

Mr. Satish Kumar Tripathi, Advocate for the petitioner in W.P. (C.) Nos. 10396/2020, 4340/2021, 4372/2021, 8274/2021, 8290/2021 & 8504/2021.

Mr. Michael Peter, Advocate for the petitioner in W.P. (C.) Nos.4229/2021 & 7942/2021.

Ms. Kanjani Sharma, Advocate for the petitioner in W.P. (C.) No.8736/2021.

Mr. Sri Harsha Peechara & Mr. Diptiman Acharyya, Advocates for respondent/ TVC (NDMC) in W.P. (C.) Nos. 9622/2020, 4340/2021, 4372/2021, 7836/2021 & 2511/2020.

Mr. Vipul Ganda, ASC and Mr. Ashish Tiwari, Advocate for the respondent/ NDMC in W.P. (C.) No.10396/2020.

Mr. Om Prakash Shukla, Advocate for the respondent/ NDMC in W.P. (C.) No.8704/2021.

Ms. Mrinalini Sen Gupta, Ms. Nihaarika Jauhari & Mr. Tanmay Yadav, Advocates for respondent No.2 in W.P. (C.) No. 8504/2021.

Mr. Tushar Sannu, Standing Counsel for the respondent/ SDMC in W.P. (C.) No. 8782/2021.

Mr. Mananjay Mishra, Advocate for respondent/ NDMC in W.P.(C) No.1684/2020 .

Mr. Gobind Singh & Mr. Mananjay Mishra, Advocates for the respondent/ NDMC in W.P. (C.) Nos. 8274/2021, 8504/2021 & 146/2021.

Mr. Arjun Mitra & Mr. Rahul Singh, Advocates for respondent No.1 in W.P. (C.) No. 8290/2021.

Mr. Manu Chaturvedi, Standing Counsel for EDMC in W.P. (C.) No.8572/2021.

Mr. Rishikesh Kumar, ASC with Mr.Prem Sagar Pal, Advocate for respondent No.2 in W.P. (C.) No.8290/2021.

Mr. Naushad Ahmed Khan, ASC with Mr. Zahid & Ms. Manisha Chauhan, Advocates for respondent/ GNCTD in W.P. (C.) Nos.10396/2020, 7836/2021, 8274/2021, 8572/2021 & 8736/2021.

Mr. Akshay Verma & Mr. Aditya Vikram Singh, Advocates in W.P. (C.) No. 7942/2021.

Mr. Rizwan, Advocate for respondent/ GNCTD in W.P. (C.) No.7942/2021 & 8704/2021.

Mr. Naman Jain, Advocate for respondents No.2 & 3 in W.P. (C.) No.1684/2020.

CORAM: WWW.LIVELAW.IN
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
30.09.2021

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1. During the course of hearing, our attention has, firstly, been drawn to Section 22 of the Street Vendors (Protection of Livelihood & Regulation of Street Vending) Act, 2014 (“Street Vendors Act”, for short). The said section talks about the constitution of the Town Vending Committee (TVC). Sub-Section (2) of Section 22 provides for constitution of the TVC and states that each Town Vending Committee shall consist of:

“(a) Municipal Commissioner or Chief Executive Officer, as the case may be, who shall be the Chairperson; and

(b) such number of other members as may be prescribed, to be nominated by the appropriate Government, representing the local authority, medical officer of the local authority, the planning authority, traffic police, police, association of street vendors, market associations, traders associations, non-governmental organisations, community based organisations, resident welfare associations, banks and such other interest as it deems proper;

x x x x x x x x x

PROVIDED that one-third of members representing the street vendors shall be from amongst women vendors:

PROVIDED FURTHER that due representation shall be given to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and persons with disabilities from amongst the members representing street vendors.”

2. The said section has to be read with Rule 12, which also talks about the constitution of the TVC. The said rule reads as follows:

“12. Constitution of the Town Vending Committee. –

(1) New Delhi Municipal Council and Delhi Cantonment Board shall have one Town Vending Committee each. In each of Municipal Corporations, Town Vending Committee shall be constituted for a group of 8-12 wards each. In respect of Municipal Corporations, the Additional Commissioner/Deputy Commissioner of the local authority may be the chairperson of the Town Vending Committee.

(2) The Municipal Commissioner or Chairperson or Chief Executive Officer as the case may be, of the local authority concerned shall be the Chairperson of Town Vending Committee and other members of the Town Vending Committee shall be as follows:-

<i>S.No.</i>	<i>Department/Body</i>	<i>No. of Representative(s)</i>
<i>1.</i>	<i>The Commissioner or Chairperson or Chief Executive Officer of the local authority concerned - Chairperson</i>	<i>1</i>
<i>2.</i>	<i>Medical Officer of Local Authority - Member</i>	<i>1</i>
<i>3.</i>	<i>Planning Authority (Chief Town Planner or any other officer of Town Planning Department of the Local Authority)- Member</i>	<i>1</i>
<i>4.</i>	<i>Representative of Local Authority (Enforcement Department Head/ Officer to be nominated by the Commissioner/ Chairperson/ Chief Executive Officer)- Member</i>	<i>3</i>
<i>5.</i>	<i>Traffic police -not below the rank of ACP - Member</i>	<i>1</i>

6.	<i>Police -not below the rank of ACP- Member</i>	<i>1</i>
7.	<i>Market/Trader Associations - Members</i>	<i>2</i>
8.	<i>Non- Government organizations - Members</i>	<i>2</i>
9.	<i>Banks/Association of Street Vendors</i>	<i>1</i>
10.	<i>Street Vendors (Elected) - Members</i>	<i>12</i>
11.	<i>CPWD/PWD/Works Department of the local authority (Whosoever has maximum area under their jurisdiction) - Member</i>	<i>1</i>
12.	<i>Community based organizations - Member</i>	<i>1</i>
13.	<i>Resident Welfare Associations- Members</i>	<i>2</i>
14.	<i>Revenue Department, GNCTD - Member</i>	<i>1</i>
	<i>Total</i>	<i>30</i>

(3) The Members of the Town Vending Committee except the elected members shall be nominated on the basis of names suggested by the Government/ Authorities/ Agencies/ Associations.

(4) The Municipal Commissioner or Chief Executive Officer or Chairperson as the case may be, of the Local Authority shall ensure that due representation is given to the Scheduled Castes/Scheduled Tribes, Other Backward Classes, Minorities and Persons with disabilities from amongst the persons representing street vendors while conducting elections to the

Town Vending Committee.”

3. It would, therefore, be seen that every TVC consists of 30 members/representatives. A close scrutiny of the composition of the Street Vending Committee shows that the same has a majority of representation from amongst the street vendors, their associations and NGOs formed for protecting the rights of the street vendors. The representation of the various authorities tasked with the task of local administration, including the Municipal Administration, Police Administration, and other Public Works Department, etc. all put together is less than 50%. In a sense, the Street Vending Committees, therefore, appear to be heavily loaded in favour of the street vendors.

4. Secondly, our attention has been drawn to the First Schedule to the Street Vendors Act. The First Schedule to the Act is relatable to Section 21 of the said Act which, *inter alia*, states that every local authority shall, in consultation with the planning authority and “*on the recommendations of the Town Vending Committee, once in every five years, prepare a plan to promote the vocation of street vendors covering the matters contained in the First Schedule*”. It further provides that “*the plan for street vending prepared by the local authority shall be submitted to the Appropriate Government for approval and that Government shall before notifying the plan, determine the norms applicable to the street vendors*”. The First Schedule, *inter alia*, provides in Clause 3 that declaration of no-vending zone shall be carried out by the plan for street vending, subject to the following principles:

“(a) any existing market, or a natural market as identified under the survey shall not be declared as a no-vending zone;

(b) declaration of no-vending zone shall be done in a manner which displaces the minimum percentage of street vendors;

(c) overcrowding of any place shall not be a basis for declaring any area as a no-vending zone provided that restrictions may be placed on issuing certificate of vending in such areas to persons not identified as street vendors in the survey;

(d) sanitary concerns shall not be the basis for declaring any area as a no-vending zone unless such concerns can be solely attributed to street vendors and cannot be resolved through appropriate civic action by the local authority;

(e) till such time as the survey has not been carried out and the plan for street vending has not been formulated, no zone shall be declared as a no-vending zone.”

5. It would, thus, be seen that an existing market, or a natural market as identified under the survey, shall not be declared as a no vending zone. Overcrowding of any place shall not be a basis for declaring any area as a no-vending zone, and sanitary concerns shall not be the basis for declaring any area as a no-vending zone, unless, such concerns can be solely attributed to street vendors and cannot be resolved through appropriate civic action by the Local Authority.

6. In our prima facie view, it appears to us that the scheme of the Street Vendors Act and the Rules framed thereunder greatly tilts the balance to encourage street vending. Pertinently, the plan for street vending, under Section 21, itself is required to be prepared “*to promote the vocation of street vendors*”.

7. Clause 1(a) of the First Schedule provides that the plan for street vending shall ensure that all existing street vendors identified in the survey, subject to a norm confirming to, two and half per cent of the population of the ward, zone, town or city, as the case may be, are accommodated in the

plan for street vending. For a Mega City like Delhi – with a population of about 2 Crores, the number of street vendors, according to the plan, would be about 5 Lakhs.

8. It needs serious consideration whether, while protecting and promoting street vending – by enacting the Street Vendors Act, aspects regarding planned development of cities and towns has been compromised. Even more important, in our view, is the possible infringement of Fundamental Rights of the Citizens who live in any city, or town, particularly, under Article 21 of the Constitution of India, as the Right to Life guaranteed by the said Article is not a right of mere animal existence, but a right to enjoy security, safety and a life in a healthy environment.

9. We are informed that two writ petitions laying a challenge to the Street Vendors Act, namely W.P. (C.) Nos.2592/2016 and 10853/2018 are pending consideration before this Court. However, since they are cases of the years 2016 & 2018, they are not being listed before the Court. Before proceeding further, we deem it appropriate to direct listing of the said petitions along with the present batch of matters, so that all those interested, and stakeholders from all fields are heard in the matter.

10. List these petitions on 25.10.2021 along with W.P. (C.) Nos.2592/2016 and 10853/2018. Court notice shall issue to the learned counsels representing the petitioners in the aforesaid petitions along with a copy of this order informing the counsels about the date fixed.

11. In the meantime, we direct counsels to exchange their respective pleadings. For that purpose, list the matter before the Joint Registrar concerned on 04.10.2021.

12. The digital records of W.P. (C.) Nos.2592/2016 and 10853/2018 may be accessed by all counsels concerned.

13. Mr. Sahoo & Mr. Peechara shall prepare a common compilation of judgments that either of them wish to rely upon in support of their respective submissions. Let hard copies as well as soft copies of the same be filed before the next date.

VIPIN SANGHI, J

JASMEET SINGH, J

SEPTEMBER 30, 2021

B.S. Rohella

Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 01.10.2021
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