

Salient Extracts from the MCD Petition to Supreme Court

A Rare Gesture by the Government

Municipal Authorities Admit Flaws in Government Policy for Street Vendors

We publish below salient extracts from a petition submitted by the Municipal Corporation of Delhi to the Supreme Court of India conceding MANUSHI's critique of the existing licensing system for street hawkers and seeking the Court's permission to implement the pilot project for creating model hawker markets on the lines suggested by and in collaboration with MANUSHI.

... While, this Hon'ble Court in 1985 (3) SCC 520 and 1989 (4) SCC 155 has given a wide scope to the fundamental right of citizens to carry on their business in street trading under Article 19(1) (g), in later judgments, in particular in 1993 (3) SCC 178, this Hon'ble Court has limited the number of *tehbazaris* and hawking licenses that could be granted to citizens by the MCD, based on the policy placed before this Hon'ble Court by the MCD at that time...

The guidelines laid down by the Hon'ble Supreme Court for grant of vending hawking licenses called *tehbazari* in "Sodan Singh Vs NDMC & Others-1992" (2) SCC 458 were further reiterated in "Gainda Ram & Others Vs. MCD & Others" 1993 (3) SCC 178 as under: -

→ 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;

→ In so far as casual *tehbazari* on weekly holidays, festivals/melas etc. is concerned as well as at the 67 weekly bazaars held, persons availing of the said benefit will continue to be granted the casual or weekly *tehbazari*;

→ Squatters who have started squatting/ hawking from 1983 onwards and who were not found on the date of survey would also be considered for grant of open *tehbazari* of 6 ft by 4 ft subject to the production of proof of continuous squatting and proof of residence and nationality. Such squatters/hawkers would be granted open *tehbazari* subject to availability of space provided they have cleared the dues of the MCD; and

→ Persons who do not fall within the aforesaid three categories were to be permitted to apply for hawking licenses under Section 420 of the DMC Act, 1957 and their applications were to 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 were to be entitled to hawk with their goods anywhere in the zone in respect of which they have been granted a license. However, such permission was to be subject to restrictions that may be imposed by the residential associations of different colonies.

The Hon'ble Supreme Court in "Gainda Ram Vs MCD"-1993 (3) SCC 178 has also issued various directives, some of which are as under: -

→ Those who do not fall in any one of the aforesaid four categories were

given no rights whatsoever as they fall outside the scheme and are not entitled to any protection.

→ The MCD was directed to maintain the status quo till the verification was completed and only in regard to those hawkers/squatters, whose claims are negated, it was open to the MCD to take action for their eviction.

→ The MCD was directed to also ensure that future encroachments do not take place defeating the rights of existing squatters/hawkers covered under the Scheme.

→ It (MCD) was directed to protect the interests of shopkeepers as they do have similar rights under Article 21 of the Constitution.

The effect of the *Gainda Ram* judgement is that a severe limitation is put on the number of people who are to be authorised by municipal authorities to earn their livelihood by street vending and hawking.

As per available information, currently there are 288 squatting areas in different zones of the city and 12,369 *tehbazaris* of 6ft by 4ft have been so far identified. In addition, the MCD was instructed to invite applications for mobile hawking licenses. However, the municipal authorities have not been able to process all these cases due to the following reasons:

With increase in population, there is a proportional increase in demand for a whole range of services, including that of hawkers and vendors...

→ The number of eligible applicants was much higher [than available spaces], even in the 1990s when applications under this system were first invited. Since then the number of street vendors and hawkers in Delhi had grown manifold.

→ The areas identified for allotment by municipal authorities are not found economically viable by allottees who are reluctant to move to sites, which have low or negligible business potential.

→ This economic activity is dependent on market demand. Hawkers appear where there is actual demand for their services. Even if you remove one set of people from those areas, another set soon reappears to fill the vacuum. Therefore, it may be more effective to create hawker zones where “natural” markets have already been created than to create artificial hawking zones that have no takers.

→ Once fixed *tehbazari* sites are allocated, allottees tend to encroach upon larger areas with the help of police and municipal inspectors.

→ The existing system of allotment is complex and unmanageable and lends itself easily to abuse.

→ A huge number of unrecognized hawkers/ *tehbazaris* continue to operate despite municipal authorities cracking down on unauthorized hawker, at regular intervals.

The system of *tehbazari* allotment institutionalised by the Supreme Court has failed to control the number of hawkers operating in the city. While municipal authorities have so far allotted less than 5000 *tehbazaris*, hundreds of thousands of vendors



Abha Gandhi

Fish vendors at Sewa Nagar—among the worst victims of frequent evictions supposedly on health grounds.

continue to operate illegally. It is not possible to know the exact figure because no survey has ever been done to ascertain their number. It is estimated that 2 lac migrants enter the city every year and there are nearly 134 lac people residing in Delhi. With increase in population, there is a proportional increase in demand for a whole range of services, including that of hawkers and vendors, who provide a vital and efficient network for trade and distribution of a whole variety of goods for daily use and consumption – from vegetables and fruits to stationery, kitchen utensils, readymade clothes, shoes and cooked food. If they do not reach these goods to the doorsteps of consumer or convenient locations, people will have to drive or walk long distances to buy their daily necessities, resulting in a great deal of inconvenience, wastage

of time and money. Prices of essential goods will rise dramatically if the numbers of suppliers are unrealistically curbed, as would happen if all unlicensed hawkers were to be forcibly removed.

- Given the high rate of unemployment in the country, it is very difficult, if not impossible to control and prevent people from migrating to cities in search of income opportunities. It is not just the impoverished poor from villages who are forced to migrate to urban centres in search of livelihood, but also middle class professionals and businessmen who tend to move from small towns to big cities because of very limited economic opportunities available to them in small towns due to the depressed nature of our economy. If impoverished migrants do not find work even in cities, they perforce gravitate towards crime, as is evidenced by the rising crime rate in cities like Delhi.

- The recent closure of industries in Delhi has also forced a number of unemployed people to take to street hawking and vending as a means of survival since there are hardly any new jobs being created in the organised sector of our economy.

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Both the private sector as well as the government are trying to cut down on the number of employees/workers on their rolls.

- Therefore, it becomes all the more important to increase avenues for self-employment. Street vending and hawking not only provide desperately needed employment for those without a viable livelihood but also provide vibrancy to our economy. By increasing the flow of goods in the market, they provide a much needed boost to the small scale sector in industry and the farm sector involved in producing vegetables, fruits and spices which are widely distributed through street vendors.

- A large number of middle class and working class people who travel long distances for work depend on street vendors for their meals. Hawkers provide freshly cooked, nutritious food at very reasonable prices to the urban poor as well as to low and middle income groups in cities.

- In recent years, a number of NGOs and concerned citizens have brought to the notice of the government how the restrictive licensing system for hawkers with an unrealistic quota of a few thousand fixed in the 1990s in a growing city like Delhi has facilitated widespread abuse of the system. Hundreds of thousands of vendors are in fact carrying on their activity because of the huge influx of population into the metropolis. An urgent need is felt by the applicant to recognise in law, a larger number of people who are carrying on the business of street trading.

- So disturbing were these revelations of abuse of the system that the Hon'ble Prime Minister, Shri. A.B. Vajpayee took suo moto note of these reports and the PMO has drafted a detailed "Concept Note" for "reforming the licensing regime for street hawkers and rickshaw pullers" in Delhi with an accompanying letter to the Lt. Governor directing him that this policy reform must be undertaken with speed...

During this period, the Ministry of Urban Development and Poverty Alleviation has also set up a National

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Task Force on Street Vendors to chalk out a viable national policy for providing this sector the required security and protection so that people involved in street trading can earn their livelihood without needless harassment and undue interference.

The Municipal Corporation of Delhi too cannot remain a mute spectator to the distortions that have crept into the existing License-Quota system which puts unbridled power in the hands of the municipal inspectors who are supposed to process, issue and enforce the licensing system. In fact that putting a fixed and low ceiling on the number of *tehbazaris* to be given for street vending has failed to curb growth in their numbers. Ignoring their existence in official records results in

greater chaos in public spaces because authorities have no way of allocating spaces for them in a planned and rational manner. It has been alleged that their illegal status also allows the police to tyrannise them and extort ever increasing amounts of money by way of bribes.

At a time when many other sectors of our economy are being reformed and freed of the License-Quota-Raid Raj which has distorted and depressed our economy and forced people to bend and break laws, we need to extend the benefits of economic reforms to the self-employed poor as well.

In order to meet the challenges of the new millennium which demands that we bring about dramatic increase in employment opportunities and income levels of our people, especially those suffering from chronic poverty and insecurity, the MCD took the initiative of studying the problem in-depth and concluded that comprehensive reform is required in the policies, laws and regulations governing street vendors. A restrictive quota system involving an artificially determined permanent freeze on their numbers is not workable in practice. The numbers of hawkers/vendors have to be increased in keeping with the realities of the situation and increase in the population of Delhi. Moreover, since this Hon'ble Court has recognised street hawking and vending as a legitimate means of livelihood covered under the fundamental rights provisions of the Indian Constitution, a restrictive interpretation is not

A restrictive quota system involving an artificially determined permanent freeze on their numbers is

warranted by unrealistically limiting the number of licenses to be issued to street vendors. In fact, the present licensing regime needs to be abolished and replaced with a more viable and effective system, which curbs the possibility of corruption, criminal assaults and physical violence routinely inflicted on street vendors.

This new regulatory system lays due emphasis on the need to bring about greater civic discipline through appropriate planning in the allocation of space for various categories of users. This involves a simpler but more effective registration system taking into account market laws of supply and demand for the service of street hawkers and, providing the appropriate infra-structure required for their orderly functioning.

The Municipal Corporation of Delhi taking into consideration the factors mentioned above adopted a resolution No.505 dated 11.09.2002 which motion was carried as urgent business No.121 on 11.11.2002, proposing a new policy as follows:-

New Policy Measures

- a) MCD would declare certain roads as “No Hawking Roads” and “No Tehbazari Roads (only the footpaths above the road are to be considered for the *tehbazaris*).
- b) On certain parts of roads, certain open areas could be earmarked for hawking and *tehbazaris* on footpaths, keeping in mind the socioeconomic requirements of the neighbouring locality.
- c) Hawking would be permitted in residential colonies, as it is a necessary service for those areas. However, if local residents object this is subject to change.
- d) In all areas other than banned areas, permission for vending,



A typical footpath restuarant in Delhi—all rules flouted with payoffs

hawking and *tehbazaris*, both open and covered, would be allowed as per the new registration system evolved by the MCD.

e) Street traders would pay their licence fee to the MCD, to enable them to continue their activity, which is recognized by this Hon’ble Court, and allowed to earn their livelihood under the protection of Article 19 (1) (g) of the Constitution of India.

f) No *tehbazari* or hawking would be allowed in banned areas.

g) MCD would charge a fee ranging from Rs 50 to Rs. 500 per month for open *tehbazari* and up to Rs. 1000 for a covered *tehbazari* site.

The present licensing regime needs to be abolished and replaced with a more viable and effective system, which curbs the possibility of corruption, criminal assaults and physical violence routinely inflicted on street vendors.

In view of the above, as an inaugural step, to test out the viability of the new reform policy, it is essential for the MCD to implement as pilot projects Model Projects at Sewa Nager and CGO Complex (Lodhi Colony). If the pilot projects are found to be successful, after due assessment, they would be expanded to other areas as well. As stated earlier the new policies/scheme requires to be implemented with immediate effect.

Based on the results of the pilot project in Sewa Nagar and the CGO complex, the MCD will undertake the job of planning similar projects with geographical and other variations.

Prayer

In view of the above, the applicant most humbly prays that this Hon’ble Court declares that:

- a) The pilot project in Sewa Nagar and CGO Complex be implemented forthwith by the MCD;
- b) In case the said project is successful, the new reformed scheme may be implemented by MCD in other areas of Delhi as well...

Deponent, Additional Commissioner, Revenue, Municipal Corporation Delhi