interfering by arbitrarily refusing to grant or renew licences for hawking, which renders them liable to be removed along with their goods, from places where they do their business.

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A During the pendency of the writ petition, on the intervention of the Court, the Municipal Corporation formulated a scheme for the licencing of hawkers in Greater Bombay by creating hawking zones. Preferring to adopt "non liquet" as to the validity of the challenge by the petitioners to certain provisions of the Bombay Municipal Corporation Act, the Court considered the merits and feasibility of the scheme and suggested modalities to be adopted by the Corporation in so far as hawking and non-hawking zones are concerned.

B Disposing off the writ petitions, the Court,

C HELD : 1.1 The right conferred by Article 19(1) (g) of the Constitution to carry on any trade or business is subject to the provisions of clause (b) of that Article, which provides that nothing in sub-clause (g) of Article 19(1) shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. Here, the affidavits filed on behalf of the respondent in unmistakable terms show that the impugned provisions of the Bombay Municipal Corporation Act are in the nature of reasonable restrictions, in the interests of the general public, on the exercise of the right of hawkers to carry on their trade or business. [855 C-D]

D 1.2 No one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. Public streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the centre of busy thoroughfares, thereby paralysing all civic life. Indeed, that is what some of them have done in some parts of the city. They have made it impossible for the pedestrians to walk on footpaths or even on the streets properly so called.

[855 E-G]

F 2.1 As to the merits and feasibility of the scheme formulated for the licencing of hawkers in Greater Bombay by creating hawking zones formulated by the Municipal Commissioner in letter No. MDG/2418 dated 30th September, 1983, and in particular the eight conditions subject to which the Commissioner proposes to grant licences to the hawkers, no exception can be taken to conditions (i), (ii), (iii), (iv), (vii) and (viii) except that conditions (ii) and (viii) require a little modification. The first part of condition (ii) beginning with the words "they should not put up any stall" and ending with the words "nor should they hawk on handcarts" may stand. But, the second part of that condition should not be construed to mean that the hawkers will not be entitled even to protect their wares against the sun, rain, wind and so on, by spreading a cloth, plastic sheet, chaddar, tarpaulin etc. The object of that condition is to ensure that no construction is put up and no handcarts are used. In so far as condition No. (viii) is concerned, all that it should be understood to mean is that the fact that a daily fee is charged will not confer upon the hawker the right to do his business at any particular place. That is because, the daily fee is a kind of licence fee to do business it is not a fee charged for doing business

at any particular place. The Commissioner will, therefore, be free to impose conditions (i), (ii), (iii), (iv), (vii) and (viii) while granting licences to the hawkers in the Hawking Zones, after making the necessary clarifications in conditions (ii) and (viii). [859 GH-H 860 A-C]

2.2 Condition (v) is an unreasonable restriction on the hawkers' right to carry on their trade or business. There are several working families in Bombay, belonging to different strata of society, which depend upon the food supplied by hawkers. The hawkers cannot be denied the right to sell cooked food, cut fruits and the like. That will, of course, not confer upon them the licence to sell adulterated or unhygienic food. They shall have to comply, like any other vendor of food, with the Municipal licencing regulations and the provisions of the Prevention of Food Adulteration Act, 1954. [860 C-D]

2.3 The hours of business mentioned in condition (vi) should be from 7 A.M. to P.M. instead of 7 A.M. to 9 P.M. In cities like Bombay, nights are quite young at 10 P.M.[860 D-E]

3. In so far as Hawking and non-hawking Zones are concerned, the Commissioner should adopt the following modalities :-

(a) As far as possible, there should be one Hawking Zone for every two contiguous municipal wards in Greater Bombay.

(b) The Non-Hawking Zones may be fixed by the Municipal Commissioner in his discretion, in consultation with the Bombay Municipal Corporation.

(c) In areas other than the Non-Hawking Zones, licences should be granted to the hawkers to do their business on payment of the prescribed fee. That will be without prejudice to the right of the Commissioner to extend the limits of the non-Hawking Zones in the interests of public health, sanitation, safety, public convenience and the like.

(d) Hawking licences should not be refused in the Hawking Zones except for good reasons. The discretion not to grant a hawking licence in the Haking Zones should be exercised by the Commissioner reasonably and in public interest.

(e) In future, before making any alteration in the scheme the Commissioner should take into confidence all public interests, including the hawkers, the Commissioner of Police and representative associations of the public such as the one which appeared before us. Hawkers have the right to do their business, subject to reasonable restrictions in the interests of the general public. The Police Commissioner is in the best position to speak about the law and order problem as well as the traffic hazards created by street trading. The general public has a stake in showing how and why the hawking trade should

A be regulated. The power conferred upon the Commissioner by section 313-A of the Act to grant licences to hawkers is in the nature of a discretion coupled with a duty. It is, therefore, essential that the said power should be exercised by consulting all concerned interests and guided by considerations of what is in the interests of the general public. The scheme framed by the Commissioner will have a binding effect on all concerned. [860 E-H,861A-D]

B ORIGINAL JURISDICTION : Writ Petitions Nos. 5602-5605 of 1983

Under Article 32 of the Constitution of India

C *Miss Indira Jai Singh and Miss Kamini Jaiswal* for the Petitioners.

K. K. Singhvi, K. K. Venugopal, D.N. Mishra, Karadhkar, M. N. Shroff, Ms. Manik Karanjawala and S. Manik Karanjawala for the Respondents.

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The Judgment of the Court was delivered by

E CHANDRACHUD, C J. : These writ petitions are filed by and on behalf of a large number of hawkers who carry on the trade of hawking their wares in Greater Bombay. They sell almost everything under the sun, from hairpins to hot food and vegetables to video cassettes. They hawk their wares standing or squatting on public streets, which constitutes a serious impediment to the free movement of pedestrian and vehicular traffic. Standing, of course, is safer than squatting because, it ensures easy mobility at the sight of Municipal or police officers. Mobile hawkers decorated with a hundred ball pens, like war-medals, is quite a common sight in Bombay. Constraints of modern times have created ingenious methods of trading. Some of the streets in Bombay are so incredibly flooded with merchandise sold by hawkers that it is impossible for the pedestrians to walk on those streets. The Bombay Municipal Corporation has been making herculean efforts to clear the streets of these and other obstructions but, those efforts have met with intense opposition from several quarters, not unexpectedly, even from those who wield considerable political influence. In the ultimate analysis, it is the ballot-box that matters. This tug-of-war or the game of hide-and-seek between the Corporation and the hawkers led recently to a serious incident in which an officer of the Corporation engaged in the task of

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demolishing unauthorised constructions put up on public streets, was shot at. He survived but, such is the magnitude of the problem.

Petitioner 1 is the Bombay Hawkers' Union, a Trade union which has a large number of hawkers on its membership roll. It has been negotiating with the Municipal authorities for the creation of a hawkers' zone and for granting adequate number of licences to hawkers to enable them to carry on their trade and business. There are about 1, 50, 000 hawkers in the city of Bombay, 1/6th of them being women. Broadly, there are three types of hawkers - those who have feur-wheeled carts, those who squat on the streets and those who have stalls. The largest amongst these are the squatting hawkers who number about 1,20,000. Petitioner 2 is the Persident of the Bombay Hawkers' Union and is also a Corporator. The other three petitioners carry on the business of hawking.

Respondent 1 is the Municipal Corporation of Greater Bombay, respondent 2 is the State of Maharashtra, respondent 3 is the Municipal Commissioner, while respondent 4 is the Commissioner of police.

The contention of the petitioners is that they have a fundamental right to carry on their trade, business or calling and that the respondents are unlawfully interfering with that right. The petitioners complain that respondents 1 to 3 arbitrarily refuse to grant or renew licences for hawking, which renders the hawkers liable to be removed along with their goods, from places where they do their business. By these writ petitions, the petitioners ask for a declaration that the provisions of sections 313, 313-A, 314 (3) and 497 of the Bombay Municipal Corporation Act, 1888 are void since, they confer upon the respondents an arbitrary and unguided power to refuse to grant or renew licences for hawking and to remove the goods without affording to the hawkers an opportunity to be heard.

These writ petitions were heard from time to time when, several suggestions were made and possibilities explored for evolving a staisfatory solution to the problems faced by both the sides. It was eventually decided and, a consensus emerged between the parties that the Municipal Commissioner should frame a scheme for regulat-

A ing the grant of licences to hawkers and for creating hawkers' zones wherever necessary. In pursuance of this understanding, several meetings were held between the officers of the Bombay Municipal Corporation and, the members of the Hawkers' Committee of which the Mayor of Bombay was the Chairman. By his letter dated **B** May 6, 1983 the Municipal Commissioner proposed a scheme, which is annexed as Exhibit I to the affidavit of Digambar Anant Padgaonkar, who is the Superintendent of Licences in the Municipal Corporation. The Hawkers' union showed hardly any response to the proposed scheme and it took no decision thereon. When these writ petitions come up for hearing before this Court on August 5, 1983, the following order was passed :

C "If the members of the Hawkers' Committee do not come to any decision by consensus, the Commissioner of Bombay Municipal Corporation will be free to frame a scheme. We are informed by Mr. Singhvi that the next meeting is fixed on 12th August 1983. The scheme shall **D** be framed as expeditiously as possible thereafter."

E The meeting was eventually held on September 12, 1983 when the Hawkers' Committee discussed the proposals made by the Municipal Commissioner. No agreement could be reached in that meeting since, the Hawkers' union expressed reservations about some terms of the scheme.

F In deference to the suggestions of the Hawkers' Committee, the Municipal Commissioner proposed a modified scheme by his letter dated September 30, 1983. The Hawkers' Committee met under the chairmanship of the Mayor of Bombay, Shri Manmohan Singh Bedi, and recommended to the Corporation that the Commissioner may proceed to formulate a final scheme for regulating hawking, on the lines suggested by him in his letter dated September 30, 1983. The 'Fifth and Final Report' of the Hawkers' Committee dated **G** October 15, 1983 is Exhibit III to the letter addressed by the Municipal Commissioner to the Mayor of Bombay, which is at Exhibit I.

H On November 23, 1983 an application for directions was filed by the petitioners, asking specifically that the Municipal Commissioner be asked to formulate a scheme for the licensing of hawkers in Greater Bombay by creating hawking zones. That application

was heard by us along with the writ petitions, when the parties argued upon the merits and demerits of the scheme proposed by the Municipal Commissioner. After we heard counsel for the respective parties for some time, it was decided that we will pass orders on the basis of the scheme framed by the Commissioner with such modifications as we consider proper and necessary.

In view of the fact that we are primarily concerned to consider the merits and feasibility of the scheme proposed by the Municipal Commissioner, it is necessary to consider the validity of the challenge made by the petitioners to certain provisions of the Bombay Municipal Corporation Act. We would, however, like to add that there is no substance in that challenge because, the right conferred by Article 19 (1) (g) of the Constitution to carry on any trade or business is subject to the provisions of clause (b) of that Article, which provides that nothing in sub-clause (g) of Article 19 (1) shall affect the operation of any existing law insofar as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. The affidavits filed on behalf of the respondents show in unmistakable terms that the impugned provisions of the Bombay Municipal Corporation Act are in the nature of reasonable restrictions, in the interests of the general public, on the exercise of the right of hawkers to carry on their trade or business. No one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. Public Streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the centre of busy thoroughfares, thereby paralysing all civic life. Indeed, that is what some of them have done in some parts of the city. They have made it impossible for the pedestrians to walk on footpaths or even the streets properly so called.

In order to give the background and a full picture of the recommendations made by the Commissioner, it would be desirable to reproduce the letter of the Commissioner dated September 30, 1983 to the Mayor of Bombay, who was the Chairman of the Hawkers' Committee. The Scheme proposed by the Commissioner from part of that letter. That letter reads as follows :

"No. MDG/2418

30th September, 1983

To

The Mayor of Bombay &
Chairman, Hawkers' Committee,
Corporation Hall,
Bombay--400001.

Sub:—Creation of Hawking Zones
in Greater Bombay.

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Dear Sir,

Kindly refer to my letter No. MDG/6638 dated 6th May 1983 on the abovementioned subject, of which you were kind enough to circulate copies to the members of the Hawkers' Committee, and recall the subsequent discussions held in the meetings of the said Committee wherein, inter alia, the proposals set out in that letter were discussed threadbare.

"During the discussion, it was pointed out by some members, Shri Dharap in particular, that if, as proposed in my aforesaid letter (dated 6th May 1983), 'No Hawking Zones or Areas' are identified and declared as such, an impression would be automatically created that the remaining Zones/areas/streets are 'Hawking Zones or Areas', where hawking would be freely permissible. In this connection, as an analogy, it was pointed out that when the police declare certain areas as 'No parking Areas', it automatically follows that parking is permissible in the areas other than those declared as 'No parking Areas'. An apprehension was, therefore, voiced that identification or declaration of certain zones or areas as 'No Hawking Zones or Areas' may give rise to rampant hawking activity in the remaining areas and a demand for issue of licences freely to hawkers who will mushroom in those areas. This will, it was stated, defeat the main purpose viz. that of proper regulation of hawkers and their activities.

I then clarified that it was never my intention that hawking should be permitted freely in areas not covered by 'No Hawking Zones/Areas', nor had I intended that additional hawking licences should be given freely to hawkers to operate in such remaining areas. It was then decided in the meeting of the Hawkers' Committee held on 13th September 1983 that I should resubmit my proposal with suitable clarifications/modifications so as not to leave any room for a wrong impression that hawking will be permissible in a free and unchecked manner in certain areas. Accordingly, I once again outline my proposal in the paragraphs below.

"As per the provisions of Section 61(o) of the Bombay Municipal Corporation Act, the removal of obstructions and projections in or upon streets, bridges and other public places is an obligatory duty of the Corporation. The hawkers together with their stalls or the objects which they sell and which they exhibit in the stalls or on the roads/pavements, constitute an obstruction/projection in or upon streets and other public places. Their removal is, therefore, an obligatory duty of the Corporation. Having regard to our resources, human, physical and financial, it is, however, obvious that we will not be able to fully discharge this duty and remove the obstructions/projections caused by hawkers on every road, lane or pavement in the entire City of Greater Bombay. We should, therefore, decide that within the constraints of our resources, we would concentrate on the removal of such obstructions/projections on certain streets and public places where the pedestrians or vehicular traffic is most intense and where any obstruction/projection on the street or pavement is likely to cause great harm to public interest and cause nuisance. For example, the roads leading from suburban Railway Stations to the residential areas in the Suburbs or roads in the Central Business District in South Bombay connecting the Suburban Railway Stations with the offices and other places of work as also certain arterial roads on which major goods and public transport vehicles move, could be considered as important roads and pavements where no hawkers should be allowed to do their business. No doubt, at present, on these roads/areas too, there are existing hawkers who were given licences in the past but who now do constitute an obstruction to the free and safe flow of pedestrian and vehicular traffic. It will be possible to remove these licensed hawkers by giving them alternative sites.

A "Thus, having regard to the resources of vehicles, staff etc. at our disposal, we could identify in each Ward the streets/areas where intensive removal action against unauthorised hawkers should be taken. This shall not, however, mean that hawking in other areas will be freely permitted. In areas *other than* the areas identified from time to time, having regard to the resources available and the dynamic situation, for intensive removal action, if hawkers do their hawking business without seriously affecting the vehicular and/or pedestrian traffic or causing nuisance, they may be tolerated by sufferance and a daily fee at the rate of Rs. 3 per day from a male hawker and at the rate of Rs. 1 per day from a female hawker may be recovered, without prejudice to our right to remove them should the dynamic situation and the changed circumstances so demand in future. It should be made explicitly clear at the back of the receipt given for the fees recovered that the collection of the fee shall not be deemed to confer any right whatsoever on the hawker concerned to do his/her hawking business at the site concerned.

D "The following restrictions/conditione shall be imposed on such hawkers :—

E (i) They should do their hawking business only on an area of 1 Mt. x 1 Mt. on the footpath wherever it exists or on the extreme sides of the carriage way, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked.

F (ii) They should not put up any stall or place any table, stand or such other thing or erect any type of structure whatsoever on the pitch on which they are conducting their hawking business nor should they hawk on handcarts. They should also not put up any cloth, plastic sheet, chaddar, tarpaulin etc. as shelter.

G (iii) They should not hawk within 100 metres from any place of worship; holy shrine, educational institution and general hospital and within the periphery of 150 metres from any Municipal or other market.

H (iv) They should not create any noise for attracting the public/customers.

(v) They should not hawk any cooked food articles, cut fruits etc. A

(vi) They should do their hawking business only between 7-00 A.M. and 9-00 P.M. on the day on which the prescribed daily fee is recovered. In other words, payment of the prescribed daily fee shall not be deemed to authorise them to do their hawking business beyond the aforesaid hours. B

(vii) They should extend full co-operation to Municipal conservancy staff for cleaning the streets and footpaths and also to other Municipal staff for carrying out any Municipal work. They should also co-operate with other Government and public agencies such as the B.E.S.T. Undertaking, Bombay Telephones, B.S.E.S. Ltd., etc. for laying cables or for doing any repair/development work. C

(viii) Recovery of prescribed daily fee shall not bestow on them any right whatsoever over the space used by them for hawking on the day on which the fee is recovered. D

"I would request you to immediately circulate copies of this letter to all the members of the Hawkers' Committee and to convene a meeting of the Committee *very urgently* for consideration of the proposals set out herein. E

Yours faithfully,

Sd/-(D.M. Sukthankar)
Municipal Commissioner." F

We have considered carefully the eight conditions mentioned above, subject to which the Commissioner proposes to grant licences the hawkers. No exception can be taken to conditions (i), (ii), (iii), (iv), (vii) and (viii) except that conditions (ii) and (viii) require a little clarification. The first part of condition (ii) beginning with the words "They should not put up any stall" and ending with the words "nor should they hawk on handcarts" may stand. But, the second part of that condition should not be construed to mean that the hawkers will not be entitled even to protect their wares against G

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A the sun, rain, wind and so on, by spreading a cloth, plastic sheet, chaddar, tarpaulin etc. The object of that condition is to ensure that no construction is put up and no handcarts are used. In so far as condition No. (viii) is concerned, all that it should be understood to mean is that the fact that a daily fee is charged will not confer upon the Hawker the right to do his business at any particular place. That is because, the daily fee is a kind of license fee to do business; it is not a fee charged for doing business at any particular place. The Commissioner will, therefore, be free to impose conditions (i), (ii), (iii), (iv), (vii) and (viii) while granting licenses to the hawkers in the Hawking Zones, after making the necessary clarifications in conditions (ii) and (viii). Condition (v) is an unreasonable restriction on the hawkers' right to carry on their trade or business and must be dropped. There are several working families in Bombay, belonging to different strata of society, which depend upon the food supplied by hawkers. We do not see any valid reason why hawkers should not be allowed to sell cooked food, cut fruits and the like. That will, of course, not confer upon them the licence to sell adulterated or unhygienic food. They shall have to comply, like any other vendor of food, with the Municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act, 1954. Lastly the hours of business mentioned in Condition (vi) should be from 7 A.M. to 10 P.M. instead of 7 A.M. to 9 P.M. In cities like Bombay, nights are quite young at 10 p.m.

In so far as Hawking and Non-Hawking Zones are concerned, the Commissioner should adopt the following modalities :

F (a) As far as possible, there should be one Hawking Zone for every who contiguous municipal wards in Greater Bombay.

G (b) The Non-Hawking Zones may be fixed by the Municipal Commissioner in his discretion, in consultation with the Bombay Municipal Corporation.

H (c) In areas other than the Non-Hawking Zones, licenses should be granted to the hawkers to do their business on payment of the prescribed fee. That will be without prejudice to the right of the Commissioner to extend the limits of the Non-Hawking Zones in the interests of public health, sanitation, safety, public convenience and the like.

(d) Hawking licences should not be refused in the Hawking Zones except for good reasons. The discretion not to grant a hawking licence in the Hawking Zone should be exercised by the Commissioner reasonably and in public interest.

(e) In future, before making any alteration in the Scheme, the Commissioner should take into confidence all public interests, including the hawkers, the Commissioner of Police and representative associations of the public such as the one which appeared before us. Hawkers have the right to do their business, subject to reasonable restrictions in the interests of the general public. The Police Commissioner is in the best position to speak about the law and order problem as well as the traffic hazards created by street trading. The general public has a stake in showing how and why the hawking trade should be regulated. The power conferred upon the Commissioner by section 313-A of the Act to grant licences to hawkers is in the nature of a discretion coupled with a duty. It is therefore essential that the said power should be exercised by consulting all concerned interests and guided by considerations of what is in the interests of the general public. The scheme framed by the Commissioner will have a binding effect on all concerned.

In the result, we direct that the Municipal Commissioner will proceed to frame the final Scheme on the lines suggested above, as expeditiously as possible. There will be no order as to costs.

S.R.

Petitions disposed off.