

MAHARASHTRA EKTA HAWKERS UNION AND ANR. A
v.
MUNICIPAL CORPORATION, GREATER MUMBAI AND ORS.

DECEMBER 9, 2003

[S.N. VARIAVA AND H.K. SEMA, JJ.] B

Constitution of India Article 19(1)(g) and (6)—Reasonable restrictions—Hawking—Held, hawkers have right to carry on their trade or business—The right can be subjected to reasonable restrictions keeping in view convenience of the public, security etc.—Scheme framed by High Court for regulating hawking business—Scheme modified—Restrictions/conditions laid down for hawking business—Directions issued. C

Constitution of India—Article 21—Right to life and personal liberty under—Hawking Held, not a fundamental right. D

In *Bombay Hawkers' Union v. Bombay Municipal Corporation*, [1985] 3 SCC 528 the Court laid down certain guidelines in respect of the scheme proposed by the Municipal Commissioner for regulating hawking activities in Bombay and directed the Municipal Commissioner to frame a final scheme on the basis of the guidelines suggested by it. Pursuant to the judgment, the Bombay Municipal Corporation constituted an Advisory Committee and a draft scheme was framed on 12.8.1996. Under the draft scheme, 488 zones were shown as hawking zones and 28 sites were earmarked for construction of hawkers' plazas. 49,000 hawkers were sought to be accommodated in the said draft scheme. Highways, arterial and trunk roads, footover bridges, subways, certain distance around railway stations, certain radius around municipal markets, religious places, educational institutions, medical institutions and large traffic junctions, were totally banned for hawkers. E F

Various aspects of the draft scheme framed by the Bombay Municipal Corporation were challenged by filing a number of writ petitions. The draft scheme was further modified by the Bombay Municipal Corporation and the number of hawking zones were brought down from 488 to 377. The number of hawkers who could be H

A accommodated was brought down to 38,000. The proposal for construction of hawking plazas was deleted.

B On 1.3.2040, the High Court constituted a Committee, which heard and considered representations from various persons. The said Committee further reduced the number of hawking zones to 187. The High Court sanctioned the scheme with a few modifications. The High Court, *inter alia*, approved exclusion of all major, trunk and arterial roads from hawking zones and disapproved the idea of creation of hawking plazas.

C The aggrieved parties filed special leave petitions before the Court questioning the scheme framed by the High Court.

D The Court, adjourning the matter for further information from Bombay Municipal Corporation, partially modifying the scheme and laying down restrictions/conditions for regulation of hawking activities.

E HELD: 1.1. The hawkers have a right under Article 19(1) (g) of the Constitution of India to carry on their trade and business. This right however is subject to reasonable restrictions under Article 19 (6) of the Constitution of India. Thus hawking may not be permitted where e.g. due to narrowness of road free flow of traffic or movement of pedestrians is hindered or where for security reasons an area is required to be kept free or near hospitals, places of worship etc. [596-B-C]

F 1.2. There is no fundamental right under Article 21 of the Constitution of India to carry on any hawking business. There is also no right to do hawking at any particular place. [596-C-D]

G *Bombay Hawkers' Union v. Bombay Municipal Corporation*, [1985] 3 SCC 528; *Olga Tellis and Others v. Bombay Municipal Corporation and Others*, [1985] 3 SCC 545 and *Sodan Singh and Others v. New Delhi Municipal Corporation and Others*, [1989] 4 SCC 155, referred to.

H 1.3. As the hawkers have a fundamental right under Article 19 (1) (g) of the Constitution of India it would not be correct to unreasonably restrict such a right, except under circumstances set out in the guidelines laid down by the Court in the *Bombay Hawkers Union's*

case and other reasonable restrictions. The correct approach should be to ascertain/earmark areas where, as per the guidelines, hawking cannot be permitted. Thereafter all other areas/streets must be hawking zones. [596-G-H; 597-A-B] A

Bombay Hawkers' Union v. Bombay Municipal Corporation, [1985] 3 SCC 528, referred to. B

2. If properly regulated the small traders can considerably add to the convenience and comfort of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. [596-D] C

3. The Court is not really equipped to go through the scheme street by street. It would be preferable that the Court approves the conditions of the scheme and certain roads/streets on which hawking is to be permitted. Then a Committee must be appointed and modalities laid down under which the Committee is to function. The Committee can hear interested parties and consider their representations. The Committee can decide whether any particular road/street is to be declared as a non-hawking zone. [597-B-C] D

[The court laid down several restrictions and conditions on which the hawkers could do business.] E

4.1. A Committee consisting of a retired Judge of the Bombay City Civil Court at Bombay (to be nominated by the Chief Justice of Bombay High Court), who shall be the Chairman of the Committee, a senior officer of Bombay Municipal Corporation (who shall be nominated by the Municipal Commissioner) and a senior police officer from the traffic department (who shall be nominated by the Police Commissioner) is appointed. Any person or organisation who feels, that roads/streets, from those designated as non-hawking zone, are suitable for hawking, may apply to this Committee, for having the road/street designated as a hawking zone. Similarly any person or organisation who feels that any road/street designated as hawking zone should be a non-hawking zone may apply to the Committee for having that road/street designated as a non-hawking zone. [602-C-F] F G

4.2. The Committee shall cause a notice to be placed in the concerned H

A ward office and in prominent places on that road/street inviting objections/suggestions in respect of the proposals made to it by any person/organisation. Undoubtedly the Committee shall visit the road/street and also hear all concerned parties including residents associations, shop owners on that road/street etc. The Committee shall then decide how many hawkers can be accommodated on that road/street if it is to be a hawking zone. It is clarified that merely because in the scheme, as sanctioned, an area has been shown as a hawking zone or a non-hawking zone, will not preclude the Committee from considering whether hawking can be permitted on that road/street. The Committee shall ensure that the criteria laid down in the scheme are fulfilled before a road/street is declared as a hawking zone and that if all the criteria are met then the road/street is not kept out of a hawking zone. In the event of any difference between the Committee members, the decision of the Chairman of the Committee shall prevail. The decision of the Committee shall be final and binding on all. [602-G-H; 603-A-C]

D 4.3. Bombay Municipal Corporation shall give wide publicity in the City of Mumbai and invite applications for allocation of licences. Each application must state the area, where a pitch is sought and the type of items proposed to be sold. Each applicant can give a choice of not more than three locations. All applications will be categorised road/street wise. If the number of applicants, for a road/street, do not exceed the number of hawkers who can be accommodated on that road/street, then licences will be issued to them on receipt of requisite license fee. If the number of applicants are more than the number of places available then those applications will be placed before the Committee. **E** The Chairman of the Committee shall then allot licences on the basis of a draw of lots by him. Those who do not get the licence will be placed on a waiting list. As and when any other road/street gets declared as a hawking zone, lots will be drawn from the wait list and places allotted. [604-A-C]

G 4.4. The principle that all major, trunk and arterial roads should automatically be excluded from hawking zones is not approved. The committee will be entitled to examine, on receipt of a proposal whether hawking can be permitted on such roads. If without too much hindrance to vehicular and pedestrian traffic hawking can be permitted, it must be so permitted. **H** [601-D-E]

5. The finding of the High Court that hawking plazas are not to be permitted is not approved of. It will be open for the Bombay Municipal Corporation to set up hawking plazas. However, when Bombay Municipal Corporation sets up a hawking plaza, the allotment of 1 mt. X 1 mt. pitches in those hawking plazas must be made on the above terms and conditions including no fixed site, timing from 7 a.m. to 10 p.m. etc. and only by issuing advertisements in three local newspapers. Out of the applications received the allotment must be by draw of lots by the Chairman of the committee. Even in hawking plazas the licence should not exceed one year. [601-F-G]

6. Apart from 187 roads approved by the High Court, 49 additional roads meet all the criteria laid down in the scheme and can be included in the hawking zones. Therefore, 236 roads are approved as hawking zones. Even though a road may be within hawking zone the restrictions, set out in the scheme regarding distances from railway stations, hospitals, educational institutions, places of worship etc. on that road, if any, would continue to apply. [597-E-F, G-H; 598-A]

7. The scheme framed and the guidelines would not be applicable to hawkers who do not sit in any one place but who travel from place to place carrying their wares with them. However, even such hawkers shall be required to obtain a licence on payment of prescribed fees and display that license on their shirt/coat at all times. Such hawkers will be allowed even in residential areas and areas where there are no shopping lines. They shall not sell costly items and will only vend articles of immediate requirement i.e. articles of convenience shopping. They shall not hawk within 100 meters of any place of worship, of any municipal or other markets or from any railway station. [603-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4156-4157 of 2002.

From the Judgment and Order dated 6.7.2000 of the Bombay High Court in W.P. No. 621 of 1999.

WITH

C.A. Nos. 4158-59, 4161-62, 4163-64, 4160, 4170-71, 4167-69/

A 2002, C.P. Nos. 456-58/2002 in C.A. Nos. 4167-69/2002, 4165-4166, 4175-76, 4179-80, 4172-74/2002, C.P.(C) Nos. 195-196/2002, C.A. Nos. 4178, 4177/2002, 9662, 9661, 9663, 9666, 9667 of 2003.

B Vijay Hansaria, V.N. Ganpule, Bhimrao Naik, J.F. Pochkhanawala and A.K. Panda, Sushil Kumar Jain, H.D. Thanvi, Ms. Anjali Doshi, Ms. Ruchi, A.P. Dhamija, Anand Grover, S. Santanam Swaminadhan, Bharat Sangal, M.N. Shroff, Jayesh K. U., Sunil Kumar Jain, Shakil Ahmed Syed, Ashok Kumar Singh, Sushil Karanjkar, Venkateswara Rao Anumolu, Vimal Chandra S. Dave, Vijay Kumar, Colin Gonsalves, Ms. Aparna, Bhat, Vipin M. Benjamin, P. Ramesh Kumar, Pallav Shishodia, D.N. Mishra, C Hemant Sharma, Pradeep Kumar Bakshi, V. Ramasubramanian, Jamshed Mistry, Senthil Jagadeesan, S.S. Shinde, Mukesh K. Giri, Ms. Nandini Gore, Shri Narain, Sandeep Narain, Ms. Anjali Jha, A. K. Raina and P. Parmeswaran, Ms. Rubi Singh Ahuja for the appearing parties.

D The Judgment of the Court was delivered by

S.N. VARIAVA, J. Leave granted in Special Leave Petitions.

E All these Appeals are against the Judgments of the High Court dated 5th July, 2000 and 3rd May, 2001. The facts leading up to these Appeals are that as far back in 1983 a number of Writ Petitions were filed in this Court, by and on behalf of a large number of persons who carried on hawking activities in Bombay. These Petitions came to be disposed of by Judgment of this Court in the case of *Bombay Hawkers' Union v. Bombay Municipal Corporation* reported in [1985] 3 SCC 528. By this Judgment, F it was held that the right to carry on trade or business conferred by Article 19(2)(g) of the Constitution of India is subject to the provisions of sub-clause (6) of Article 19 which provided that nothing in sub-clause (g) of Article 19(1) would affect the operation of any existing law insofar as it imposed, or prevented the State from making any law imposing, in the interests of general public, reasonable restrictions on the exercise of the G right conferred by the said sub-clause. It was held that no one had 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. It was held that public streets, by their very nomenclature and definition, were meant for the use of the general public. It was held that the public streets are not laid to H facilitate the carrying on of private trade or business. It was held that if

hawkers were to be conceded the right claimed by them they could hold the society to ransom by squatting on the center of busy thoroughfares, thereby paralyzing all civic life. It was recognized that in some of the parts of the city the hawkers had made it impossible for the pedestrians to walk on footpaths or even on the streets. This Court then examined the scheme proposed by the Municipal Commissioner and laid down certain modalities for hawking and non-hawking zones. This Court also accepted the restrictions/conditions proposed by the Municipal Commissioner, except for some changes. This Court then directed the Municipal Commissioner to frame a final scheme on the guidelines suggested by it.

The above mentioned Judgment was delivered on 3rd July, 1985. On 12th August, 1986 Bombay Municipal Corporation (for short BMC) approved some guidelines. It then constituted an Advisory Committee composed of officials of the Corporation, representatives of the Residents' Association, NGO's, elected representatives of the Traffic Police and representatives of the hawkers. A draft scheme was framed on 12th August, 1996. Under the draft scheme 488 zones were shown as hawking zones. Under the draft scheme 49,000 hawkers were to be accommodated. Under the draft scheme 28 sites, in different wards, were earmarked for construction of hawkers' plazas. Under the draft scheme highways, arterial and trunk roads, footover bridges, subways, certain distance around railway stations, certain radius around municipal markets, religious places, educational institutions, medical institutions and large traffic junctions, were totally banned for hawkers. BMC also got undertaken a survey by Tata Institute of Social Sciences and Youth for Unity and Voluntary Action. This survey disclosed that there were approximately 1,03,0000 hawkers out of which 15,000 were licenced hawkers and approximately 22,000 were issued daily receipts or 'pautis' under a Scheme known as 'Unauthorized Occupation cum Refuse Removal Charges'.

A number of Writ Petitions came to be filed in the Bombay High Court challenging various aspects of the Scheme. In these Writ Petitions a number of interim Orders were passed. We are not really concerned with those orders except that, on 30th November, 1988, a statement was made on behalf of BMC that the scheme framed by them was only a draft scheme and that BMC would consider representations from all and would suitably modify the scheme. It must be mentioned that in an affidavit filed by BMC

A it was disclosed that between August 1998 till April 1999, by issuance of 'pautis' BMC had collected Rs. 2,70,14,162.

BMC filed a modified scheme before the Court on 31st July, 1999. By this modified scheme the number of hawking zones were brought down

B from 488 to 377. The number of hawkers who could be now accommodated were 38,000. The proposal for construction of hawking plazas, on 28th sites, stood deleted. On 1st March, 2000 the High Court constituted a Committee composed of the Additional Municipal Commissioner in-charge of the scheme, one K.D. Kagtala, Advocate on behalf of the Bombay Hawkers' Association, one V.R. Bhandare, Advocate for some of the Residents' Associations and Smt. Neera Punj, Convenor, Citizens' Forum for protection of Public Places. This Committee heard and considered representations from various persons. It then identified area/roads which could be hawking zones and which were to be non-hawking zones. The Committee hereafter made its recommendations. Now the hawking

C
D zones were reduced to 187. The High Court by the impugned Judgment dated 5th July, 2000 sanctioned the scheme with a few modifications and adjourned the matter to enable BMC to consider the manner in which it proposed to implement the scheme. The basic features of the scheme as framed by the High Court are as under :

E

“(a) Hawkers cannot be allowed to have a fixed place of business or else there would be no distinction left between hawkers and those ordinarily understood as trades.

F

(b) The exclusion, of arterial roads, pavements, carriage ways, approaches to railway stations, places of worship and schools, as also roads with less than 8.5 meters width, from areas which could be declared as 'hawking zones' was approved.

G

(c) It was clarified that the Development Control Regulations for Mumbai would also be applicable with the result that no trading or commercial activities could be carried out in exclusively residential zones. It was also held that no such activities could be carried on roads and pavements which did

H

not have a shopping line.

- (d) It was directed that 15,000 licenced hawkers found to be operating in the city in 1997 would be permitted to carry on hawking and after they were so accommodated, the others could be permitted to hawk in the remaining areas of zones by the method of drawings lots. On the drawing of lots, those selected would be considered for issuance of licence. Licensed hawkers would be permitted to ply their trade in hawking zones. Unlicensed hawkers would not be permitted at all. A B
- (e) BMC's proposal to allow pitches of 1 m x 1 m space for hawking was not allowed, on the ground that it would defeat the purpose of the scheme and make the right to hawk a heritable or transferable right. It was also not allowed as the number of hawkers would have to be restricted keeping in mind the requirement to have smooth flow of traffic and minimizing nuisance caused by hawkers. C D
- (f) BMC was called upon to consider making a rule whereby hawkers could ply their trade on one side of the road on even days. E
- (g) Sale of solid food items was prohibited but sale of juices was permitted. F
- (h) Vending of costly items such as electrical appliance, video and audio tapes was not to be allowed. It was observed that ordinarily hawkers are only supposed to deal with articles of immediate requirement and/or 'convenience shopping'. G
- (i) Implementation of the scheme was to be on a 'war footing'. Involvement of public spirited organizations and citizens was called for. It was suggested that the pattern followed by the Civil Defence Organisation under which wardens were appointed to take care of streets, lanes and by lanes in every ward be adopted. H
- (j) Existing shop keepers were also required to participate in keeping non-hawking zones free from hawkers with the help H

- A of security or manpower.
- (k) A systematic phase-wise removal and demolition operation was suggested in different parts of the city.
- B (l) The Court disapproved of the idea of hawking plaza on the ground that it automatically gave the shopkeepers heritable/transferable in the space allotted to them and also because the Court felt that the idea of hawking was lost if customer had to go to the plaza.
- C Thereafter, on 7th September 2000 the High Court permitted cooked food to be sold by the hawkers.

Special Leave Petitions were then filed in this Court. While these Special Leave Petitions were pending BMC moved the Bombay High Court for certain modifications. The High Court, by its Order dated 22nd November 2000 clarified that only small changes would be permissible. BMC then filed an affidavit dated 31st January 2001 suggesting changes in the light of representations received by it. On 3rd May 2001 the High Court rejected the proposed modifications on the ground that the proposed modification in effect amounted to reframing the sanctioned scheme.

The Scheme framed by the High Court is questioned before this Court. It now becomes necessary to consider what was held by this Court in the *Bombay Hawkers' Unions'* case (supra). In that case, the Municipal Commissioner had suggested framing of a scheme on the following terms:

F “As per the provision of the section 61(o) of the Bombay
Municipal Corporation Act, the removal of obstruction and
projections in or upon streets, bridges and other public places is
an obligatory duty of the Corporation. The hawkers with their
G 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
H remove the obstruction/s projections caused by hawkers on every

road, lane or pavement in the entire City of the Greater Bombay. A
 We should, therefore, decide that within the constraints of our
 resources, we would concentrate on removal of such obstructions/
 projections on certain streets and public places where the pedes-
 trians or vehicular traffic is most intense and where any obstruc-
 tion/projection on the street or pavement is likely to cause great B
 harms to public interest and cause nuisance. For example, the
 roads leading from suburban railway stations to the residential
 areas in the suburbs or the roads in the Central Business District
 in South Bombay connecting the suburban railway station with
 the offices and other places of the work as also certain arterial C
 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 the pedestrian and D
 vehicular traffic. It will be possible to remove these licensed
 hawkers by giving them alternative sites.

Thus having regard to the resources of vehicles, staff etc. at
 our disposal, we could identify in the each Ward the streets/areas E
 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, F
 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 Re. 1 per day
 from a female hawker may be recovered without prejudice to our
 right to remove them should the dynamic situation and the G
 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. H

- A The following restrictions/conditions shall be imposed on such hawkers :
- B (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 side of the carriage way, in such a manner that the vehicular and pedestrian tariff is not obstructed and access to shops and residence is not blocked.
- C (ii) They should not put 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 sheets, chaddar, tarpaulin etc. as shelter.
- D (iii) They should not hawk within 100 meters from any place of worship, holy shrine, educational institution and general hospital and within the periphery of 150 meter from any Municipal or other market.
- E (iv) They should not create any noise for attracting the public/customers.
- (v) They should not hawk any cooked food articles, cut fruits etc.
- F (vi) They should do their hawking business only between 7 a.m. and 9 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.
- G (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 the 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
- H

any repair/development work.

A

- (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 the which the fee is recovered.”

This Court held that no exception could be taken to conditions (i), (ii), (iii), (iv), (vii) and (viii). This Court also held that in condition (ii) the words “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 handcars” may stand. This Court further clarified that the condition that “they should also not put up any cloth, plastic sheet, chaddar, tarpaulin etc. as shelter” should not be construed to mean that the hawkers are not entitled to protect their wares against the sun, rain or wind. This Court clarified that the object of Condition (ii) was only to ensure that no construction was put up and no handcars were used. This Court also clarified that so far as Condition (viii) was concerned the fact that daily fees were charged would not confer upon the hawkers the right to do business on any particular place. It was clarified that the fee was a kind of licence fee to do business and it was not a fee charged for doing business at any particular place. This Court further held that the condition (v) was a unreasonable restrictions. This Court saw no reasons why the hawkers should not be allowed to sell cooked food, cut fruits and the like. This Court clarified that it did not mean that adulterated or unhygienic food could be sold. This Court held that hawkers had to comply with the Municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act, 1954. This Court lastly extended the business hours from 7 a.m. to 10 p.m. This Court then laid down following modalities :

B

C

D

E

F

- “(a) As far as possible, there should be one Hawking Zone for every two 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.

- (c) In areas other than the Non-Hawking Zones, licences should

H

- A 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.
- B (d) Hawking licences should not be refused in the Hawking Zones except for goods reasons. The discretion not to grant a hawking licence in the Hawking Zone should be exercised by the Commissioner reasonably and in public interest.
- C (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 interest 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. The scheme shall be framed, as far as possible, before October 31, 1985.”
- D
- E
- F

G It must be mentioned that this Judgment was delivered by Chief Justice Chandrachud (as he then was). Immediately thereafter a Constitution Bench of this Court, headed by Chief Justice Chandrachud (as he then was) delivered a Judgment in the case of *Olga Tellis and Other v. Bombay Municipal Corporation and others* reported in [1985] 3 SCC 545. This case dealt with the rights of pavement dwellers in Bombay. On behalf of the

H hawkers strong reliance was placed on various observations made in this

Judgment. It was submitted that this case showed that the right to hawk was also a fundamental right under Article 21 of the Constitution of India. However such an argument has been negated by this Court in the case of *Sodan Singh and Others v. New Delhi Municipal Committee and Others* reported in [1989] 4 SCC 155. This case dealt with hawkers in the city of Delhi. It was held that the hawking on roadsides fell within the expression “occupation, trade or business” in Article 19(1)(g) but that it was subject to reasonable restrictions under Article 19(6) of the Constitution of India. It was held that this right was specifically for poor hawkers and not for sellers of luxury items or goods. It was further held that hawkers had no right to occupy any particular place on the pavement nor could they assert right to occupy permanently specific places demarcated on the pavement. It was held that the Municipality had a right to regulate such businesses and the Municipality was directed frame rules and schemes regarding street trading. It was also recognized that hawking could be totally prohibited in certain areas. The Court negated an argument, based on *Olga Tellis’s* case that the hawkers had a fundamental right under Article 21. It was held that the right to carry on trade or business was not covered by Article 21 and the hawkers could claim no right under Article 21. It was *inter-alia* held as follows :

“So far as right of a hawker to transact business while going from place to place is concerned, it has been admittedly recognized for a long period. Of course, that also is subject to proper regulation in the interest of general convenience of the public including health and security considerations. What about the right to squat on the roadside for engaging in trading business? As was stated by this Court in *Bombay Hawkers’ Union v. Bombay Municipal Corporation* — the public streets by their nomenclature and definition are meant for the use of the general public; they are not laid to facilitate the carrying on the private business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting of the busy thoroughfares, thereby paralyzing all civil life. This is one side of the picture. On the other hand, if properly regulated according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to the comfort and convenience of general public, by making available ordinary articles of everyday use for

A a comparatively lesser price.”

Thereafter this Court passed various orders accepting/modifying recommendations of the Committee appointed to consider to whom licences were to be granted, how licences were to be granted and the places where hawking could be permitted.

B

The above authorities make it clear that the hawkers have a right under Article 19(1)(g) of the Constitution of India. This right however is subject to reasonable restriction under Article 19(6). Thus hawking may not be permitted where e.g. due to narrowness of road free flow of traffic or movement of pedestrians is hindered or where for security reasons an area is required to be kept free or near hospitals, places of worship etc. There is no fundamental right under Article 21 to carry on any hawking business. There is also no right to do hawking at any particular place. The authorities also recognize the fact that if properly regulated the small traders can considerably add to the convenience and comfort of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. The scheme must keep in mind the above principles. So far as Mumbai is concerned the scheme must comply with the conditions laid down in the *Bombay Hawkers Union's* case. Those conditions have become final and there is no changed circumstance which necessitates any alteration.

C

D

E

As has already been mentioned hereinabove a draft scheme was prepared pursuant to the Judgment of this Court in the *Bombay Hawkers Union's* case. In the initial scheme the number of hawking zones were shown as 488, they were then brought down to 377 and ultimately have been reduced to 187 as per the scheme framed by the Bombay High Court. Under the Scheme sanctioned by the Bombay High Court only 22,000 hawkers can be accommodated. Even as per the survey carried out by BMC there were over 1,03,000 hawkers in the city of Bombay. Out of this there were 15000 licenced hawkers and app. 22000 hawkers who had been issued pautis (receipts) under a scheme initiated in 1988 and known as ‘unauthorised Occupation cum Refuse Removal Charges’. As it has already been held that the hawkers have a fundamental right under Article 19(1)(g) it would not be correct to unreasonably restrict such a right, except under circumstances set out in the guidelines laid down by this Court in the

F

G

H

Bombay Hawkers Unions' case and other reasonable restrictions set out hereafter. In our view the correct approach should be to ascertain/earmark areas where, as per the guidelines, hawking cannot be permitted. Thereafter all other areas/streets must be hawking zones. A

We have, during the course of arguments, tried to go through the scheme street by street. However on a re-consideration it appears to us that this Court is not really equipped to undergo this exercise. In our view it would be preferable that this Court approve the conditions of the scheme and certain roads/streets on which hawking is to be permitted. The, as in *Sodan Singh's* case, a committee must be appointed and modalities laid down under which the committee is to function. The committee can hear interested parties and consider their representations. The committee can decide whether any particular road/street is to be declared as a non-hawking zone. We therefore confine ourselves to laying down the basic features of the scheme, appointing a committee and laying down the modalities for functioning of the committee. B C D

At this stage it must be mentioned that we had by order dated 1st May 2003 permitted parties to make suggestions as to which additional areas can become hawking zones. A number of suggestions had been made. We are told that BMC is agreeable to include 51 more roads as hawking zones. We have considered submissions of Mr. Divan on why these additional roads should not be added to the 187 already approved by the Bombay High Court. In our view 49 of these additional roads meet all the criteria, set out hereafter, and can be included in the hawking zones. Therefore to start with we approve the 187 + 49 roads as hawking zones. The roads we have excluded are Pandey Road in A Ward and Deodhar Road in F/N ward as they appear to be residential areas with no shopping line. We further clarify that amongst these 49 roads there are some roads e.g. Mahatma Gandhi Marg in A Ward which are already included in the hawking zones but on which BMC now proposes to accommodate additional hawkers. Whilst doing so BMC will ensure that there is no impediment or hindrance to vehicular traffic or pedestrians. The approval of these 49 roads is subject to approval/NOC from the traffic police. It must also be clarified that even though a road may be within a hawking zone the restrictions, set out hereunder, regarding distances from railway stations, hospitals, educational institutions, places of worship etc. on the road, if any, would continue to E F G H

A apply.

The restrictions/conditions on which the hawkers shall do the business are :

- B (1) an area of 1 mtr x 1 mtr on one side of the footpath wherever they exist or on an extreme side of the carriage way, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residence is not blocked. We further clarify that even where hawking is permitted, it can only be on one side of the footpath or road and under no circumstances on both sides of the footpaths or roads. We however clarify that Aarey/Sarita stalls and sugar cane vendors would require and may be permitted an area of more than 1 Mt. by 1 Mt. but not more than 2 mt. by 1 Mt;
- C
- D (2) Hawkers must not put up stalls or place any tables, stand or such other thing or erect any type of structure. They should also not use handcarts. However they may protect their goods from the sun, rain or wind. Obviously this condition would not apply to Aarey/Sarita stalls;
- E (3) There should be no hawking within 100 meters from any place of worship, holy shrine, educational institutions and hospitals or within 150 meters from any municipal or other markets or from any railway station. There should be no hawking on foot-bridges and over-bridges. Further certain areas may be required to be kept free of hawkers for security reasons. However outside places of worship hawkers can be permitted to sell items required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candles, agarbattis, coconuts etc.;
- F
- G (4) The hawkers must not create any noise or play any instrument or music for attracting the public or the customers;
- H (5) They can only sell cooked foods, cut fruits juices and the like. We are unable to accept submission that cooking should be permitted. We direct that no cooking of any nature

- whatsoever shall be permitted. Even where cooked food or cut fruits or the like are sold, the food must not be adulterated or unhygienic. All municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act must be complied with; A
- (6) Hawking must be only between 7.00 am and 10.00 pm; B
- (7) Hawking will be on the basis of payment of a prescribed fee to be fixed by BMC. However the payment of prescribed fee shall not be deemed to authorize the hawker to do his business beyond prescribed hours and would not confer on the hawker the right to do business at any particular place; C
- (8) The hawkers must extend full cooperation to the municipal conservancy staff for cleaning the streets and footpaths and also to the other municipal staff for carrying on any municipal work. They must also cooperate with the other government and public agencies such as BEST undertaking, Bombay Telephones, BSES Ltd. etc. if they require to lay any cable or any development work; D
- (9) No hawking would be permitted on any street which is less than 8 meters in width. Further the hawkers also have to comply with Development Control Rules thus there can be no hawking in areas which are exclusively residential and where trading and commercial activity is prohibited. Thus hawking cannot be permitted on roads and pavements which do not have a shopping line; E
- (10) BMC shall grant licences which will have photos of the hawkers on them. The licence must be displayed, at all times, by the hawkers on their person by clipping it on their shirt or coat; F
- (11) Not more than one member of a family must be given a licence to hawk. For this purpose BMC will have to computerize its records; G
- H

- A (12) Vending of costly items e.g. electrical appliances, video and audio tapes and cassettes, cameras, phones etc. are to be prohibited. In the event of any hawker found to be selling such items his licence must be cancelled forthwith.
- B (13) In areas other than the Non-hawking Zones, licences must be granted to the hawkers to do their business on payment of the prescribed fee. The licences must be for a period of 1 year. That will be without prejudice to the right of the Committee to extend the limits of the Non-Hawking Zones in the interests of public health, sanitation, safety, public convenience and the like. 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 reasonably and in public interest.
- C
- D (14) In future, before making any alteration in the scheme, the Commissioner should place the matter before the Committee who shall take a decision after considering views of all concerned including the hawkers, the Commissioner of Police and members of the public or an association representing public.
- E
- F (15) It is expected that citizens and shopkeepers shall participate in keeping non hawking zones/areas free from hawkers. They shall do so by bringing to the notice of the concerned ward officer the presence of a hawker in a non hawking zone/area. The concerned ward officer shall take immediate steps to remove such a hawker. In case the ward officer takes no action a written complaint may be filed by the citizen/shopkeeper to the Committee. The Committee shall look into the complaint and if found correct the Committee will with the help of police remove the hawker. The officer in charge of the concerned police station is directed to give prompt and immediate assistance to the Committee. In the event of the Committee finding the complaint to be correct it shall so record. On the Committee so recording an adverse remark re-failure to perform his duty will be entered in the
- G
- H

confidential record of the concerned ward officer. If more than three such entries are found in the record of an officer it would be a ground for withholding promotion. If more than 6 such entries are found in the records of an officer it shall be a ground for termination of service. For the work of attending to such complaints BMC shall pay to the Chairman a fixed honorarium of Rs. 10,000 p.m.

- (16) The scheme framed by us will have a binding effect on all concerned. Thus apart from those to whom licenses will now be issued, no other person/body will have any right to squat or carry on any hawking or other business on the roads/streets. We direct the BMC shall bring this judgment to the notice of all Courts in which matters are now pending. We are quite sure that the concerned Court/s shall then suitably vacate/modify its injunction/stay order.

We do not approve of the principle that all major, trunk and arterial roads should automatically be excluded from hawking zones. The committee will also be entitled to examine, on receipt of a proposal whether hawking can be permitted on such roads. If without too much hindrance to vehicular and pedestrian traffic hawking can be permitted, it must be so permitted. For example, we see no reason why hawking should not be permitted on J. Tata Road or Barrister Rajni Patel Marg in A Ward. Of course hawking cannot be permitted on these roads in the vicinity of Sachivalaya and Vidhan Bhavan. The Committee will consider whether some portion of these roads can be declared as a hawking zone. We also do not approve of the findings of the Bombay High Court that hawking plazas are not to be permitted. It will be open for the BMC to set up hawking plazas. However when BMC sets up a hawking plaza the allotment of 1 Mt. x 1Mt. pitches in those hawking plazas must be made on the above terms and conditions including no fixed site, timing from 7 a.m. to 10 p.m. etc. and only by issuing advertisements in three local newspapers, one in Marathi, one in Hindi and one in English. Out of the applications received the allotment must be by draw of lots by the Chairman of the Committee. Even in hawking plazas the licence should not exceed one year. We were informed during hearing that at Andheri, BMC has entered into an arrangement with some of the hawkers and

A allotted them a place. In our view, such allotment was entirely unjustified as inasmuch as it was against the Judgment of the Bombay High Court and such allotment was made without making any advertisements or inviting applications from all concerned. We see no substance in the argument that this allotment was not as a hawking plaza and that therefore the Bombay
B High Court Judgment did not apply to it. If the allotment is not by way of hawking plaza, BMC could not have, at its whims and fancies, allotted only to a particular body of hawkers. It then necessarily had to first advertise and invite applications and allot only by draw of lots. As in Court it was fairly admitted that BMC had committed a mistake and will rectify it, we do not pass any orders in respect thereof.

C
We appoint a Committee consisting of a retired Judge of the Bombay City Civil Court at Bombay (to be nominated by the Chief Justice of Bombay High Court), who shall be the Chairman of the Committee, a senior officer of BMC (who shall be nominated by the Municipal
D Commissioner) and a senior police officer from the traffic department (who shall be nominated by the Police Commissioner). For the present the Officers will be deputed full time to work on the Committee. BMC shall forthwith make available to the Chairman and the Committee all facilities like office space, secretarial staff etc. BMC shall also make available to
E the Chairman a chauffeur driven car which is to be used for this work only. Any person or organization who feels, that roads/streets apart from those designated as non hawking zones are suitable for hawking, may apply to this Committee, for having that road/street designated as a hawking zone. Similarly any person or organization who feels that any road/street designated as hawking zone should be a none hawking zone may apply
F to the Committee for having that road/street designated as a non hawking zone. The person or organization so applying must deposit along with the application a sum of Rs. 1500 per road/street in respect of which they want a decision. BMC shall add to that a sum of Rs. 1500 per road/street. The sum of Rs. 3000 per road/street shall be handed over to the Chairman of
G the Committee as his honorarium. The Committee shall then cause a notice to be placed in the concerned ward office and in prominent places on that road/street inviting objections/suggestions in respect of that proposal. Undoubtedly the Committee shall visit the road/street and also hear all concerned parties including residents associations, shop owners in that
H road/street etc. The Committee shall then decide whether or not such road/

street should be a hawking zone or not. The Committee will also decide how many hawkers can be accommodated on that road/street if it is to be a hawking zone. We clarify that merely because in the scheme, as sanctioned, an area has been shown as a hawking zone or a non hawking zone, will not preclude the Committee from considering whether hawking can be permitted on that road/street. We have no doubt that the Committee shall ensure that the above mentioned criteria are fulfilled before a road/street is declared as a hawking zone and that if all the criteria are met then that road/street is not kept out of a hawking zone. In the event of any difference between the Committee members, the decision of the Chairman of the Committee shall prevail. The decision of the Committee shall be final and binding on all.

At one stage it was submitted that BMC would not have funds to meet the payments suggested by us. We see no substance in this submission. As set out hereinabove, between August 1998 and April 1999 BMC had collected Rs. 2,70,14,162 from licence fees and by issuance of 'Pauties'. Now that they can charge licence fees, a large amount is going to be collected by them. BMC shall keep apart, from the licence fees collected, sums necessary for expending monies under this Judgment.

We clarify that the scheme framed above and the guidelines are not applicable to hawkers who do not sit in any one place but who travel from place to place carrying their wares with them. However, even such hawkers shall require to obtain a licence on payment of prescribed fees and display that licence on their shirt/coat at all times. Such hawkers will be allowed even in residential areas and areas where there are no shopping lines. They shall not sell costly items and will only vend articles of immediate requirement i.e. articles of convenience shopping. They shall not hawk within 100 meters of any place of worship, holy shrine, educational institutions or hospital or within 150 meters of any municipal or other markets or from any railway station.

By Judgment dated 3rd May, 2001 certain suggestions regarding cobblers have been accepted by the Bombay High Court. We confirm that finding of the Bombay High Court, but clarify that the existing cobblers pitches in non hawking zones can be continued. However no further pitches can be added in non-hawking zones.

- A** BMC shall now give wide publicity in the city of Mumbai and invite applications for allocation of licences. Each application must state the area, where a pitch is sought and the type of items proposed to be sold. Each applicant can give a choice of not more than 3 locations indicating his 1st, 2nd and 3rd choice. All applications will then be categorized road/street wise. If the number of applicants, for a road/street, do not exceed the number of hawkers who can be accommodated on that road/street, then licences will be issued to them on receipt of requisite licence fee. If the number of applicants are more than the number of places available then those applications will be placed before the Committee. The Chairman of the Committee shall then allot licences on basis of a draw of lots by him.
- B** Those who do not get a licence will be placed on a waiting list. As and when any other road/street gets declared as a Hawking Zone, lots will be drawn from the wait list and places allotted.
- C**

- D** We realize that it will take some time for the above exercise to be completed. We hope that the above exercise shall be completed within 6 months from today. In the meantime licences may be issued and hawkers may be located in zones already approved by us by a draw of lots as indicated above. We now adjourn these matters to 23rd July, 2004. On that date BMC will inform us, on affidavit, how many more roads/streets have been declared as hawking zones and how many licences have already been issued and how many more hawkers are likely to be accommodated. BMC will also inform us how many and where they intend to locate hawking plazas and by what date they hope to set them up.
- E**

B.K.M.

Matter is pending.