A GAINDA RAM AND OTHERS

v.

M.C.D. AND OTHERS

I.A. Nos.1, 3 & 4 in I.A. No.1 in I.A. No.407

I.A. Nos.9 & 10 in I.A. No.407

B IN W.P.(C) NO.1699 OF 1987

OCTOBER 08, 2010

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

C *Hawker matters:*

Legislation – Need for – Regulation of squatters/hawkers in Delhi – Schemes evolved by New Delhi Municipal Corporation and Municipal Corporation of Delhi from time to D *time on directions by Supreme Court – Right to carry on hawking on pavements under control of MCD and NDMC – Claim of by hawkers – Complaint alleging that steps taken by NDMC and MCD preventing them from carrying hawking and vending – Held: Hawkers have a fundamental right to carry on hawking under Article 19(1) (g) – It is subject to* E *reasonable restrictions imposed by law – National Policy on Urban Street Vendors, 2004 and Scheme framed by NDMC cannot be called law – National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009 which is up to 31.12.2010, and Street Vendors (Protection of Livelihood and* F *Regulation of Street Vending) Bill, 2009 have been enacted to regulate the fundamental right of street hawking and street vending – Numerous matters are pending before Supreme Court – Thus, structured regulation and legislation imminently necessary in public interest, to control and regulate* G *fundamental right of hawking of vendors and hawkers – Appropriate Government directed to enact a law to regulate hawking, before 30.06.2011 – Till such time, grievances of hawkers/vendors to be redressed by internal dispute redressal*

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mechanisms provided in the Schemes– Writ petition and IA's disposed of – Municipalities – New Delhi Municipal Council Act, 1994 – ss. 225, 226, 330 and 369(2) – Delhi Municipal Corporation Act, 1957 – Constitution of India, 1950 – Articles 19(1)(g) and 19(6).

The instant matters are with regard to regulation of hawking on the streets of Delhi. In ****Sodan Singh's* **case, the Supreme Court laid down certain guidelines for regulating citizen's right to carry on hawking business on the streets. Pursuant thereto, the New Delhi Municipal Council (NDMC) and Municipal Corporation of Delhi (MCD) framed Schemes to regulate hawking and street vending. The said Schemes were modified from time to time by the order passed by the Supreme Court. The Thareja Committee and Chaturvedi Committee were formed to examine the claims of the hawkers but many of the hawkers were not allotted sites. Meanwhile, several hawkers filed cases before the Supreme Court. Subsequently, NDMC and MCD also framed Schemes for hawkers and squatters following the National Policy on Urban Street Vendors, 2004. This Court directed the municipal authorities to implement the Scheme approved by the Court.**

The hawkers filed the instant writ petition and interim applications claiming a right to carry on business in different parts of the pavements under the control of MCD and NDMC; and complaining about steps taken by the NDMC and MCD to prevent them from hawking and vending.

Disposing of the writ petition and the IA's, the Court

HELD: 1.1 The hawkers' and squatters' or vendors' right to carry on hawking has been recognized as fundamental right under Article 19(1)(g) of the

A **Constitution of India, 1950 but such right is not absolute and is subject to reasonable restrictions under Article 19(6) of the Constitution. At the same time the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article**
B **19(1)(d). These two apparently conflicting rights must be harmonized and regulated by subjecting them to reasonable restrictions only under a law. [Paras 42 and 77] [1026-B; 1043-H; 1044-A]**

C **Sodan Singh and Ors. vs. New Delhi Municipal Committee and Ors.* **(1989) 4 SCC 155 – followed.**

Pyare Lal vs. New Delhi Municipal Committee and another **AIR 1968 SC 133 – distinguished.**

D **1.2 The rights under Article 19(1)(g) can only be controlled by law as contemplated in Article 19(6). Such law can impose reasonable restrictions. The reasonable restrictions on the fundamental right under Article 19(1)(g) can be imposed either by existing law or by a law**
E **which may be made by a State in the interest of general public. Therefore, nothing short of law can impose reasonable restrictions on a citizen's fundamental right to carry on hawking under Article 19(1)(g) of the Constitution. [Paras 43, 45 and 46] [1025-C; 1027-C-D]**

F *Bijoe Emmanuel and Ors. vs. State of Kerala and Ors.* **AIR 1987 SC 748;** *Kameshwar Prasad and others vs. State of Bihar and Anr.* **AIR 1962 SC 1166;** *Kharak Singh vs. State of U.P. and Ors.* **AIR 1963 SC 1295 – referred to.**

G **2.1 The New Delhi Municipal Council (NDMC) framed a Scheme for regulation of squatting and hawking in the NDMC areas on the basis of guidelines given in *Sodan Singh's case. In that scheme NDMC divided its area into four zones and some of the zones have been made non-**

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hawking zones. From time to time the said scheme has been modified by the orders passed by this Court. Subsequently, another scheme was prepared by the NDMC pursuant to the National Policy on Urban Street Vendors, 2004. In the said scheme the NDMC referred to Sections 225 and 330 of the NDMC Act. Section 225 of the Act permits squatting only on the permission given by the Chairman and on payment of such fees in each case as the Chairman may think fit. Section 330 of the Act provides for licence for hawking of articles etc. The said Section 330 authorizes the NDMC to prevent hawking unless there is a licence to that effect granted by the Chairperson. As per Section 226 of the NDMC, the Chairperson may without notice cause removal of articles kept in the public street and Section 369(2) of the Act provides for punishment for contravention of the provision of the Section 225(1). [Paras 50 and 51] [1028-A-E]

2.2 The 2004 Policy provides for setting up of a vending committee which may consist of representatives of (a) Municipal Authority, (b) Traffic and Local Police, (c) Public and owning authority, (d) Associations of traders, residents and also of street vendors both static and mobile. The 2004 Policy also referred to the Master Plan of Delhi, 2021 which provides for informal sector in trade in the planned development of various zones. In the said policy, there is also a division between vending and non-vending areas and it is made clear that no hawking licence would be issued in non-vending areas. The timing and the day of hawking was also to be regulated as per the suggestions of Residents Welfare Association (RWA). Neither the said policy nor the scheme framed by the NDMC can be called law, except the provisions of Sections 225, 226, 330 and 369(2) of NDMC Act. [Paras 52, 53 and 54] [1028-E-F; 1029-G-H; 1030-A-B]

A 2.3 Section 388 of the NDMC Act empowers the NDMC to frame bye-laws relating to the streets which have to be laid before Parliament under Section 389 of the Act. These bye-laws may have the status of subordinate or delegated legislation. Penalty has been B provided for breach of bye-laws under Section 390 of the Act. It does not appear that the NDMC has made any bye-law under Section 388 of the NDMC Act so as to regulate the fundamental right of the hawkers to hawk or squat on the streets of Delhi. The Schemes framed under the C direction of this Court or the 2004 Policy which has been framed by the Government, cannot said to have been framed under the said power to frame bye-laws and do not have the status of law or even subordinate legislation. [Paras 55, 56 and 57] [1030-C-E-G]

D 2.4 Subsequent to the 2004 Policy, a new National Policy on Urban Street Vendors, 2009 was framed on 17th June 2009. The 2009 Policy recognizes street vending as an integral and legitimate part of urban retail trade and distribution system, even when, otherwise, E street vending is sometimes projected as a major menace in urban areas aggravating traffic problems. But the 2009 Policy aims at giving the street vendors a legal status by providing them legitimate vending and hawking zones in the city in the town master plans and F development plans. Therefore, the National Policy directs, "Municipal Authorities should frame necessary rules for regulating entry of street vendors on a time sharing basis in designated vending zones keeping in view three broad categories – registered vendors who have secured a G license for a specified site/stall; registered street vendors in a zone on a time sharing basis; and registered mobile street vendors visiting one or the other vending zone". Therefore, the Policy seeks to institutionalize a part of the urban street vending through legislation. [Paras 59, 60 H and 61] [1031-C-G]

2.5 The National Capital Territory of Delhi Laws (Special Provisions) Second Act 2009 was enacted on 23.12.2009 which makes special provisions for the National Capital Territory of Delhi for a period up to 31.12.2010. Therefore, it is clear that the said law is for temporary period. From the preamble of the law, it would appear that a strategy and a Scheme was prepared by the local authorities in the National Capital Territory of Delhi for regulation of urban street vendors in accordance with national policy for urban street vendors and the Master Plan for Delhi, 2021. It was also provided that whereas more time is required for orderly implementation of the Scheme regarding hawkers and urban street vendors and for regulation of unauthorized colonies, the said law would have effect only up to 31.12.2010. [Para 62] [1034-A-D]

2.6 There is also a Bill called the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 by the Government of India, Ministry of Housing and Urban Poverty Alleviation. The Bill is to provide for protection of livelihood of urban street vendors and to regulate street vending and for matters connected therewith. Now if the said Bill is enacted in the present form, the Bill then *prima facie* recognizes the rights of hawkers and vendors under Article 21 of the Constitution since it seeks to protect their livelihood. In the background of the provisions in the Bill and the 2009 Policy, it is clear that an attempt is made to regulate the fundamental right of street hawking and street vending by law, since the right to hawk on the streets or right to carry on street vending is part of fundamental right under Article 19(1)(g). However, till the law is made, the attempt made by NDMC and MCD to regulate the said right by framing Schemes which are not statutory in nature is not exactly within the contemplation of constitutional provision. However, such Schemes

A have been regulated from time to time by this Court for several years. Even, orders passed by this Court, in trying to regulate such hawking and street vending, is not law either. At the same time, there is no denying of the fact that hawking and street vending should be regulated B by law. Such a law is imminently necessary in public interest. [Paras 63, 64, 65] [1034-E-H; 1035-A-C]

2.7 The problem is acute. On the one hand there is an exodus of fleeting population to metro cities and towns in search of employment and on the other hand C with the ever increasing population of cars and other vehicles in the same cities, the roads are choked to the brim posing great hazards to the interest of general public. In the midst of such near chaos, the hawkers want to sell their goods to make a living. Most of the hawkers D are very poor, a few of them may have a marginally better financial position. But by and large they constitute an unorganized poor sector in the society. Therefore, structured regulation and legislation is urgently necessary to control and regulate fundamental right of E hawking of these vendors and hawkers. [Para 66] [1035-G-H; 1036-A-B]

2.8 The issue is vitally important to a very large section of people, mostly ordinary men and women. Such F an issue cannot be left to be decided by Schemes and which are monitored by this Court from time to time. The fundamental right of the hawkers, just because they are poor and unorganized, cannot be left in a state of limbo nor can it left to be decided by the varying standards of G a Scheme which changes from time to time under the orders of this Court. [Paras 77 and 79] [1043-A-B-D]

2.9 Innumerable IAs have been filed in this Court along with various objections by the hawkers, most of the time collectively, complaining about steps taken by

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municipal authorities, namely, NDMC and MCD to prevent them from hawking and vending. This Court has tried its best to somehow deal with the situation. But it is difficult for this Court to tackle this huge problem in the absence of a valid law. The nature of the problem defies a proper solution by this Court by any judicially manageable standards. Therefore, the writ petition and all the IAs are disposed of with the direction that the problem of hawking and street vending may be regulated by the existing Schemes framed by NDMC and MCD, up to 30th June, 2011. Within that time, the appropriate Government is to legislate and bring out the law to regulate hawking and hawkers' fundamental right. Till such time the grievances of the hawkers/vendors may be redressed by the internal dispute redressal mechanisms provided in the Schemes. [Paras 67, 68 and 69] [1036-B-F]

2.10 In view of such Schemes, the hawkers, squatters and vendors must abide by the Dispute Redressal Scheme. There should not be any direct approach to this Court by way of fresh petition or IAs, bypassing the Dispute Redressal Mechanism provided in the Scheme. However, before 30th June, 2011, the appropriate Government is to enact a law on the basis of the Bill mentioned or on the basis of any amendment thereof so that the hawkers may precisely know the contours of their rights. These directions are given in exercise of its jurisdiction to protect the fundamental right of the citizens. The appropriate Government has already enacted a Bill and, therefore, the initial decision making in the field of legislative exercise is complete. It has, of course, to be converted into a law by following the Constitutional process. That is why time is given till 30th June, 2011. [Paras 75, 76, 77 and 78] [1043-E-G; 1044-B-C]

Fertilizer Corporation Kamgar Union (Regd.) Sindri &

A *others vs. Union of India and others* **(1981) 1 SCC 568;** *K. Rajendran & others vs. State of Tamil Nadu & others* **(1982) 2 SCC 273;** *Bombay Hawkers' Union & others vs. Bombay Municipal Corporation & others* **(1985) 3 SCC 528;** *Olga Tellis & ors. vs. Bombay Municipal Corporation & others* **(1985) 3 SCC 545;** *Saghir Ahmad and another vs. State of U.P. and others* **AIR 1954 SC 728;** *Municipal Corporation of Delhi vs. Gurnam Kaur* **(1989) 1 SCC 101;** *Saudan Singh etc. etc. vs. NDMC and others etc. etc.*, **(1992) 2 SCC 458;** *Gainda Ram and Ors. vs. MCD* **(1993) 3 SCC 178;** *Sodan Singh vs. NDMC and others*, **(1998) 2 SCC 727;** *Sudhir Madan and others vs. Municipal Corporation of Delhi and others* **IA No. 394 in I.A.No. 356 in WP (Civil) No. 1699/1987);** *Ramesh Shah vs. MCD and others* **IA No. 332-333 in WP (Civil) No. 1699/1987 dated 6.11.2000;** *Bijoe Emmanuel and others vs. State of Kerala and others* **AIR 1987 SC 748;** *Kameshwar Prasad and others vs. State of Bihar and another* **AIR 1962 SC 1166;** *Kharak Singh vs. State of U.P. and others* **AIR 1963 SC 1295 – referred to.**

Case Law Reference:

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AIR 1968 SC 133	**Distinguished.**	**Para 6**
(1989) 4 SCC 155	**Followed.**	**Para 3**
(1981) 1 SCC 568	**Referred to**	**Para 7**
(1982) 2 SCC 273	**Referred to**	**Para 7**
(1985) 3 SCC 528	**Referred to**	**Para 7**
(1985) 3 SCC 545	**Referred to**	**Para 7**
AIR 1954 SC 728	**Referred to**	**Para 8**
(1989) 1 SCC 101	**Referred to**	**Para 10**
(1992) 2 SCC 458	**Referred to**	**Para 19**
(1993) 3 SCC 178	**Referred to**	**Para 24**

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(1998) 2 SCC 727	**Referred to**	**Para 27**	A
AIR 1987 SC 748	**Referred to**	**Para 47 and 48**	
AIR 1962 SC 1166	**Referred to**	**Para 48**	
AIR 1963 SC 1295	**Referred to**	**Para 48**	B

CIVIL ORIGINAL JURISDICTION : I.A. No. 1, 3 & 4 in I.A. No. 1, in I.A. No. 407 & in I.A. Nos. 9 & 10, in I.A. No. 407 in W.P. (C) No. 1699 of 1987.

WITH C

I.A. Nos. 2 & 3 I.A. No. 407 in W.P. (C) No. 1699 of 1987

I.A. Nos. 4 & 5 I.A. No. 407 in W.P. (C) No. 1699 of 1987

I.A. Nos. 6 in I.A. No. 407 in W.P. (C) No. 1699 of 1987 D

I.A. Nos. 7 & 8 I.A. No. 407 in W.P. (C) No. 1699 of 1987

W.P. (C) No. 77 of 2010

I.A. Nos. 211, 212 & 213 in C.A. No. 560 of 1998. E

Vijay Hansaria, L.N. Rao, Rakesh Kumar Khanna, Dr. Rashmi Khanna, T.S. Doabia, N.K. Sahoo, H.A. Raichura, Rani Chhabra , P.I. Jose, Sneha Kalita, B.K. Mishra, Vivek Kandari, Anupam Mishra, Satyendra Kumar, Sunita Bhardwaj, Abhay Kumar, Madhusmita Singh, Tenzing Tsering, Nikhil Goel, F Naveen Goel, A. Venayagam Balan, M.M. Kashyap, Kavita Wadia, Surya Kant, Purnima Jauhari, Prashant Kumar, Sukhvinder Kaur, Shiv Kumar, Sunita Sharma, S.W.A. Qadri, Mukesh Verma, P.S. Tomar, Anil Katiyar, Kiran Bhardwaj, Sushma Suri, Parekh & Co., Arvind Kr. Sharma, Saurabh G Mishra, Goodwill Indeevar, S.C. Patel, Dinesh Kumar Garg, Suresh Chandra Tripathy, T.V. George, Indira Sawhney, Sanjiv Sen, Praveen Swarup, P. Parmeswaran, Anuja Chopra, Indira Unninayar, Prashant Narang, Sanjay Jain, N. Annapoorni, Gargi

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A Khanna, Anil Katiyar, M.P.S. Tomar and Mukesh Verma for the appearing parties.

The Judgment of the Court was delivered by

GANGULY, J. 1. Hawking on the streets of Delhi, whose B municipal limits have expanded over the years, has been the subject matter of several proceedings in this Court. Initially in the early sixties, this problem surfaced when this Court, hearing an appeal from a decision dated 4th August, 1966 of the Punjab High Court, Circuit Bench at Delhi, dealt with this question in C some detail in the case of *Pyare Lal vs. New Delhi Municipal Committee and another* [AIR 1968 SC 133]. In *Pyare Lal* (supra), sale of cooked food on public streets which was creating the problems of unhygienic conditions came up before this Court in the context of a resolution of the New Delhi D Municipal Committee stopping such sale. A three-Judge Bench of this Court held that no person carrying on the aforesaid business of selling cooked food has any fundamental right to carry on street vending particularly in a manner which creates unsanitary and unhygienic conditions in the neighbourhood.

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2. However, the controversy did not rest there, nor did the problem of hawking come to an end in view of Pyare Lal's judgment.

3. Several cases were filed thereafter in different Courts F and ultimately the leading decision was rendered in the case of *Sodan Singh and others vs. New Delhi Municipal Committee and others* [(1989) 4 SCC 155] by a Constitution Bench of this Court.

G 4. In *Sodan Singh* (supra) the petitioners, as hawkers, were carrying on business by squatting on the pavements of Delhi and New Delhi and those squatters alleged that they were allowed by the Municipality to carry on such business on payment of charges described as Tehbazari. As the Municipal

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Authority subsequently refused to permit them to continue their business, that action of the municipality according to those petitioners, interfered with their fundamental right to carry on business under Articles 19(1)(g) and 21 of the Constitution of India. The correctness of the decision in *Pyare Lal* (supra) was also doubted. As such the matter was placed before the Constitution Bench.

5. In *Sodan Singh* (supra) there was a paradigm shift by this Court on the interpretation of fundamental right of a hawker or a squatter under Article 19(1)(g) to carry on business. Various judgments of this Court were considered and in paragraph 18 (at page 169 of SCC) Justice Sharma (as His Lordship then was) delivering the majority judgment expressly held by referring to *Pyare Lal* (supra) that, "we do not agree with these observations." However, His Lordship was quick to add that in the facts considered in *Pyare Lal* (supra) the decision was correct.

6. In our judgment, the decision in *Pyare Lal* (supra) was thus distinguished and confined to the facts of that case.

7. However, this Court in *Sodan Singh* (supra) took a very broad view of a citizens right under Article 19(1)(g) following its decisions in the case of *Fertilizer Corporation Kamgar Union (Regd.) Sindri & others vs. Union of India and others* [(1981) 1 SCC 568] and also the decision of this Court in *K. Rajendran & others vs. State of Tamil Nadu & others* [(1982) 2 SCC 273] and the decision of this Court in *Bombay Hawkers' Union & others versus Bombay Municipal Corporation & others* [(1985) 3 SCC 528] and the Constitution Bench decision of this Court in the case of *Olga Tellis & ors. vs. Bombay Municipal Corporation & others* [(1985) 3 SCC 545].

8. This Court in *Sodan Singh* (supra) came to the conclusion that the hawkers and squatters have a fundamental right to carry on business on the public street, but the same should be regulated. It was further held by Justice Sharma (as

A His Lordship then was) that the right of a hawker to transact business, while going from place to place, is recognized in India for a long period. Of course such right is subject to regulation since public streets demand its use by the public and the streets are not meant to facilitate some citizens to carry on B any private business. However, such right of hawking for carrying on business on the street cannot be denied if they are properly regulated. The learned Judge made it very clear that the said right is subject to reasonable restrictions under Clause (6) of Article 19. The learned Judge relying on the ratio in C *Saghir Ahmad and another vs. State of U.P. and others* [AIR 1954 SC 728] held that streets in India are vested in the municipality and they have to be used by the municipalities as trustees. The learned Judge while delivering the judgment observed:-

D "We as a court in a welfare State do realise the hardship to which many of the petitioners may be exposed if they are prevented from carrying on the business. The only solution for this is the adoption of the policy of full employment, which even according to leading economists E like Keynes will alleviate the problems of the unemployed to some extent. But as students of economics we also realise that every human activity has the 'optimum point' beyond which it becomes wholly unproductive. It is for the government to take reasonable steps to prevent movement F of people from rural areas to urban areas. That can be done by the development of urban centres in rural areas removed from each other at least by one hundred miles. This is more a matter of executive policy than for judicial fiat. We hope and trust that in administering the laws in G force the authorities will keep in view humane considerations..."

9. Justice Kuldip Singh, in a concurring but a different opinion, interpreted the right under Article 19(1)(g) as comprehensively as possible to include all the avenues and H

modes through which a man earns his livelihood excepting of course gambling and trafficking in women. The learned Judge's interpretation of Article 19(1)(g) if we may say so, with respect, is remarkably brilliant. His Lordship held, "in a nutshell the guarantee takes into its fold any activity carried on by a citizen of India to earn his living. The activity of course must be legitimate and not anti-social like gambling, trafficking in women and the like. (See para 28 page 174 of the report).

10. The learned Judge referred to the decision in *Bombay Hawkers' Union* (supra) and also to the decision of this Court in *Municipal Corporation of Delhi vs. Gurnam Kaur* [(1989) 1 SCC 101] and highlighted the importance of framing regulations to regulate hawking business by creating hawking and non-hawking zones. The learned Judge in his concurring judgment made a very pertinent observation after comparing the position of street trading in India with that prevailing in other countries and noted that even in England where there is complete social security and the citizens are not driven to the streets to make out a living out of poverty and sheer unemployment, street trading is recognized. Considering that an alarming percentage of population in our country lives below poverty line, the learned Judge held that when the citizens by gathering meager resources try to employ themselves as hawkers and street traders, they cannot be subjected to a deprivation on the pretext that they have no right. The learned Judge deplored that despite repeated suggestions by this Court, the Government has not yet framed regulations for regulating citizen's right to carry on hawking business on the streets.

11. Subsequently, also again this Court had to deal with large number of petitions filed by hawkers claiming a right to carry on business in different parts of the pavements under the control of Municipal Corporation of Delhi (MCD) and New Delhi Municipal Council (NDMC).

12. In *Sodan Singh* (supra) this Court was of the view that

A detailed provisions, dealing with all relevant aspects, and capable of solving the problems of hawking in a fair and equitable manner should be made and the respondents (municipal authorities) should proceed as soon as it may be possible. This Court felt that municipal authorities would be well B advised to consider suggestions of the hawkers while finalizing the schemes with due regard to the requirements of the relevant laws e.g. Delhi Police Act, 1978, the Delhi Control of Vehicular and other Traffic on Roads and Streets Regulations, 1980 etc. The Constitution Bench in *Sodan Singh* (supra) clarified in C paragraph 24 of the judgment that the demand of the petitioners therein that the hawkers must be permitted on every road in the city, could not be allowed, if the road was not wide enough to conveniently manage the traffic on it, no hawking may be permitted at all, or may be sanctioned only once a week, say D on Sundays when the rush considerably thinned out. Hawking could also be justifiably prohibited near hospitals or where necessity of security measures so demanded. The demand that permission to squat on a particular place must be on a permanent basis was also rejected on the ground that circumstances were likely to change from time to time.

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13. Pursuant to the directions of this Hon'ble Court, a scheme was prepared by the NDMC vide its Resolution No. 28 dated 10.11.1989 and the same was placed before the Lok Adalat held at this Hon'ble Court on November 19, 1989. F Thereupon, a general order was passed by the Lok Adalat after going through the scheme submitted by NDMC on the guidelines laid down by this Court in *Sodan Singh* (supra) for implementation of the scheme. A committee consisting of two members of NDMC and a District Judge or a Higher Judicial G Officer was to be constituted. Decision rendered by the committee was to be made binding and final.

14. It was submitted before the Lok Adalat that the NDMC did not have sufficient land which belonged to the Central Government and unless the Central Government allotted suitable

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land, the Municipal Committee was not in a position to accommodate all the hawkers/squatters as per the scheme. The Lok Adalat accordingly suggested that a request was to be made by the Legal Aid Committee to the Central Government for the allotment of land. The NDMC as well was to approach the Central Government for the allotment of suitable land in the areas in which the NDMC could go ahead with this programme, of accommodating these hawkers/squatters. These directions appear from the order of the Lok Adalat.

15. The Judicial Officer for the committee was to be nominated with the concurrence of the High Court. Therefore, with the direction of this Hon'ble Court, a Judicial Officer (Shri G.P. Thareja) was nominated by the High Court to preside over the Committee which was constituted for looking into the matter of hawkers in the NDMC area. Thereupon, by an order dated 1st February 1990, this Hon'ble Court directed that because the Committee which had been constituted as aforesaid had become functional, such Committee should proceed to examine the claims of hawkers. As a matter of first lot, first 100 claims were to be taken up for examination in view of the scheme prepared by the Municipal Committee in terms of the direction of the Court.

16. Appreciating the fact that since the work allotted to the Judicial Officer requires full time engagement, this Court by an order dated 9.2.1990 issued directions requesting the High Court to relieve the said Judicial Officer who was appointed exclusively for the work. In the said order, directions were also given to the learned Additional Solicitor General to find out the possibilities of assigning land to the Municipal Committee for making it available for hawking.

17. Thereafter, the said Thareja Committee gave its interim report to this Court and this Court in its order dated 29.1.1991 noticed the said interim report and found that 5000 applications were pending before the Committee.

A 18. A complaint was made to this Court that the Thareja Committee was applying very strict norms for proof of eligibility. However, this Court by its order dated 13.3.1992 rejected the said grievance. In order to protect the rights of the genuine claimants, this Court, after discussing the report of the Thareja B Committee, set out nine directions. Those directions are as under:

"(1) Out of the 440 claimants, the one-member Thareja Committee will review the cases of those claimants whose claims have been rejected for non-compliance of the C standard of proof laid down by Resolution No. 28, if claimant adduces any other authentic proof in the form of government or local authority records, the genuineness whereof is unimpeachable, and the Committee considers such proof presented to it to be adequate for review. If on D perusal such proof is found to be unacceptable, the Committee may refuse to review its decision;

(2) In regard to the Sarojini Nagar claims, the Committee may evolve its own criteria or standard of proof de hors E the one laid down by Resolution No. 28 and proceed to dispose of the claims on the basis thereof. In doing so fresh claims, if any, received may also be scrutinised;

(3) Public advertisements will be issued by the Committee in local newspapers having wide circulation inviting claims F from squatters/hawkers who have not preferred claims or filed proceedings in court by a date to be stipulated therein, such claims must of course be consistent with the eligibility criteria laid down in Resolution No. 28. In addition to such public advertisement to be issued in newspapers G of different languages such as English, Hindi, Urdu, South-Indian languages, etc., to be determined by the Committee, handbills and pamphlets shall also be printed and distributed and pasted in different parts of the five zones selected for squatting/hawking inviting claims by the

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stipulated date. The advertisements/pamphlets, etc. will also cover claimants falling within directions (1) and (2) above; A

(4) The Registry of this Court will not entertain any further Writ Petitions/Special Leave Petitions from any squatter or hawker concerning the sites chosen in the five zones mentioned hereinabove but will instead direct the petitioners to approach the Thareja Committee if they have moved such Writ Petitions/Special Leave Petitions before the date stipulated by the Committee (which date will be communicated to the Registry) and no Writ Petition/ Special Leave Petition or any other proceeding shall be entertained by the Registry concerning the sites in the five zones after the stipulated date; B C

(5) The High Court of Delhi and all courts subordinate thereto will also follow the course of action set out in direction No. 4 hereinabove; D

(6) All Writ Petitions/Civil Appeals/ Special Leave Petitions and CMPs/IAs therein which concern the five zones will stand disposed of by this order except one in which orders have been made from time to time and the claimants of all the matters disposed of pursuant to this direction will be at liberty to seek further directions in the one matter kept pending under this direction as interveners in case such need arises in future. This is essential to regulate such cases against NDMC; E F

(7) The interim stay orders will continue in respect of the 224 claimants whose claims have already been scrutinised by the Committee. In respect of the other claimants out of 440 whose claims have been rejected the status quo will be maintained for two months after the stipulated date in respect of those claimants who have sought review on or before the stipulated date. If during the said period of two months the exercise for review cannot be completed, the G H

A authorities desirous of taking any action will approach the Committee and seek its approval. If the Committee is of the opinion that there is no prima facie case for review it may permit such action to be taken 10 days thereafter so that the claimant likely to be affected may in the meantime B approach the Court and obtain appropriate orders. In respect of all other cases the interim orders, if any, will continue till the Committee has scrutinised their cases and rejected them. Liberty is, however, reserved to NDMC to move for vacating any order if public interest so demands C or it is found that the claimant is in any way misusing it;

(8) The Tharjea Committee will draw up a list of squatters/ hawkers identified by it as entitled to protection so that their claims can be regulated in future also. In drawing up the list care should be taken to ensure that one and the same D person does not secure a double benefit; and

(9) The Committee may also draw up a list of squatters/ hawkers on the basis of their actual standing for being accommodated in future as and when there is a vacancy E in the available space in the five zones or when such space is expanded or new space within the five zones is cleared for squatting/hawking. The Committee will also suggest sites within the zones, over and above those already identified, which can be made available to accommodate F such surplus squatters/hawkers who cannot be accommodated in the five zones on account of paucity of space."

19. In the meantime, several cases were filed before this Court. From the judgment of this Court in *Saudan Singh etc. G etc. vs. NDMC and others etc. etc.*, (1992) 2 SCC 458, it appears that it was dealing with Article 32 petitions along with some Special Leave Petitions filed impugning the order of the Delhi High Court. In that judgment, this Court after considering the ratio of *Sodan Singh* (supra) laid down the principle relating H to and reasonable restrictions on street trading, as follows:

"It is, therefore, settled law that every citizen has a right to the use of a public street vested in the State as a beneficiary but this right is subject to such reasonable restrictions as the State may choose to impose. Street-trading is albeit a fundamental right under Article 19(1)(*g*) of the Constitution but it is subject to reasonable restrictions which the State may choose to impose by virtue of clause (6) of Article 19 of the Constitution. The right to street-trading under Article 19(1)(*g*) of the Constitution does not, however, extend to a citizen occupying or squatting on any specific place of his choice on the pavement regardless of the rights of others, including pedestrians, to make use of the pavements. In other words the law laid down by the Constitution Bench permits a citizen to hawk on the street pavements by moving from one place to another without being stationary on any part of the pavement vested in the State. After laying down the law on the point in the context of Articles 14, 19 and 21 of the Constitution, the Constitution Bench remitted all the petitions to a proper Division Bench of this Court for final disposal." (See para 2)

20. In *Saudan Singh* (supra), this Court took note of the appointment of Thareja Committee as well as the salient features of NDMC scheme. These features, noted by this Court, run as under:

"(A) A squatter up to 1977 shall be eligible for the allotment of a stall/kiosk while the squatters pertaining to the years 1978 till 1980 shall be eligible for Tehbazari site, if no shop/kiosk is available. The squatters squatting since between 1981 to 1987 shall be considered for allotment for a Tehbazari site subject to availability of vacant space.

(B) The eligibility of a squatter shall be determined by documents such as receipts issued by the NDMC, Challans by Police and Toleration Permission etc.

A (C) Only non-licensable trades excluding sophisticated luxury items, imported or smuggled goods shall be permitted i.e. pan, biri, cigarettes, chana, moongfali, hosiery items, toys, small stationery items, lottery tickets, fresh vegetables, uncut fruits, packed bakery items etc. will B be allowed. No cooking and sale of food items exposed to dust causing health hazards shall be allowed. Open space measuring 6" x 4" for doing non-licensable trades and 4" x 3" for the trade of pan, biri, cigarettes will be allowed.

C (D) Not more than one member of the family, as defined by the NDMC, will be eligible for benefit under the Scheme.

(E) The following percentage shall be allowed for the D purpose of reservation in the allotment.

(*a*) General Category60%

(*b*) Schedule Caste/Schedule Tribe12-1/2%

E (*c*) Physically Handicapped 10%

(*d*) Ex-serviceman2-1/2%

(*e*) War Widows 2%

F (*f*) Freedom Fighters3%

(*g*) Extreme Hardship and Humanitarian grounds 10%."

21. In paragraph 10 of the judgment in *Saudan Singh* G (supra), this Court observed that it was dealing with the question of livelihood and survival of a large number of families and in such a situation the Court should adopt a compassionate approach so as to ensure that genuine hawkers/squatters are not denied their daily bread at the altar of technicalities, while H at the same time ensuring that those who are out to exploit and

abuse the process of law do not succeed. To achieve these objectives, the Court gave certain directions which were set out hereinabove. A

22. The Court also gave directions about hawkers/ squatters, who were carrying on their business within the administrative control of MCD. It may be noted that MCD has, within its jurisdiction, the entire Union Territory of Delhi excluding the area within the administrative control of NDMC and Delhi Cantonment. B

23. This Court also noted that after partition of this country there was a large influx of population to Delhi and the local authority was constrained to evolve certain norms to rehabilitate such people. This gave rise to the Tehbazari system. Keeping this in view, the MCD evolved a scheme of open Tehbazari consisting of grant of permission to squat on an earmarked spot for carrying on business. On Gazetted holidays, festivals days and Sundays, permission was given to squat in various other areas. This system is known as casual Tehbazari. The Court noted that for the purpose of such kind of hawking the city was divided into ten zones and in all 288 squatting areas were identified. This Court also noted that MCD also prepared a scheme for regulating hawking business in Delhi in different zones. The scheme was prepared in consultation with the Commissioner of Police and the priority of allotment has been determined on the following lines: C D E F

"(1) Persons who have been found squatting between 1970 and 1982 and whose names are contained in the survey report prepared after the survey conducted in 1982 will receive first priority for grant of Tehbazari permission subject to the scrutiny of their claims; G

(2) Insofar as casual Tehbazari on weekly holidays, festivals/melas, etc. is concerned, as well as at the 67 weekly bazars held, persons availing of the said benefit will continue to be granted the casual or weekly Tehbazari; H

A (3) Squatters who have started squatting/hawking in 1983 onwards and who are found on the date of survey would also be considered for grant of open Tehbazari of 6" x 4" subject to the production of proof of continuous squatting and proof of residence and nationality. Such squatters/ B hawkers would be granted open Tehbazari subject to availability of space provided they have cleared the dues of the MCD; and

(4) Persons who do not fall within the aforesaid three C categories would be permitted to apply for hawking licences under Section 420 of the Delhi Municipal Corporation Act, 1957 and their applications would be considered on merit for permission to hawk — not squat — by moving in specified areas with their goods on their heads or on cycles. They will be entitled to hawk with their D goods anywhere in the zone in respect of which they have been granted a licence. However, such permission will be subject to any restrictions that may be imposed by the residential associations of different colonies."

E 24. In the meantime, the writ petition No.1699/87 (*Gainda Ram and others vs. MCD*) was disposed of by this Court by judgment and order dated 12th May 1993 [(1993) 3 SCC 178].

25. Ultimately, the Thareja Committee examined 5627 claims in great detail and passed detailed order in every case F and in its final report found that 761 out of 5627 persons were entitled for allotment of sites and it also found 12 cases of hardship. The said Committee also identified 977 sites for squatting in NDMC area.

G 26. Those who were aggrieved by the orders of the Thareja Committee filed IAs before this Court. As many as 130 IAs were filed before this Hon'ble Court questioning various orders of Thareja Committee.

H 27. In the meantime, another judgment in the name of

Sodan Singh vs. NDMC and others, (1998) 2 SCC 727 was delivered which was in continuation of its two earlier judgments concerning the hawkers/squatters in the public streets in NDMC area. The Court considered the report of the Thareja Committee and came to the conclusion that occupation and places of eligible squatters, as decided by the Thareja Committee, is only tentative. However, the Court accepted the procedure recommended by the Thareja Committee and also accepted its recommendation about payment of arrears of dues towards Tehbazari and also noted its recommendation that in case of failure to pay such dues the claimant is not entitled to the benefit under the scheme. The Court directed certain procedures to be followed for the purpose of making final allotment of sites. One of them is issuance of public notice for allotment of sites, the other procedure is for payment of arrears of Tehbazari. The Court also prescribed a cut-off date for filing of application and further directed notice of hearing to the petitioners. The Court also held that the right of the traders to change their trade is subject to reasonable restrictions under Article 19(6).

28. The Court thereafter nominated another Judicial Officer Shri V.C. Chaturvedi to undertake various duties and functions enumerated in its order and in paragraph 52 page 741 of the report gave the summary of procedure to be followed by the Chaturvedi Committee, which are set out:

> 1. Shri Chaturvedi Committee (sole member) shall issue public notice in an English and a Hindi newspaper (expenses to be borne by the NDMC) within *15 days* from today permitting the eligible claimants so found eligible by the Thareja Committee to submit their applications in *Part I* containing options in regard to the identified places and sizes (whether 6' x 4' or 4' x 3') in the particular zone to which these claims belong. The public notice in the newspaper will state that the details regarding the available sites and their location and size is put up on the

A notice boards of the NDMC at various places, whose addresses are given. The notice will also require the claimants to state in *Part II* of their applications the details as to payment of Tehbazari charges due after 1-1-1990 and if there are or not any arrears as on date. The notice B will also be put up in the various offices of the NDMC within the abovesaid period. The notice in NDMC office will also give a detailed list of the places available for squatting/hawking and stating whether it is a kiosk/stall or a place for mere vending on Tehbazari basis as decided C by the Thareja Committee and indicating their sizes (6' x 4' or 4' x 3').

2. The eligible claimants will be given *3 weeks' time* to file in Part I of their application their three options, indicating the zone concerned, their seniority as decided by the D Thareja Committee, stating whether they come under any reservation category, the type of trade they have been trading in or the new trade for which they have applied to the NDMC and such other particulars as may be called for or relevant. In Part II the eligible claimants shall specify if E they have made payments of Tehbazari arrears due for the period after 1-1-1990 and if there are any arrears as on date.

3. After receipt of the claims, the Committee shall issue F notice to the parties concerned and the NDMC in regard to each of the *places* at which squatting/hawking is permitted as per the Thareja Committee Report and decide on the basis of seniority and reservation, the size of place and such other relevant material as may be placed before the Committee, as to who should be allotted what G place. The Committee shall fix up dates of hearing by issuing registered A.D. notices to the parties concerned. (The expenditure in this behalf shall be borne by the NDMC.) The Committee shall give an opportunity of being heard and pass reasoned orders and its decisions shall

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be final and shall not be questioned before any other authority, tribunal, court, nor the High Court nor in this Court. A

4. It shall however be open to Shri Chaturvedi to obtain, if necessary, such directions or clarifications from this Court by way of filing IAs in this SLP, even though it is now disposed of. B

5. The claimants will be permitted to appear before the Chaturvedi Committee either in person or through their counsel.

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6. In case it is decided by the Chaturvedi Committee after the hearing of the case in Part II that any eligible claimant is in arrears of Tehbazari dues for any period after 1-1-1990 then the said Committee shall fix a date before which the arrears have to be paid and informing that if the amount is not paid by that date, the claimant will lose his claim for the kiosk/stall or for the place. In case the claimant defaults in payment by such date fixed and the claimant's rights cease as stated above, the Chaturvedi Committee will consider if the vacancy can be allotted to any other claimant already declared eligible by the Thareja Committee. D E

7. In case any of the places found eligible for kiosks/stalls by the Thareja Committee are not accepted by the Urban Arts Commission or the Archaeological Survey of India and the Department of Archaeology of the Government of N.C.T., the said places meant for kiosks/stalls shall be available for Tehbazari and the Chaturvedi Committee shall pass appropriate orders of allotment on that basis. As and when the abovesaid authorities inform the NDMC that the places earmarked for kiosks/stalls are not acceptable for that purpose, the NDMC shall inform the Chaturvedi Committee about the said decision. (We have already observed that pending construction of kiosk/stall the claimant tentatively allotted the place or other person F G H

A authorisedly using the place for vending on Tehbazari, shall continue. We also said unauthorised persons vending at these places be evicted by the NDMC forthwith.)

For the purpose of obtaining clearance for the said authority, the NDMC is granted time up to 30-6-1998 and B for construction of the kiosks/stalls up to 31-10-1998.

8. In regard to eviction of unauthorised squatters or other persons using the places identified by the Thareja Committee the NDMC has undertaken to have them C evicted forthwith and in case this is not done, it will be open to the Chaturvedi Committee to bring it to the notice of this Court for appropriate orders, as stated earlier.

9. The NDMC in general and the Director of Estates and D the Director of Enforcement in particular will help and implement the decisions, directions or orders of Shri V.C. Chaturvedi. The NDMC shall also provide the other infrastructure to Shri Chaturvedi as stated in the main body of this order and pay his remuneration (in regard to which E we are passing separate orders in this SLP).

10. The decisions of the Chaturvedi Committee both on the question of allotment of the kiosks/stalls or the sites for Tehbazari and also as to quantum of arrears of Tehbazari shall be final as indicated in the body of this F order and shall not be questioned either by the claimants or the NDMC before any authority, tribunal, court of law, the High Court or in this Court. No petition shall be registered in this behalf by the above bodies. We have only permitted the Chaturvedi Committee to file IAs in the G appeal seeking any direction or clarification and none others. So far as orders of NDMC in regard to change of trade, it is open to the affected parties to resort to all appropriate remedies. We have so permitted Shri Chaturvedi to move this Court in certain respects.

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29. Again the matter came before this Court in IA No.394 in I.A. No.356 in WP (Civil) No.1699/1987 (*Sudhir Madan and others vs. Municipal Corporation of Delhi and others*). In that matter the Court on 03.03.2006 observed that it was not possible to look into each individual grievance and the proceeding being a Public Interest Litigation, the Court was to provide guidelines consistent with the public interest so that the roads, streets, paths, parks etc. are not occupied by unauthorised hawkers. The Court tried to balance between the hawkers' right to hawk on the streets and the right of the pedestrians, who were larger in number to use the streets. The Court, therefore, held that if it was consistent with the rights of the citizens to provide any space to the hawkers, then that could be done by the authorities. The Court directed the authorities to frame a scheme keeping all these factors in mind, and also bearing in mind the National Policy on Urban Street Vendors, 2004 (hereinafter "2004 Policy").

30. Pursuant to such orders, NDMC and MCD framed schemes for hawkers and squatters following the 2004 Policy. Thereafter, the matter was taken up by this Court from time to time, wherein it was discussed and certain modifications were suggested, which subsequently were incorporated in the scheme.

31. On 17.05.2007 this Court rejected the prayer of the hawkers to re-identify the site relying upon the orders dated 06.11.2000 passed in *Ramesh Shah vs. MCD and others* (IA No. 332-333 in WP (Civil) No. 1699/1987), while at the same time approving the schemes framed by the NDMC and the MCD.

32. By the order dated 17.05.2007 the municipal authorities were directed to implement the scheme as approved by the Court. Since the NDMC area had three legislative constituencies, this Court accordingly directed the setting up of three Zonal Vending Committees as per the scheme prepared by the NDMC. Thereafter the Court vide its order

A dated 23.01.2008 asked NDMC and MCD to file status reports about the implementation of the scheme. Pursuant to the direction of this Court by order dated 08.05.2008, Mrs. Sukhvinder Kaur, a member of the Delhi Higher Judicial Services was nominated by the High Court as the Presiding B Officer of the Zonal Vending Committees in NDMC area.

33. The main function of the Vending Committees was to verify the vending sites and hawking zones in the NDMC area. Its other function was to scrutinize application for allotment of the sites.

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34. Both, the NDMC and MCD, are statutory bodies under The New Delhi Municipal Council Act, 1994 (hereinafter, 'NDMC Act') and The Delhi Municipal Corporation Act, 1957 (hereinafter 'DMC Act') respectively. Both the acts are D parliamentary legislations.

35. MCD was established under Section 3 of the Act as a body corporate composing of Councillors. Under DMC Act a public street means a street which vests in the Corporation as a public street or the soil below, the surface of which vests E in the Corporation and which under the provision of the Act becomes or is declared to be a public street (See Section 2(44) of the Act).

36. All public streets vest in the Corporation under Section F 298 of the Act. Section 42 of the Act enumerates the obligatory functions of the Corporation, one of which is the removal of obstructions and projections in or upon the streets, bridges and other public places [See Section 42(p)].

G 37. Under Section 320(1) of the Act there is a clear mandate that no person shall, except with the permission of the Commissioner, and on payment of such fee as he or she, in each case, thinks fit, place or deposit upon any street or upon any open channel, drain or well in any street or upon any public place in stall, chair, bench, box, ladder, bale or other things

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whatsoever so as to form an obstruction thereto and encroachment thereon. Section 322 of the Act also empowers Commissioner to remove any stall, chair, bench, box, ladder, bale or anything whatsoever placed, deposited or projected in, upon, from or to any place in the street. If it has been placed in contravention of the Act, the Commissioner can remove any article hawked or exposed for sale on any public street or in any other place in contravention of this Act along with any vehicle, package or box or any other thing in or on which such article is placed.

38. Under Section 481 of the said Act, the Corporation may frame bye-laws relating to permission, regulation or prohibition of use or occupation of any street or place by itinerant vendors/ hawkers or by any person, for the sale of articles or the exercise of any calling or the sitting of any booth or stall and make regulation for fees chargeable for such occupation. (See the provision of Section 481E(5) of the Act)

39. Under the NDMC Act almost similar provisions are there. Definition of public street under Section 2(39) of NDMC Act is virtually the same as the definition of public street under Section 2(44) of the DMC Act. Similarly under Section 3 of the NDMC Act, NDMC has been formed as a body corporate having perpetual succession and a common seal. NDMC is also equally empowered to remove obstructions and projections in and upon the streets, bridges and other public places. In fact it is one of the obligatory functions of NDMC.

40. Under Section 202 of the NDMC Act all public streets vest in the Council. The NDMC Act also contains similar provisions prohibiting erection of structures/fixtures which causes obstructions in the street. (See Section 224. Sections 225 and 226 of NDMC have been referred to already).

41. The NDMC is also authorized to prevent any nuisance in any public street or public place, or picketing of animals or collection of carts, displacement, damaging or making any

A alteration to the pavement, water-drain etc. without any authority. (See Section 308(viii) of the Act. Reference to Section 330 of the Act has been already made)

42. It has been held by the Constitution Bench of this Court in *Sodan Singh* (supra) that right to hawk on the streets of Delhi B is a fundamental right under Article 19(1)(g) of the Constitution but such right is not absolute and is subject to reasonable restrictions under Article 19(6) of the Constitution.

43. On a perusal of the aforesaid constitutional provision, C it is clear that the rights under Article 19(1)(g) can only be controlled by law as contemplated in Article 19(6). Such law can impose reasonable restrictions. The relevant constitutional provisions are set out:-

D "19(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub- E clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, -

(i) the professional or technical qualifications necessary for F practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry G or service, whether to the exclusion, complete or partial, of citizens or otherwise."

44. On an analysis of the provisions under Article 19(6), it is clear that the provisions under Article 19(6) are broadly in two parts. The first part authorizes that nothing in sub-clause H

(g) of Article 19(1) shall affect the operation of existing law in so far it imposes reasonable restrictions, in the interest of general public, on rights conferred by Article 19(1)(g). The second part is that nothing contained in Article 19(1)(g) shall prevent the State from making any law imposing, in the interest of general public, reasonable restrictions on the exercise of rights conferred by Article 19(1)(g). Here we are not concerned with clauses (i) and (ii) of Article 19(6).

45. It is, therefore, clear that reasonable restrictions on the fundamental right under Article 19(1)(g) can be imposed either by existing law or by a law which may be made by a State in the interest of general public.

46. Therefore, nothing short of law can impose reasonable restrictions on a citizen's fundamental right to carry on hawking under Article 19(1)(g) of the Constitution.

47. In *Bijoe Emmanuel and others vs. State of Kerala and others* (AIR 1987 SC 748) this Court held, "the law is now well settled that any law which may be made under clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be a law having statutory force and not a mere executive or departmental instructions." (para 15 page 753)

48. In coming to the aforesaid formulation in *Bijoe Emmanuel* (supra) this Court relied on two Constitution Bench decisions of this Court in the case of *Kameshwar Prasad and others vs. State of Bihar and another* (AIR 1962 SC 1166) and another Constitution Bench decision of this Court in *Kharak Singh vs. State of U.P. and others* (AIR 1963 SC 1295).

49. In the instant case, this Court has discussed the legal provisions in the NDMC and DMC Act which seek to control the fundamental right of the petitioners to carry on their business of hawking.

50. As stated earlier the scheme which was framed by

A NDMC for regulation of squatting and hawking in the NDMC areas was on the basis of guidelines given by this Court in its judgment dated 30th August 1989 in *Sodan Singh's* case. In that scheme NDMC has divided its area into four zones and some of the zones have been made non-hawking zones. From B time to time the said scheme has been modified by the orders passed by this Court. This Court also finds that subsequently another scheme was prepared by the NDMC pursuant to the 2004 Policy. In the said scheme the NDMC has referred to Sections 225 and 330 of the NDMC Act. Section 225 of the C Act permits squatting only on the permission given by the Chairman and on payment of such fees in each case as a Chairman may think fit. Section 330 of the Act provides for licence for hawking articles etc. The said Section 330 authorizes the NDMC to prevent hawking unless there is a D licence to that effect granted by the Chairperson.

51. As per Section 226 of the NDMC, Chairperson may without notice cause removal of articles kept in the public street and Section 369(2) of the Act provides for punishment for contravention of the provision of the Section 225(1).

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52. The 2004 Policy provides for setting up of a vending committee which may consist of representatives of (a) Municipal Authority, (b) Traffic and Local Police, (c) Public and owning authority, (d) Associations of traders, residents and also F of street vendors both static and mobile. The function of such vending committing shall include:

"(i) Demarcation of vending and non-vending areas;

(ii) Provision and identification of space for squatting G and areas for hawking. Provisions for space may include temporary designations as Vendor markets (e.g. as weekly markets) whose use at other time may be different (e.g. Public Parks, Parking lots) etc.;

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(iii) Timing restrictions on the urban vending. It should correspond to needs of ensuring non-congestion of public spaces; A

(iv) Public hygiene and cleanliness;

(v) Ensure continuation and upgradation of weekly markets; B

(vi) Quantitative norms i.e. where to allow, how many squatters or persons;

(vii) Qualitative guidelines:- This has to include C

- Provision for solid waste disposals,
- Public toilets to maintain cleanliness;
- Aesthetic design of mobile stalls/push carts; D
- Provision for electricity;
- Provision for protective cover to protect their wares as well as themselves from heat, rain, dust etc; E

(viii) Regulatory Process;

(ix) Registration system;

(x) Corrective mechanism against defiance by vendors; F

(xi) Collection of revenues and

(xii) Monitoring mechanism."

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53. The 2004 Policy has also referred to the Master Plan of Delhi, 2021 which provides for informal sector in trade in the planned development of various zones. In the said policy, there is also a division between vending and non-vending areas and it is made clear that no hawking licence shall be issued in non- H

A vending areas. The timing and the day of hawking was also to be regulated as per the suggestions of Residents Welfare Association (RWA).

54. Neither the said policy nor the scheme framed by the B NDMC can be called law, except of course the provisions of Sections 225, 226, 330 and 369(2) of NDMC Act mentioned hereinabove.

55. Section 388 of the NDMC Act empowers the NDMC to frame bye-laws. This power is categorized under different C clauses of sub-section 1 of Section 388. Under clause (D) of the said sub-section there is a provision for making bye-laws relating to the streets. Section 388(1)(D)(5) of NDMC Act provides as follows:

D "388(1)(D)(5) the permission, regulation or prohibition or use or occupation of any street or place by it, itinerant vendors or hawkers or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall and the fees chargeable for such occupation;"

E 56. The bye-laws have to be laid before Parliament under Section 389 of the said Act. These bye-laws may have the status of subordinate or delegated legislation. Penalty has been provided for breach of bye-laws under Section 390 of the Act.

F 57. It does not appear that the NDMC has made any bye-law under Section 388 of the NDMC Act so as to regulate the fundamental right of the hawkers to hawk or squat on the streets of Delhi. The schemes which have been framed under the direction of this Court or the 2004 Policy which has been G framed by the Government, cannot said to be framed under the said power to frame bye-laws and do not have the status of law or even subordinate legislation.

58. The Master Plan of Delhi, 2021 however, provides for the accommodation of the informal sector wherein it states for

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suitable public conveniences and solid waste disposal and arrangements apart from formulation of guidelines for schemes which would include hawking and no hawking zones. The Master Plan also seeks to define the role and responsibility of NGOs along with the specific obligation of the hawkers towards society for maintenance of law and order within the hawking zones and weekly markets. There was also provision for informal bazaar in new urban areas.

59. Subsequent to the 2004 Policy a new National Policy on Urban Street Vendors, 2009 (hereinafter "2009 Policy") was framed on 17th June 2009. The most important part of the 2009 Policy is that it recognizes street vending as an integral and legitimate part of urban retail trade and distribution system, even when otherwise street vending is sometimes projected as a major menace in urban areas aggravating traffic problems. But the 2009 Policy aims at giving the street vendors a legal status by providing them legitimate vending and hawking zones in the city in the town master plans and development plans.

60. The National Policy, therefore, directs "Municipal Authorities should frame necessary rules for regulating entry of street vendors on a time sharing basis in designated vending zones keeping in view three broad categories – registered vendors who have secured a license for a specified site/stall; registered street vendors in a zone on a time sharing basis; and registered mobile street vendors visiting one or the other vending zone;".

61. The Policy, therefore, seeks to institutionalize a part of the urban street vending through legislation. The objects of the policy are as follows:

3.1 Overarching Objective

The overarching objective to be achieved through this Policy is:

A To provide for and promote a supportive environment for the vast mass of urban street vendors to carry out their vocation while at the same time insuring that their vending activities do not lead to overcrowding and unsanitary conditions in public spaces and streets.

B 3.2 Specific Objectives

This Policy aims to develop a legal framework through a model law on street vending which can be adopted by States/Union Territories with suitable modifications to take C into account their geographical/local conditions. The specific objectives of this Policy arc elaborated as follows:

(a) Legal Status:

D To give street vendors a legal status by formulating an appropriate law and thereby providing for legitimate vending/hawking zones in city/town master or development plans including zonal, local and layout plans and ensuring their enforcement;

E **(b) Civic Facilities:**

To provide civic facilities for appropriate use of identified spaces as vending/hawking zones, vendors' markets or vending areas in accordance with city/town master plans F including zonal, local and layout plans;

(c) Transparent Regulation:

To eschew imposing numerical limits on access to public spaces by discretionary licenses, and instead moving to G nominal fee-based regulation of access, where previous occupancy of space by the street vendors determines the allocation of space or creating new informal sector markets where space access is on a temporary turn-by-turn basis. All allotments of space, whether permanent or H temporary should be based on payment of a prescribed

fee fixed by the local authority on the recommendations of the Town Vending Committee to be constituted under this policy; A

(d) Organization of Vendors:

To promote, where necessary, organizations of street vendors e.g. unions/co-operatives/associations and other forms of organizations to facilitate their collective empowerment; B

(e) Participative Processes: C

To set up participatory processes that involve firstly, local authority, planning authority and police; secondly, associations of street vendors; thirdly, resident welfare associations and fourthly, other civil society organisations such as NGOs, representatives of professional groups (such as lawyers, doctors, town planners, architects etc.), representatives of trade and commerce, representatives of scheduled banks and eminent citizens; D

(f) Self-Regulation: E

To promote norms of civic discipline by institutionalizing mechanisms of self-management and self-regulation in matters relating to hygiene, including waste disposal etc. amongst street vendors both in the individually allotted areas as well as vending zones/clusters with collective responsibility for the entire vending zone/cluster; and F

(g) Promotional Measures:

To promote access of street vendors to such services as credit, skill development, housing, social security and capacity building. For such promotion, the services of Self Help Groups (SHGs)/Co-operatives/ Federations/Micro Finance Institutions (MFIs), Training Institutes etc. should be encouraged. G H

A 62. A law has been enacted under the name and style of a National Capital Territory of Delhi Laws (Special Provisions) Second Act 2009 on 23rd December 2009. This law makes special provisions for the National Capital Territory of Delhi for a period up to 31st December 2010. It is, therefore, clear that B the said law is for temporary period. From the preamble of the law, it will appear that whereas a strategy and a scheme has been prepared by the local authorities in the National Capital Territory of Delhi for regulation of urban street vendors in accordance with national policy for urban street vendors and C the Master Plan for Delhi, 2021 and it has also been provided that whereas more time is required for orderly implementation of the scheme regarding hawkers and urban street vendors and for regulation of unauthorized colonies, the said law shall have effect only up to 31st December 2010. Section 3(1)(b) of the D said Act provides as follows:

> "3(1)(b) scheme and orderly arrangements for regulation of urban street vendors in consonance with the national policy for urban street vendors and hawkers as provided in the Master Plan of Delhi, 2021".

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63. There is a Bill called a Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 by the Government of India, Ministry of Housing and Urban Poverty Alleviation. From the preamble and the long title F of the Bill it appears that the Bill is to provide for protection of livelihood of urban street vendors and to regulate street vending and for matters connected therewith. Now if the said Bill is enacted in the present form, the Bill then prima facie recognizes the rights of hawkers and vendors under Article 21 G of the Constitution since it seeks to protect their livelihood.

64. In the background of the provisions in the Bill and the 2009 Policy, it is clear that an attempt is made to regulate the fundamental right of street hawking and street vending by law, since it has been declared by this Court that the right to hawk

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on the streets or right to carry on street vending is part of fundamental right under Article 19(1)(g). A

65. However, till the law is made the attempt made by NDMC and MCD to regulate this right by framing schemes which are not statutory in nature is not exactly within the contemplation of constitutional provision discussed above. However, such schemes have been regulated from time to time by this Court for several years as pointed out above. Even, orders passed by this Court, in trying to regulate such hawking and street vending, is not law either. At the same time, there is no denying the fact that hawking and street vending should be regulated by law. Such a law is imminently necessary in public interest. B C

66. Certain broad facts cannot be lost sight of. Whatever power this Court may have had, it possibly cannot, in the absence of a proper statutory framework, control the ever increasing population of this country. Similarly this Court cannot control the influx of people to different metro cities and towns in search of livelihood in the background of the huge unemployment problem in this country. While there is a burning unemployment on one hand, on the other hand there is a section of our people, that, having regard to its ever increasing wealth and financial strength, is buying any number of cars, scooters and three wheelers. No restriction has apparently been imposed by any law on such purchase of cars, three wheelers, scooters and cycles. There is very little scope for expanding the narrowing road spaces in the metropolitan cities and towns in India. Therefore, the problem is acute. On the one hand there is an exodus of fleeting population to metro cities and towns in search of employment and on the other hand with the ever increasing population of cars and other vehicles in the same cities, the roads are choked to the brim posing great hazards to the interest of general public. In the midst of such near chaos the hawkers want to sell their goods to make a living. Most of the hawkers are very poor, a few of them may have a marginally D E F G H

A better financial position. But by and large they constitute an unorganized poor sector in our society. Therefore, structured regulation and legislation is urgently necessary to control and regulate fundamental right of hawking of these vendors and hawkers.

B

67. This Court finds that innumerable IAs have been filed in this Court along with various objections by the hawkers, most of the time collectively, complaining about steps taken by municipal authorities, namely, NDMC and MCD to prevent them from hawking and vending. This Court has tried its best to C somehow deal with the situation. But it is difficult for this Court to tackle this huge problem in the absence of a valid law. The nature of the problem defies a proper solution by this Court by any judicially manageable standards.

D 68. This Court, therefore, disposes of this writ petition and all the IAs filed with direction that the problem of hawking and street vending may be regulated by the present schemes framed by NDMC and MCD up to 30th June, 2011. Within that time, the appropriate Government is to legislate and bring out E the law to regulate hawking and hawkers' fundamental right.

69. Till such time the grievances of the hawkers/vendors may be redressed by the internal dispute redressal mechanisms provided in the schemes.

F 70. In the affidavit filed by the MCD, they have set out the Dispute Redressal Mechanism as follows:

"(a) First Level: 12 Zonal Vending Committees (one in every Zone); headed by Deputy Commissioner of the G Zone.

(b) Second Level: In case of dispute between the allottee of Tehbazari site and the MCD, the Zonal Vending Committees are headed by the Presiding Officer (in-Service Addl. Distt. & Sessions Judge) Presently Ms. H Rekha Rani.

(c) Third Level: Appellate Authority headed by a Retd. Judge of the Delhi High Court-presently Shri J.P. Singh." A

71. It has also been stated in the affidavit that in case any party is aggrieved by the decision pertaining to above levels, he or she is free to file an appeal to the higher level. Such level of Zonal Vending Committee is headed by Deputy Commissioner of the concerned zone. If any party is aggrieved by the order/decision of the said Zonal Vending Committee, he or she can prefer an appeal with the Zonal Vending Committee headed by the Presiding Officer (in-Service Additional District and Sessions Judge) and thereafter to the Appellate Authority. In the said affidavit, which has been filed by Shri K.S. Mehra, Commissioner of MCD, it has been stated that the MCD undertakes that in case the decisions by any of the committees are not acceptable to the department, the MCD would file an appeal to the next level. However, where no appeal is filed, the decision at the particular level would be final. It has also been stated in the affidavit by the MCD that if there is a need for change of any clause or term of the scheme, the MCD may do so in terms of the order of this Court. B C D E

72. In so far as NDMC is concerned they have also filed an affidavit, affirmed by Shri Parimal Rai, Chairman, NDMC. In that affidavit, they have disclosed another affidavit which was filed by Shri Parimal Rai in this writ petition [W.P.(C) No.1699 of 1987], wherein they have given the details of the Dispute Redressal Mechanism in paragraph 10, which is set out as follows:- F

"NDMC proposes to implement Adjudicating mechanism in its scheme in a Three-Tier system like the one in MCD Scheme. Proposed Three-Tier system is Three Vending Sub Committees & Vending Committee main and one Appellate Authority over and above the Vending Sub-Committees and Main Vending Committee. The details of this proposed three-tier system is as under: G H

A (i) Vending Sub-Committee (Site of Spaces)

(ii) Vending Sub-Committee (Health and Hygiene)

(iii) Vending sub-Committee (Enforcement)

B Functions and compositions of these sub-committees are as under.

A. Sites & Spaces:-

(a) **Functions** :-

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The sub-committee shall be responsible for recommending to Vending Committee (Main) on the following :-

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(i) Identifying spaces of squatting and the areas for hawking in the vending areas specified in para-4.2.1 of the scheme. These identification shall be as per the paras-3.3 of the scheme. While considering the spaces near the schools, the representative of the Director (Education) shall be co-opted. While determining the spaces near the parks, representative of Director (Horticulture) shall be co-opted. While determining the spaces near the parks, representative of Director (Horticulture) shall be co-opted. Where spaces are to be selected near Hospitals, representative of the Hospital to be included.

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(ii) To identify weekly or evening markets.

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(iii) To begin with the Committee shall restrict itself to the sites already earlier approved by the Supreme Court excluding the sites deleted by orders of Court or due to security reasons from Parliament Complex and

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certain areas being declared as non-vending areas and identifying spaces on these sites. A

(iv) Timings restrictions to ensure that there is no congestion in public places.

(v) Quantitative norms i.e. where to allow and how many squatters or persons at each site. B

(b) **Composition:-**

This sub-Committee shall consist of the following members- C

• Director (Vending Committee).

• A representative of the MLA of New Delhi Assembly Constituency/Delhi Cantonment Constituency. D

• A representative of the traffic police/local police for the NDMC area.

• A representative of the Market Association of the concerned market for which squatting sites are to be identified. E

• A representative of the Resident Welfare Association where the vending sites/hawking sites are to be decided in the residential colonies. F

• A representative of the authorized hawkers/squatters from the market for which the sites are being identified.

• A representative of the Road Division of the NDMC where the sites are to be selected on footpath and the roads. G

• Convenor of the sub-Committee shall be Joint Director (Vending Committee) or any other officer of NDMC appointed by Chairperson. H

A This Committee shall be headed by Director (Vending Committee) {Selection of sites & spaces}.

B. Vending sub-Committee (Health and Hygiene):

(a) **Functions:-**

B

The sub-Committee shall recommend to the Vending Committee on the following:-

(i) Issue of fresh licence for hawking including for ice-cream and water trolleys.

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(ii) Recommend cancellation of hawking licence and Tehbazari permission of those who violate terms of licence or do not confirm to Health & Hygiene.

D

(iii) To ensure public hygiene and cleanliness.

(iv) Qualitative guidelines-

- Provision of solid waste disposal from squatting sites.

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- Public toilet to maintain cleanliness

- Provision for electricity, if the same is to be provided.

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- Approving protective covers to protect the wares and squatters from the rain, heat, dust etc.

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- Amount of fee to be collected for disposal of solid waste from sites and for user of toilet facilities.

(v) Issue of photo identity cards to hawkers.

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(vi) Any other function assigned by Vending

Committee [Main] or Chairperson. A

(b) **Composition:-**

This Vending sub-Committee shall be headed by the Medical Officer of Health. Its Members shall be - B

(i) Representative of Chief Engineer (Electrical).

(ii) Representative of Chief Engineer (Civil).

(iii) A Representatives of Association of the Market for which hawking licence or qualitative guidelines are being considered. C

(iv) A representative of the authorized squatters of the market for which hawking licence or qualitative guidelines are being considered. D

(v) Convenor of the Sub-Committee shall be Jt. Director (Vending Committee).

The Committee shall submit its recommendations on qualitative guidelines by 30.09.2010 to Vending Committee (Main). E

C. Vending sub-Committee (Enforcement) :

(a) **Functions** F

(i) Registration of squatters covered by Clause-4 & 5 after police verification.

(ii) Collection of registration charges fixed by the Chairperson on the recommendations of the Vending Committee. G

(iii) Regulatory process, registration system. Issue of photo Identity Cards.

(iv) Collection of fees as may be fixed by the H

A Chairperson on the recommendations of the Vending Committee.

(v) Monitoring mechanism.

B (vi) Other matters as may be assigned by Vending Committee or Chairperson.

(vii) To recommend cancellation of permission to approved squatters.

C (viii) To issue Tehbazari permission, on approval of recommendation of Vending Committee by Chairperson.

(ix) To process cases of transfer on legal heir basis.

D (x) To remove squatters from non-vending areas and remove unauthorized squatter from vending areas and take action U/s-226 of the New Delhi Municipal Council Act, 1994.

E (b) **Composition:-**

The Committee shall be headed by Director (Enforcement) and shall consist of representative of Accounts, Chief Security Officer and local police, if necessary. Convener F of the Committee shall be Joint Director, Vending Committee or any other officer appointed by the Chairperson. Chairperson can also add members in this sub-Committee. This Committee shall complete its functions of Registration by 31st October 2010."

G 73. In paragraph 12 of the affidavit it has been stated that there shall be an Appellate Authority which shall attend to the redressal of grievances of squatters, hawkers, traders, residents or any other person by hearing appeals against the decision of the Vending Committee (Main). Paragraph 12 of H that affidavit is set out below:-

"There shall be an Appellate Authority. On the forwarding of petitions received by the Chairperson, this Authority shall attend to redressal of grievances of squatters, hawkers, traders, residents or any other person. The Authority shall also hear appeals against the decision of Vending Committee (Main). Decisions of this Authority unless challenged before a Higher Forum or in any Competent Court, shall be final. This Authority shall be initially headed by a person appointed by the Chairperson having at least 10 years legal or judicial background. There can be more than one member in this Authority."

74. In the said affidavit, which was affirmed before this Court on 24th August, 2010 it has been stated that NDMC shall comply with the orders which would be passed by the adjudicatory mechanism contemplated in the scheme and which has been approved by this Court for the NDMC area, unless such orders are made subject matter of challenge before a higher forum or in any other competent Court.

75. In view of such schemes, the hawkers, squatters and vendors must abide by the Dispute Redressal scheme mentioned above. There should not be any direct approach to this Court by way of fresh petition or IAs, bypassing the Dispute Redressal Mechanism provided in the scheme.

76. However, before 30th June, 2011, the appropriate Government is to enact a law on the basis of the Bill mentioned above or on the basis of any amendment thereof so that the hawkers may precisely know the contours of their rights.

77. This Court is giving this direction in exercise of its jurisdiction to protect the fundamental right of the citizens. The hawkers' and squatters' or vendors' right to carry on hawking has been recognized as fundamental right under Article 19(1)(g). At the same time the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19(1)(d). These two apparently

A conflicting rights must be harmonized and regulated by subjecting them to reasonable restrictions only under a law. The question is, therefore, vitally important to a very large section of people, mostly ordinary men and women. Such an issue cannot be left to be decided by schemes and which are B monitored by this Court from time to time.

78. The second reason is that the appropriate Government has already enacted a Bill and, therefore, the initial decision making in the field of legislative exercise is complete. It has, of course, to be converted into a law by following the C Constitutional process. That is why time till 30th June, 2011 is given.

79. The fundamental right of the hawkers, just because they are poor and unorganized, cannot be left in a state of limbo nor D can it left to be decided by the varying standards of a scheme which changes from time to time under orders of this Court. With the aforesaid observations and directions the writ petition and all the IAs are disposed of.

E 80. No order as to costs.

N.J. Matters disposed of.