

SUDHIR MADAN AND ORS
v.
MUNICIPAL CORPORATION OF DELHI AND ORS

MAY 17, 2007

[B.P. SINGH AND HARJIT SINGH BEDI, JJ.]

Hawkers/Street Vendors:

Policy for Street Vendors—of MCD and Scheme for Street Vendors in NDMC Area:

HELD: Supreme Court would not give a direction that fresh survey should be undertaken by an independent expert body or an independent organization to identify the hawking sites and the existence of hawkers—This is essentially a matter which the Municipal Corporation of Delhi has to consider and take a decision—Supreme Court cannot issue a writ directing the MCD to do so, this being a matter of policy—Administrative Law.

Small modification made in the Scheme so far as it relates to prohibition on cooking of food items—The allottees of Tehbazari/vending sites may be permitted to serve tea or coffee provided it does not result in disposal of any waste and the beverage is served in disposable glasses/cups for which adequate arrangement is made for safe disposal by the allottees of those sites.

MCD has accepted the suggestion made that the Scheme shall be modified suitably by providing that the Zonal Vending Committees shall be presided over by a judicial officer not below the rank of Addl. District Judge and the Appellate Committee shall be presided over by a retired High Court Judge—MCD would carry out necessary amendment in the Scheme.

The proforma of the application form enclosed by the MCD with the proposed Scheme for tehbazari/vending sites which requires an applicant to give all necessary particulars for consideration of his/her application, is approved—But it will be open to the MCD to require further particulars to be given in case it is considered necessary—Timing of squatting/vending activity at places such as railway station, bus stands, hospitals etc. May be relaxed in such a way that food items are made available to persons using

A *these places at unearthly hours also—This, however, should be an exception.*

No tehbazari/vending site shall be located on a footpath unless a clear 5 ft. space is made available for pedestrian—This should be made clear in the Scheme.

B *Weekly bazaars should be held only once a week in an area which must be the day on which the markets in the area observe a weekly closure under the Shops and Establishments Act—No weekly bazaars will be held on a day which is not a closed day for the market of the area—To avoid loss of revenue to the MCD, the collection from these bazaars should be made by the MCD itself and middlemen should not be involved in such collection.*

C *Direction to declare a weekly market in a particular area is a matter which has to be considered by the Municipal Corporation of Delhi –*

D *Giving preference to women vendors is a matter of policy and it would not be appropriate for Supreme Court to direct MCD to give preference to women vendors or recognize daily markets only for women.*

E *As regards the person unauthorisedly continuing to carry on business as hawkers/street vendors—The problems need to be addressed by the Legislature or the rule making authority—If it is felt that the persons who fall in this category require special protection, the Act may be suitably amended to cover their cases—Legislation—Need for.*

F *Delhi Administration is directed to take appropriate steps in the matter whenever any complaint is made by MCD or the NDMC with regard to violation of Rules by the taxi stand owners and illegal encroachments on footpath and roads by parking of vehicles—The Commissioner of Delhi Police would come to the aid of the MCD/NDMC as and when required for proper implementation of the schemes propounded by them. Any laches on the part of the police will be seriously viewed by the Court, as amounting to a breach of an order passed by Court –*

G *Supreme Court has approved the schemes as framed by the MCD and NDMC—Modifications/changes in the Schemes submitted by the MCD and NDMC, are approved—The said authorities shall take appropriate steps to implement the scheme forthwith—If the legislature intervenes and frames another scheme or regulations governing such schemes, that will certainly supersede the schemes prepared by the MCD and NDMC—Since a National*

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Policy on Urban Street Vendors has been formulated, the authorities concerned will have due regard to the said policy in the implementation of the schemes regulating tehbazari/vending sites etc.—National Policy on Urban Street Vendors. A

Editorial Note : This order is to be read in continuation of the order of the Court passed on 6.2.2007, which is reproduced at the end of this order. B

CIVIL ORIGINAL JURISDICTION : I.A. No. 394 in I.A. No. 356 In Writ Petition (C) No. 1699 of 1987.

Vikas Singh, ASG, Colin Gonsalves, V. Sekhar, Indira Jaising, June Choudhary, Rakesh K. Khanna, Sr. Adv., Aruna Mathur (for Arputham Aruna & Co.), S.K. Sinha, Kavita Wadia, M.M. Kashyap, Usha Kumar, K.K. Mohan, Geeta Luthra, Piyush Singh, D.N. Goburdhan, Gouri Karuna Das, Anu Gupta, Rajesh Singh, Rani Jethmalani, Taruna Dua, Y.P. Mahajan, K.C. Dua, R. Gopalakrishnan, Karun Mehta, Subramaniam Prasad, Mohan Pandey, S.S. Bandyopadhyay, S.N. Pandey, Santosh. Kumar, C.S. Ashri, S.K. Garg, Balraj Dewan, Varinder Kumar Sharma, Sudhir Nandrajog, Sudhir K. Sajwan, Prasanthi Prasad, Gargi Khanna, Madhu Moolchandani, Sanjiv Sen, Praveen Swarup, Subhash Bansal, Surya Kant, Rashmi Khanna, Jhanvi Woraha, Shelja Sinha, S.K. Verma, Asha G. Nair, Shakeel Ahmed, Arna Das, Kamini Jaiswal, Shomila Bakshi, Sunita Dwivedi, Prashant Bhushan, Parul Kaur Majethia, Indira Unninayar, Krishan Mahajan, Rakesh Garg, V.K. Verma, Ravindra Garia, Mehak Sethi, T.V. George N.K. Sahid, S.C. Tripathy, P.H. Parekh (for P.H. Parekh & Co., Shiv Kumar (A.C.) Indra Sawhney, Ranjan Narain, Ashok Bhan, Wasim A. Qadri, M.P.S. Tomar, Varuna Bhat, D.S. Mehra, Anil Katiyar, and Varuna Bhandari Guggani for the appearing parties. C D E

The Order of the Court was delivered by F

ORDER

B.P. SINGH, J. 1. This order may be read in continuation of our order of 6th February, 2007. G

2. When the matter came up before us on 6th February, 2007, all aspects of the Scheme submitted by the Municipal Corporation of Delhi (hereinafter for short 'MCD') were fully discussed. In the course of discussion, certain suggestions were made which the Court found acceptable and directed the MCD to consider whether those suggestions could be incorporated in the H

A Scheme. The MCD finding the suggestions acceptable has submitted before us a scheme incorporating these suggestions.

3. The Scheme envisages the identification of squatting/vending areas by the Ward Vending Committees which has to be approved by the Zonal Vending Committees which is also empowered to make necessary changes and make allotments accordingly. The identification of the hawkers/squatters occupying those sites has necessarily to be done by the MCD. Ms. Indra Jaising, learned senior counsel appearing on behalf of SEWA and Mr. Prashant Bhushan, learned counsel appearing for National Association of Street Vendors of India submitted that the Scheme proposed by the MCD is not satisfactory inasmuch as the survey work to identify hawking and non-hawking zones and the sites available should have been entrusted to an independent organisation which at one time was considered by the MCD, but which has been rejected on the plea that it involves considerable expense and time.

4. It appears that such a question was raised before this Court in the case of *Ramesh Shah v. MCD & Ors.*, (I.A. No. 332-333 in WP(C) No. 1699/1987) and this Court by order dated 6.11.2000 rejected the submission which has been urged before us, in these words :-

“So far as identification of squatting and non-squatting zones are concerned it is an administrative function of the MCD which is done by taking into account various factors namely, public interest depending mainly upon the congestion in the area and public safety which are the main considerations for any Government. No challenge to such identification of squatting and non-squatting zones can be permitted under any circumstance when the administrative authority has taken all factors in to account. We are not sitting in appeal against any decision made by the administrative authority. We therefore do not permit any challenge to the identification of the squatting and non-squatting zone and to the map as prepared by the MCD showing Green shall be treated as final and shall not be allowed to be questioned.”

In this view of the matter, we cannot accede to the request of the learned counsel for the respondents who have contended that fresh survey should be undertaken by an independent expert body or an independent organisation to identify the hawking sites and the existence of hawkers. This is essentially a matter which the Municipal Corporation of Delhi has to consider and take a decision. We cannot issue a writ directing the MCD to do so, this being a

matter of policy.

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5. We would, however, like to make one small modification in the Scheme so far as it relates to prohibition on cooking of food items. The allottees of Tehbazari/vending sites may be permitted to serve tea or coffee provided it does not result in disposal of any waste and the beverage is served in disposable glasses/cups for which adequate arrangement is made for safe disposal by the allottees of those sites.

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6. The Scheme provides for resolution of disputes between allottee and the MCD by the Zonal Vending Committees and an appeal is provided before the Appellate Authority. Mr. Sanjiv Sen, learned counsel appearing for the MCD accepted the suggestion made that the Scheme shall be modified suitably by providing that the Zonal Vending Committees shall be presided over by a judicial officer not below the rank of Addl. District Judge and the Appellate Committee shall be presided over by a retired High Court Judge. He submitted that necessary amendment in the Scheme shall be carried out accordingly. We, therefore, direct the MCD to do so.

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7. The MCD has enclosed with the proposed Scheme a proforma of the application form for tehbazari/vending sites which requires an applicant to give all necessary particulars for consideration of his/her application. We approve of the said proforma submitted before us but it will be open to the MCD to require further particulars to be given in case it is considered necessary.

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8. In the Scheme the proposed timing for fixed tehbazari/vending sites as well as proposed auto/cycle rickshaw is from 8.00 a.m. to 9.00 p.m. and for vendors moving in residential colonies from 7.00 a.m. to 8.00 p.m. or as fixed by the concerned Residents Welfare Associations. So far as the fixed tehbazari/vending sites are concerned the timings may be changed depending on weather conditions and other relevant considerations. So far as the timings for vendors moving in residential colonies is concerned the scheme itself suggests that the Residents Welfare Association will be consulted. We only wish to emphasise, as suggested by Mr. Prashant Bhushan, that no rigid approach may be adopted in fixing the timings.

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9. We would like to make only one exception with regard to timing of squatting/vending activity. There are several places which are visited by the public at large throughout the day and night, such as, railway station, bus stands, hospitals etc. Sometimes late in the night visitors to these places may

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A require a cup of tea or snacks. At most such places, provision is made for sale of food items/beverages through duly established outlets, shops and restaurants. However, where such facilities are not available, the MCD may consider relaxing the timings for hawkers/vendors who may serve tea/coffee, cold drink, and food items including packed cooked food items in the interest of the persons visiting such places at unearthly hours. This, however, should be an exception and only subject to the conditions stated above.

10. It was also submitted before us by Mr. S.K. Sinha, counsel appearing on behalf of Daryaganj Traders Association that at some places the width of the footpath is only 5 ft. but the same has been declared to be a squatting area. We had in our earlier orders suggested that tehbazari/vending sites should be so located as to give atleast 5 ft. space on the footpath for movement of the pedestrian. The modified Scheme, however, does not clearly bring about this prohibition. We direct that no tehbazari/vending site shall be located on a footpath unless a clear 5 ft. space is made available for pedestrian. This should be made clear in the Scheme.

11. In its submission before us the MCD stated that after this Scheme comes into effect the allottees of tehbazari/vending sites will not be permitted to transfer their sites to any person except in accordance with the Scheme. However, he brought to our notice that large number of transfers have already taken place prior to 6th February, 2007 and it may be difficult for the MCD now to reverse the position as it may give rise to a lot of litigation and at the same time create some unrest. It was suggested that this Court may pass an order that no litigation shall be entertained where action is taken in cases of change of site without the permission of the MCD and the litigation, if any, should be made subject to jurisdiction of this Court only. We do not think it proper to pass such an order. However, we cannot also countenance an illegal transfer of tehbazari/vending sites by the allottees. If such transfer requires the prior permission of MCD and the same has been done in violation of such requirement, the law must take its course because in such manner many persons may be able to secure tehbazari/vending sites over looking the better claims of others. In our view the law must take its course in such cases.

12. In the proposed Scheme under Clause (I) of paragraph (a) there is reference to payment of registration fee and tehbazari/vending charges in addition to road tax, Mr. Sen clarified that payment of road tax is only in respect of four wheelers. The Scheme may clarify this position. However, this will not prevent authorities concerned from collecting road tax from others if

under law such road tax is payable.

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13. Mr. Prashant Bhushan, learned counsel appearing on behalf of National Association of Street Vendors of India submitted that allotment of sites available is only 2.5% of the total population per Ward based on census of 2001. He submitted that the percentage of 2.5 must be worked out by reference to the current census. We consider the suggestion to be reasonable and direct the MCD to consider such change in number of sites as may become necessary based upon the current census figures as and when available.

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14. In sub-paragraph (d) of para B it is provided that the age of an allottee should not be less than 18 years and should not exceed 60 years on the date of application.

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15. After hearing counsel for the parties, we are of the view that though an allottee should not be less than 18 years of age on the date of allotment, no maximum upper age limit shall be fixed. In fact, Mr. Sanjiv Sen, learned counsel appearing on behalf of MCD also agreed and submitted that the eligibility based on age should be confined to new entrants and in any case will not apply to those who are being re-located. Having considered this matter, we are of the view that the upper age limit should be deleted since it may create many complications particularly in regard to applicants whose applications have been pending but not considered or whose cases may be found to be justified though no actual allotment has been made in their favour. We, therefore, direct that the upper age limit of 60 years may be deleted from the eligibility conditions.

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16. Before parting with this aspect of the matter we may notice the submissions urged on behalf of SEWA by Ms. Indira Jaisingh. She submitted that Daryaganj has not yet been declared to be a weekly market. As a matter of fact large number of booksellers used to sell books, old and new on a particular day in the week. She submitted that the said weekly market may be recognized only for the sale of books. She also submitted that Lala Qila has not been declared as weekly market and it should be so declared.

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17. We are afraid we cannot issue direction to declare a weekly market in a particular area. That is a matter which has to be considered by the Municipal Corporation of Delhi. We may only observe that the concept of weekly market for sale of books only is a suggestion worth considering, particularly in view of the fact that the readership of books is diminishing day

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A by day on account of rising costs of books which many cannot afford. Such a market may provide an opportunity to have avid readers to purchase books at low cost. This would also serve the purpose of a book being read by many, rather than being kept in the shelf of a particular room.

B 18. She also submitted that some preference should be given to women vendors in the allotment of tehbazari sites. In particular she referred to the daily market at Jahangir Puri which had developed as an all women's vegetable market. This again is a matter of policy and it would not be appropriate for us to direct the Municipal Corporation of Delhi to give preference to women vendors or recognize daily markets only for women. It is no doubt true that women vendors should be given adequate opportunity to supplement their family income. It is also true that they deserve more protection than others. We can only observe that in planning markets in the city, the Municipal Corporation of Delhi may consider whether some space should be reserved exclusively for women who may be allotted sites adjacent to each other in a block. It may also be a good idea to establish markets where sites may be allotted exclusively to women for selling items which primarily interest the women. This may greatly convenience women shoppers who may have an exclusive place to go and shop for all their personal needs. We have no doubt that in the future planning of markets such considerations will weigh with the planners.

E 19. Subject to these modifications, the Scheme submitted by the MCD in regard to vending sites/tehbazari is approved.

20. We shall now consider the policy relating to weekly bazars.

F 21. It is submitted by the MCD that as of today as many as 227 weekly bazars are being held. Most of them are held in non-hawking/non-squatting zones. Necessary directions have been sought in this regard from this Court.

G 22. Ms. Indira Jaising, learned senior counsel appearing on behalf of SEWA submitted that these weekly bazars are held only once a week and, therefore, there can be no objection to weekly bazars being held even in a no hawking zone. The matter requires to be considered from this perspective. She further submitted that collection at such weekly bazars through middlemen should be avoided and in the matter of timing also, no rigid approach must be adopted. She pointed out that the physical demarcation of hawking sites in weekly markets has given rise to lot of disputes. She also highlighted the H fact that after the year 2005 no collections are being made from anybody in

the weekly bazars. She submitted that some preference must be given to women vendors in the weekly bazars. She also submitted that in Jahangirpuri area there was a market run only by women and this should be revived. A

23. Mrs. Usha Kumar, learned counsel appearing on behalf of the Chandni Chowk Sarvvyapar Mandal submitted that in some areas there are two weekly bazars and they are held even on working days of the market of the area. In particular, she referred to Bhogal area where the entire area is converted into something like a weekly bazar on all days. B

24. Mr. Sen, appearing on behalf of MCD submitted that most of the weekly bazars are held in non-hawking areas. There is no uniform fixed weekly holidays when markets are closed. C

25. We have considered the Scheme proposed by the MCD in relation to weekly bazars and having considered the submissions urged on behalf of counsel appearing for the parties, we are of the view that weekly bazars should be held only once a week in an area which must be the day on which the markets in the area observe a weekly closure under the Shops and Establishments Act. No weekly bazars will be held on a day which is not a closed day for the market of the area. The MCD will identify the area over which weekly bazar may be held and in doing so it must take care to see that no road is blocked and access to any of the premises on the road is not affected. If there be any open space available, excluding the parks, it may permit weekly bazars to be held there. If necessary weekly bazars shall be held at a place other than where it is currently held if it is not possible to hold the bazar at the present location without causing undue inconvenience to the residents of the locality. We again reiterate that such bazars shall be held only on days when the market of that area observes a weekly off day in compliance with the provisions of the Shops and Establishments Act and on no other day. D E F

26. To avoid loss of revenue to the MCD, the collection from these bazars should be made by the MCD itself and middlemen should not be involved in such collection. So far as the timing of such weekly bazars is concerned, as we have observed earlier, the authorities need not be rigid and depending upon the climatic conditions, different timings may be prescribed for holding weekly bazars. Usually different timings are fixed for summer and winter months. That could also be adopted for holding of such markets. However, care should be taken that the weekly bazars do not continue to G H

A function after 10.00 p.m.

27. The New Delhi Municipal Committee has also submitted its Scheme. We have considered the scheme submitted before us. The area which falls under the NDMC does not create problems such as those in the areas under the MCD. However, in the said scheme reference has been made to persons who do not have permisison under Section 225 or license under Section 330 of the NDMC Act, 1994 but who are unauthorisedly continuing to carry on business as hawkers/street vendors. They have been described as those who are "tolerated" in the NDMC area. We fail to understand why any person who violates the law should be tolerated. Either they should be compelled to obey the law or the law may be suitably amended, if it is found to create undue hardship. The problems need to be addressed by the Legislature or the rule making authority. We, therefore, observe that if it is felt that the persons who fall in this category require special protection, the Act may be suitably amended to cover their cases or else the number of such illegal squatters may increase from time to time.

28. There has been no serious objection to the scheme submitted by the NDMC which is a comprehensive scheme. Certain directions have, however, been sought for from this Court. We approve the scheme submitted by the NDMC.

29. It is submitted before us that the Schemes which have been approved by this Court must be subject to any Act or Rules that may be framed in consonance with the National Policy on Urban Street Vendors. It goes without saying that we have approved the schemes as framed by the MCD and NDMC. If the legislature intervenes and frames another scheme or regulations governing such schemes, that will certainly supersede the schemes prepared by the MCD and NDMC. It is well settled that any administrative action is always subject to law that may be framed by the competent legislature.

30. It was further submitted before us that the authorities must have due regard to the concept of a natural market. We agree. In implementing such schemes, the authorities cannot ignore the concept of a natural market, but many interests have to be balanced so as to cause least inconvenience to the public at large. There is no reason for us to doubt that the authorities concerned will ignore all such relevant considerations in working a scheme of this nature.

31. It was also submitted that the authorities may be directed to identify

the non-hawking areas only and rest of the areas should be permitted as hawking areas. In our view such a course will not be practicable. In any event, that is a matter for the concerned authorities to consider and we can express no opinion in the matter. We may, however, observe that since a National Policy on Urban Street Vendors has been formulated, the authorities concerned will have due regard to the said policy in the implementation of the schemes regulating tehbazari/vending sites etc.

32. Counsel appearing for the MCD as well as the NDMC submitted before us that so far as they are concerned, they have no control over the taxi stands which at times occupy not only the area allotted to them but spill over footpaths and the road. Very often a large number of vehicles of a taxi stand are found parked on the roads, causing dislocation of traffic. We had directed counsel for the Delhi Administration to seek instructions in this regard. We direct the Delhi Administration to take appropriate steps in the matter whenever any complaint is made by MCD or the NDMC with regard to violation of Rules by the taxi stand owners and illegal encroachments on footpaths and roads by parking of vehicles. In such cases complaints may be made by the concerned authorities to the District Magistrate of the area concerned and the SHO of the police station under which the taxi stand falls. Within one week of receipt of such complaint, appropriate action must be taken by the Delhi Administration. In case of persistent defiance and breaches, the Delhi Administration may exercise its power to denotify the taxi stand concerned.

33. We also issue a general direction to the Commissioner of Delhi Police to come to the aid of the MCD/NDMC as and when required for proper implementation of the schemes propounded by them. Any laches on the part of the police will be seriously viewed by this Court, as amounting to a breach of an order passed this Court.

34. Subject to the aforesaid modifications/changes in the Schemes submitted by the MCD and NDMC, the same are approved. The said authorities shall now take appropriate steps to implement the scheme forthwith. In case of any difficulty faced by them in implementing the schemes, they shall have the liberty to apply to this Court.

35. This order only disposes of the matter so far as it relates to the approval of the schemes submitted by the MCD and NDMC and I.As. filed in connection therewith. Individual applications in the matter shall be

A considered separately by this Court, as directed earlier.

R.P.

I.A. disposed of.

ORDER (DATED 6.2.2007)

B We have before us an affidavit filed on behalf of the Municipal Corporation of Delhi in pursuance of our order dated 3rd March, 2006. In the said affidavit the proposed scheme for Grant of Tehbazari/Squatting/ Vending Rights has been outlined. It appears therefrom that in accordance with the National Policy on Urban Street Vendors-2004, Ward Vending Committees have been constituted in all the 134 Wards of the Municipal Corporation of
C Delhi charged with the duty of identifying the sites declaring hawking and non-hawking zones in consultation with various a take holders like Vendros/ Traders' Associations, Resident Welfare Associations, Traffic Police etc. in accordance with the relevant Rules. Zonal Vending Committees have also been constituted in all the 12 Zones and the sites identified by the Ward
D Committees. It is stated that total vending sites shall not exceed 2.5% of the total population of that particular Ward/Zone based on Census 2001 and this is consistent with the policy framed for the purpose. On a rough estimate about 3 lakh hawkers/squatters may be accommodated including existing tehbazari/vending sites.

E In sub para (d) of para (o), it is provided that tehbazari/vending sites will remain the property of the Corporation. However, mutation in case of death or permanent insanity of the allottee shall be allowed. Transfer/mutation in the event of change of hands or exchange shall be permissible subject to payment of the charges as approved by the municipal Corporation from time to time.

F We would like to clarify that the Scheme must contain a clause which makes tehbazari/vending sites non-transferable. Except in the case of death or permanent insanity of an allottee, in which case, the legal heirs may be substituted in his place in accordance with the norms. This will be subject to condition that the legal heir(s) who is allotted the sites in the place of the deceased/insane allottee shall carry on tehbazari/vending activity himself and
G shall not permit anyone else to carry on the business on his behalf.

H In sub para (e) of paragraph (D), it is provided that the tehbazari/vending site shall measure 6' x 4' and open to sky. The Municipal Corporation proposes to allow the tehbazari/vending sites to be covered wherever possible, for which a standard design will be evolved by the Corporation. The expense on this account shall be borne by the allottee. This has been proposed with

a view to prevent illegal extension of tehbazari sites and also with a view to maintain uniformity. A

We would like to add, that while doing so, no permanent structure shall be raised. The tehbazari/vending sites may be covered in such a manner as to identify and demarcate the area available for tehbazari and with a view to afford protection against the elements to the allottee(s) and their goods lying within the allotted site. B

We also suggest that necessary provision be made in the Scheme for taking strict action against any allottee found the change or alter the structure raised by the Corporation. It at any time, it is found that any change or alteration in the structure has been made by the allottee, his license may be cancelled. C

In sub-para (f) of paragraph (D), it is provided that the Vendor will pay registration fee of Rs. 1,000/- for the vending site in addition to monthly tehbazari charges as approved by the Municipal Corporation in consultation with the Zonal Vending Committee of a particular Zone, or Ward Vending Committee in case of a particular Ward. D

We clarify that the amount payable by way of registration fee may be altered if considered necessary. The same will apply to the monthly tehbazari charges. E

In sub para (h) of paragraph (D), it is provided that preference will be given to those persons whose dispute are pending in Courts and who are covered under the scheme formulated in the case of *Gainda Ram v. MCD* or the Chopra Committee, as also those, whose application were rejected by the Chopra Committee on minor grounds. Thereafter, second preference will be given to the special groups like handicapped and widows etc. The sites meant for widows will be allotted to the "DMC widows and Dependents Welfare Society" (a society formed to take care of widows and dependents of deceased MCD employees) for running vending sites either individually or through self-help groups of widows and handicapped. F G

So far as widows are concerned, we are of the view that apart from the category of widows mentioned in the proposed scheme, war widows may also be included in the said category.

After some discussion, it was clarified to us that all the existing allottees H

- A** as per the old scheme continue. Thereafter the cases of others will be considered in accordance with the preference provided in the said sub-paragraph. We, however, clarify that this will not preclude the shifting of an allottee from one site to another consistent with the norms laid down in the National Policy on Urban Street Vendors which provides that eviction should be avoided wherever feasible unless there is clear and urgent need of the land in question. The
- B** Municipal Corporation will generally follow the norms laid down in paragraph 5 of the National Policy on Urban Street Vendors. Before any allottee is shifted he should be given an opportunity to give his preference for a site which may be available for allotment.
- C** In sub-para (k) of paragraph (D), it is stated that the nature of goods/ items of daily needs/service will only be allowed which are as per the needs and requirements of that particular area. Preparation of any unhygienic food spreading infectious diseases, obnoxious, hazardous, electronic items and polluting item shall not be allowed. The existing PCO booths will also be
- D** allowed to switch over to other trades as the PCOS have become outdated due to inception of mobile phones/cordless phones.

The said sub-para (k) needs to be re-drafted so as to make it clear and categoric that cooking of any food items shall not be permitted at all, but cooked food properly packed may be sold by the allottees. In the case of

E *Maharashtra Ekta Hawkers Union and Anr. v. Municipal Corporation, Greater Mumbai and Ors.*, [2004] 1 SCC, 625 in sub-para (5) of para 14 of this Court has provided as under:-

F “(5) They can only sell cooked foods, cut fruits, juices and the like. We are unable to accept the 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.”

G We are of the view that a similar provision shall be incorporated in the Scheme proposed by the Municipal corporation.

Eligibility Conditions:

H In sub-para (c) of paragraph (E) it is provided that income of the applicant should not exceed Rs. 45,000/- per annum from all known sources

and in support of this an affidavit shall have to be sworn before the sub A
Divisional Magistrate/Metropolitan Magistrate.

We are of the view that this clause should be deleted. If the applicant B
has an income of Rs. 45,000/- per annum there is no need for him to ask for
allotment of a tehbazari/vending site. Instead, the scheme must provide that
the allottees must be persons who need to carry on tehbazari/vending in order
to earn a livelihood. His financial standing shall be taken account and only
the needy should be considered eligible for allotment of the tehbazari/vending
sites.

In the case of death of an allottee the site may be allotted to one of his C
legal representatives who shall actually carry on the business at the site. In
case, there are more than one legal representatives, those already in
employment shall be excluded. Thereafter if the remaining legal representatives
agree allotment may be made in favour of one or more of them (jointly) who
shall actually carry on squatting/vending activity at the site allotted. Such an D
allottee (s) shall not be permitted to allow any other person to carry on the
business at the site allotted and shall in no event transfer his rights therein
to any other person. These norms require to be incorporated in the scheme.

In sub-para (h) of paragraph (D), the following may be added.

The transfer of an allotted site to any other suitable places as per E
availability and feasibility shall be done by the Appellate Committee referred
to in sub-para (j) of paragraph D. This shall be done after giving the allottee
an opportunity of giving a preference of any other available site.

The Scheme shall also provide that no license shall be granted to any F
person in no hawking/squatting zones. The Station House Officer of the
concerned police station shall take immediate steps to remove any person
found hawking/squatting in a non-hawking/squatting area. If an allottee, who
has been allotted a tehbazari/vending site in a hawking/squatting zone, is
found carrying on such activity in a non-hawking/squatting zone, the Municipal
Corporation may consider cancelling his allotment.

In the matter of *Gainda Ram and Ors. v. MCD, Town Hall and Ors.*, G
[1993] 3 SCC, 178 in paragraph 1(2) this Court gave certain directions with
regard to holding of casual tehbazari on weekly holidays festivals/melas etc.
We are informed that weekly bazaars which were then 67 in number have since
increased in number, and the said direction shall apply to all such weekly H

A bazars. It is clarified that such weekly bazars shall not be held in non hawking/squatting zones. We also clarify that in purely residential areas no hawking/squatting shall be permitted except where shopping area has been provided for and there is space available for accommodating such squatters/hawkers. Detailed norms with regard to holding of weekly bazaars shall also be declared by the Municipal Corporation of Delhi and placed before this Court for approval. Any change in the non-hawking/squatting zones shall be intimated to the concerned police station.

C The authorities under the Scheme shall wherever necessary ascertain the views of the Delhi Metro Rail Corporation and the Delhi Fire Services before identifying the sites.

Policy with Regard to N.D.M.C. Areas

D We have also before us a draft Scheme prepared for the street vendors by the N.D.M.C. It appears from the draft scheme that the Vending Committees have not yet been constituted. We are informed that the Vending Committee shall be constituted within a period of one month from today which shall be entrusted with the tasks enumerated in paragraph 3.2.

E In paragraph 4.2. of the Draft Scheme, it is provided that no squatting shall be allowed on the roads/areas specified in the said paragraph. We direct the NDMC that after the Vending Committee is constituted it shall review the exclusion of any of those areas and if any alteration is sought to be made, the same shall be placed before this Court for approval. The scheme should be framed having regard not only to the interest of the vendors but also of the public at large.

F In para 4.2.1 at page 165 of the paperbook, parks have been included in the Vending Areas.

G We are of the view that parks should be excluded from the Vending Areas unless there be any park where special provision is made for providing space for squatting/tehbazari., etc., but hawking only on the roads/streets around or near the park may be allowed.

H Para 4.5. provides for grant of hawking license. It vests the Vending Committee in consultation with the Resident Welfare Association to decide the number of categories and type of items which should be permitted for hawking in each of the residential colonies.

Para 4.5.2 provides that the resident welfare association, if they so need, may permit additional space for squatting/tehbazari. A

We are of the view that this should not be permitted unless there is a shopping area clearly demarcated where space is available for accommodating such squatters/tehbazaris. B

In para 4.8 it is stated that at present the squatting sites/space are of different dimensions.

We suggest that, as in the case of Municipal Corporation of Delhi, the tehbazari/vending sites should be uniformly of the specification 6' x 4' and no permanent structure shall be raised on the said site. C

We have also noticed para 6.1 of the Scheme wherein the problems created by taxi stands have been highlighted. The counsel for the N.D.M.C. submits that the power of denotifying the general taxi stands vests only in the District Magistrate. These taxi stands are being misused. The footpaths and roads have been encroached by private commercial and luxury vehicles operating as taxis. The N.D.M.C. is not able to remove these taxi stands with the result that the footpaths and roads continue to be crowded by these taxi stands. D

Mr. S.W.A. Qadri, learned counsel appearing for Delhi Police is directed to seek instructions on behalf of the Delhi Administration and submit its response to this Court on the next date of hearing. E

We have made our general observations which have to be incorporated in the Scheme with clarity. We, therefore, direct the Municipal Corporation of Delhi and the N.D.M.C. to reframe the scheme in the light of our observations contained in this order and submit the same before us within four weeks. F

We would like to highlight the fact that though this Scheme is to a great extent is for the benefit of hawker/squatters/tehbazari holders, it also serves a public purpose. At the same time the convenience and interest of the public at large, which constitutes 97.5% of the population, should not be forgotten by the concerned authorities. To the extent possible space may be made available for squatters/tehbazari etc. but no so as to cause inconvenience to the general public. This aspect of the matter should not be forgotten at any time by any of the authorities. G

- A** The Municipal Corporation of Delhi and the N.D.M.C. will now finalise the squatting/tehbazari zones and submit a detailed report to this Court. They shall also indicate the norms that they have followed in identifying these sites, in particular, the width of the roads where such aquatting/tehbazari has been permitted and the areas whether commercial/residential or otherwise where such sites are located. They should also indicate the availability of the
- B** footpath for the general public after accommodating the squatters. After the sites are identified, norms will have to be evolved by the Municipal Corporation of Delhi and the N.D.M.C. to make allotments. For that purpose they may either make a survey or adopt any other fair procedure for making allotments. It may be useful to consider the suggestions made by some of the Advocates
- C** present in Court that a detailed proforma may be prescribed by the concerned authorities for making application for allotment of squatting/tehbazari site.

Put up these matters on 28th March, 2007 for further directions.

- D** *I.A. Nos. 394 in I.A. No. 356 in W.P. (c) NO. 1699/1987, I.A. No. 396 in Cont. Pet (C) No. 506/2002, I.A. No. 407 in WP (C) No. 1699/1987 and SLP(C) 7025/2003*

Let these applications/petitions be placed for orders on 20th February, 2007.