

CASE NO.:
Appeal (civil) 4156-4157 of 2002

PETITIONER:
MAHARASHTRA EKTA HAWKWERS UNION & ANR

RESPONDENT:
MUNICIPAL CORPORATION, GREATER MUMBAI & ORS

DATE OF JUDGMENT: 12/02/2007

BENCH:
H.K. SEMA & B. SUDERSHAN REDDY

JUDGMENT:
J U D G M E N T

(With appln.(s) for intervention and direction and permission to submit additional documents and modification of Court's order dt. 9.12.03 and 30.7.04 and condonation of delay in filing affidavit and stay)

With
Civil Appeal NO. 4158-4159 of 2002 (With appln. for permission to file addl. Affidavit on B/O Appellant),

Civil Appeal NO. 4161-4162 of 2002 (with appln.(s) for permission to file addl. documents and directions),

Civil Appeal NO. 4163-4164 of 2002 (With appln(s) for modification/clarification of order dated 9.12.2003),

Civil Appeal NO. 4160 of 2002 (with appln. (s) for stay),

Civil Appeal NO. 4170-4171 of 2002,

Civil Appeal NO. 4167-4169 of 2002 (With appln.(s) for intervention(s) and direction(s),

Civil Appeal NO. 4165-4166 of 2002,

Civil Appeal NO. 4175-4176 of 2002 (With appln.(s) for directions and permission to file rejoinder affidavit and permission to file list of hawkers),

Civil Appeal NO. 4179-4180 of 2002 (With appln.(s) for clarification/modification of Court's order),

Civil Appeal NO. 4172-4174 of 2002 (With appln.(s) for directions),

CONMT.PET.(C) NO. 195-196 of 2001 in C.A.No.4175-4176/2002,

Civil Appeal NO. 4178 of 2002,

Civil Appeal NO. 4177 of 2002,

Civil Appeal NO. 9661 of 2003,

Civil Appeal NO. 9662 of 2003,

Civil Appeal NO. 9663-9666 of 2003,

Civil Appeal NO. 9667 of 2003 (With appln.(s) for

clarification/modification of Court's order dt. 30.7.2004 and intervention),

CONMT.PET.(C) NO. 456-458 of 2002 in C.A.No.4167-4169/2002

CONMT.PET.(C) NO. 153-154 of 2005 in C.A.No.4156-4157/2002,

W.P(C) NO. 17 of 2006 (with appln.(s) for ex-parte stay),

W.P(C) NO. 14 of 2006,

Contempt Petition(C)No.233-234/2005 in C.A.Nos.4156-4157/2002

Contempt Petition(C)No.245-246/2005 in C.A.Nos.4156-4157/2002

Contempt Petition(C)No.4-5/2006 in C.A.Nos.4156-4157/2002

Contempt Petition (C)No.140/2006 in C.A.No.4156-4157/2002

W.P.(C)No.335/2004 (with appln.(s) for directions and permission to file affidavit),

W.P.(C)No.337/2004 (with appln.(s) for directions),

SEMA, J.

The Hawkers' problems in the city of Bombay was first dealt with by this Court in the case of *Bombay Hawkers' Union v. Bombay Municipal Corporation* (1985) 3 SCC 528. The argument that the hawkers have a fundamental right to carry on their trade or business and that the respondents are unlawfully interfering with that right by arbitrarily refusing to grant or renew their licenses for hawking and that the writ petitions for a declaration that the provisions of Sections 313, 313-A, 314(3) and 497 of the *Bombay Municipal Corporation Act, 1988* are void since they confer upon the respondents an arbitrary and unguided power to refuse to grant or renew licenses for hawking and to remove the goods without affording to the hawkers an opportunity to be heard, was repelled by this Court. This Court held that the right to carry on trade or business conferred by Article 19(1)(g) of the Constitution is subject to the provisions of clause (6) of Article 19 which provided that nothing in Sub-clause (g) of Article 19(1) would affect the operation of any existing law insofar as it imposed, or prevented the State from making any law imposing, in the interests of general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It was held that no one had any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. It was pointed out that public streets, by their very nomenclature and definition, were meant for the use of the general public. It was further pointed out that the public streets are not laid to facilitate the carrying on of private trade or business. It was held that if hawkers were to be conceded the right claimed by them they could hold the society to ransom by squatting on the center of busy thoroughfares, thereby paralyzing all civic life. It was noticed that in some of the parts of the city the hawkers had made it impossible for the pedestrians to walk on

footpaths or even on the streets. This Court then examined the scheme proposed by the Municipal Commissioner and laid down certain modalities for hawking and non-hawking zones. After accepting some restrictions/conditions proposed by the Municipal Commissioner, this Court suggested certain guidelines and directed the Municipal Commissioner to frame a final scheme.

Pursuant to the aforesaid direction, Bombay Municipal Corporation (for short 'BMC') constituted an Advisory Committee composed of officials of the Corporation, representatives of the Residents' Associations, NGO's, elected representatives of the Traffic Police and representatives of the hawkers. In the interregnum, the Advisory Committee submitted a draft Scheme. Many suggestions were made but we are not concerned with the draft Scheme, proposals or suggestions, in these proceedings.

Before this Court a strong reliance has also been placed on behalf of the petitioners on the judgment in the case of *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545. It was submitted that the right to hawk was also a fundamental right under Article 21 of the Constitution of India. This Court noticed that such an argument has been negatived in the case of *Sodan Singh and Ors. v. New Delhi Municipal Committee and Ors.* (1989) 4 SCC 155. This Court in *Sodan Singh's* case (*supra*), while dealing with hawkers in the city of Delhi held that the hawking on roadsides fell within the expression "occupation, trade or business" in Article 19 (1) (g) but that it was subject to reasonable restrictions under Article 19(6) of the Constitution. After noticing the 1985 and 1989 judgments of this Court, as referred to above, this Court in *Maharashtra Ekta Hawkers Union v. Municipal Corporation Greater Mumbai* (2004) 1 SCC 625 para 10 at page SCC 630 held:

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

We are pointing out the aforesaid finding of this Court as many intervention applications have been filed, which we shall be dealing with at an appropriate time, attempting to re-argue the entire controversy which has been set at rest by this Court in *Maharashtra Ekta Hawkers Union v. Municipal Corporation Greater Mumbai* (2004) 1 SCC 625 (*supra*).

This Court, after noticing the draft Scheme prepared pursuant to the judgment of this Court in *Bombay Hawkers'*

Union's case (supra), decided to constitute a Committee. It said in paragraph 12 SCC page 634 as under:

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

The other finding of this Court, which would be relevant for our purpose is paragraph 13 page 634 SCC, which reads:

"13. At this stage it must be mentioned that we had by order dated 1st May 2003 permitted parties to make suggestions as to which additional areas can become hawking zones. A number of suggestions had been made. We are told that BMC is agreeable to include 51 more roads as hawking zones. We have considered submissions of Mr. Divan on why these additional roads should not be added to the 137 already approved by the Bombay High Court. In our view 49 of these additional roads meet all the criteria, set out hereafter, and can be included in the hawking zones. Therefore to start with we approve the 187 + 49 roads as hawking zones. The roads we have excluded are Pandey Road in A Ward and Deodhar Road in F/N ward as they appear to be residential areas with no shopping line. We further clarify that amongst these 49 roads there are some roads e.g. Mahatma Gandhi Marg in A Ward which are already included in the hawking zones but on which BMC now proposes to accommodate additional hawkers. Whilst doing so BMC will ensure that there is no impediment or hindrance to vehicular traffic or pedestrians. The approval of these 49 roads is subject to approval/NOC from the traffic police. It must also be clarified that even though a road may be within a hawking zone the restrictions, set out hereunder, regarding distances from railway stations, hospitals, educational institutions, places of worship etc. on that road, if any, would continue to apply."

Ultimately, this Court took the view that the hawkers shall be permitted to do their business subject to restrictions/conditions, as set out in paragraph 14 page 635 SCC as under:

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

(1) an area of 1 mtr x 1 mtr on one side of the footpath wherever they exist or on an extreme side of the carriage way, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked. We further clarify that even where hawking is

permitted, it can only be on one side of the footpath or road and under no circumstances on both sides of the footpaths or roads. We however clarify that Aarey/Sarita stalls and sugar cane vendors would require and may be permitted an area of more than 1 Mt. by 1 Mt. but not more than 2 Mt. by 1 Mt;

(2) Hawkers must not put up stalls or place any tables, stand or such other thing or erect any type of structure. They should also not use handcarts.

However they may protect their goods from the sun, rain or wind. Obviously this condition would not apply to Aarey/sarita stalls;

(3) There should be no hawking within 100 meters from any place of worship, holy shrine, educational institutions and hospitals or within 150 meters from any municipal or other markets or from any railway station. There should be no hawking on foot-bridges and over-bridges. Further certain areas may be required to be kept free of hawkers for security reasons. However outside places of worship hawkers can be permitted to sell items required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candies, agarbattis, coconuts etc.;

(4) The hawkers must not create any noise or play any instrument or music for attracting the public or the customers;

(5) They can only sell cooked foods, cut fruits juices and the like. We are unable to accept submission that cooking should be permitted. We direct that no cooking of any nature whatsoever shall be permitted. Even where cooked food or cut fruits or the like are sold, the food must not be adulterated or unhygienic. All municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act must be complied with;

(6) Hawking must be only between 7.00 am and 10.00 pm;

(7) Hawking will be on the basis of payment of a prescribed fee to be fixed by BMC. However the payment of prescribed fee shall not be deemed to authorize the hawker to do his business beyond prescribed hours and would not confer on the hawker the right to do business at any particular place;

(8) The hawkers must extend full cooperation to the municipal conservancy staff for cleaning the streets and footpaths and also to the other municipal staff for carrying on any municipal work. They must also cooperate with the other government and public agencies such as BEST undertaking, Bombay Telephones, BSES Ltd. etc. if they require to lay any cable or any development work.;

(9) No hawking would be permitted on any street which is less than 8 meters in width. Further the hawkers also have to comply with Development Control Rules thus there can be no hawking in areas which are exclusively residential and where trading and commercial activity is prohibited. Thus hawking cannot be permitted on roads and pavements which do not have a shopping line.;

(10) BMC shall grant licences which will have photos of the hawkers on them. The licence must be displayed, at all times, by the hawkers on their person by clipping it on to their shirt or coat;

(11) Not more than one member of a family must be given a licence to hawk. For this purpose BMC will have to computerize its records;

(12) Vending of costly items e.g. electrical appliances, video and audio tapes and cassettes, cameras, phones etc are to be prohibited. In the event of any hawker found to be selling such items his licence must be cancelled forthwith.

(13) In areas other than the Non-Hawking Zones, licences must be granted to the hawkers to do their business on payment of the prescribed fee. The licences must be for a period of 1 year. That will be without prejudice to the right of the Committee to extend the limits of the Non-Hawking Zones in the interests of public health, sanitation, safety, public convenience and the like. Hawking licences should not be refused in the Hawking Zones except for good reasons. The discretion not to grant a hawking licence in the Hawking Zone should be exercised reasonably and in public interest.

(14) In future, before making any alteration in the scheme, the Commissioner should place the matter before the Committee who shall take a decision after considering views of all concerned including the hawkers, the Commissioner of Police and members of the public or an association representing the public.

(15) It is expected that citizens and shopkeepers shall participate in keeping non hawking zones/areas free from hawkers. They shall do so by bringing to the notice of the concerned ward officer the presence of a hawker in a non hawking zone/area. The concerned ward officer shall take immediate steps to remove such a hawker. In case the ward officer takes no action a written complaint may be filed by the citizen/shopkeeper to the Committee. The Committee shall look into the complaint and if found correct the Committee will with the help of police remove the hawker. The officer in charge of the concerned police station is directed to give prompt and immediate assistance to the Committee. In the event of the Committee finding the complaint to be correct it shall so record. On the Committee so recording an adverse remark re failure to perform his duty will be entered in the confidential record of the concerned ward officer. If more than three such entries are found in the record of an officer it would be a ground for withholding promotion. If more than 6 such entries are found in the records of an officer it shall be a ground for termination of service. For the work of attending to such complaints BMC shall pay to the Chairman a fixed honorarium of Rs. 10,000/- p.m.

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

Finally, a Committee had been constituted by this Court with certain directions in paragraph 16 page 638 SCC as under:

"16. We appoint a Committee consisting of a retired Judge of the Bombay City Civil Court at Bombay (to be nominated by the Chief Justice of Bombay High Court), who shall be the Chairman of the Committee, a senior officer of BMC (who shall be nominated by the Municipal Commissioner) and a senior police officer from the traffic department (who shall be nominated by the Police Commissioner). For the present the Officers will be deputed full time to work on the Committee. BMC shall forthwith make available to the Chairman and the Committee all facilities like office space, secretarial staff etc. BMC shall also make available to the Chairman a chauffeur driven car which is to be used for this work only. Any person or organization who feels, that roads/streets apart from those designated as non hawking zones are suitable for hawking, may apply to this Committee, for having that road/street designated as a hawking zone. Similarly any person or organization who feels that any road/street designated as hawking zone should be a non hawking zone may apply to the Committee for having that road/street designated as a non hawking zone. The person or organization so applying must deposit along with the application a sum of Rs. 1500/- per road/street in respect of which they want a decision. BMC shall add to that a sum of Rs. 1500/- per road/street. The sum of Rs. 3000 per road/street shall be handed over to the Chairman of the Committee as his honorarium. The Committee shall then cause a notice to be placed in the concerned ward office and in prominent places on that road/street inviting objections/suggestions in respect of that proposal. Undoubtedly the Committee shall visit the road/street and also hear all concerned parties including residents associations, shop owners in that road/street etc. The Committee shall then decide whether or not such road/street should be a hawking zone or not. The Committee will also decide how many hawkers can be accommodated on that road/street if it is to be a hawking zone. We clarify that merely because in the scheme, as sanctioned, an area has been shown as a hawking zone or a non hawking zone, will not preclude the Committee from considering whether hawking can be permitted on that road/street. We have no doubt that the Committee shall ensure that the above mentioned criteria are fulfilled before a road/street is declared as a hawking zone and that if all the criteria are met then that road/street is not kept out of a hawking zone. In the event of any difference between the Committee members, the decision of the Chairman of the Committee shall prevail. The decision of the Committee shall be final and binding on all."

By another order dated 30.7.2004, this Court, amongst others, constituted two more Committees. This Court then directed that the first Committee, which had been established by order dated 9.12.2003 shall deal with Zones 1 & 2 and the two Committees, constituted on that date, shall deal with Zones 3 & 4 and 5 & 6 respectively. It was further clarified

that all unauthorized hawkers and hawkers other than the licensed hawkers may have to be, in a phased manner, removed from non-hawking Zones.

This Court further passed the following order regarding intervention applications:

"Before this Court a number of Associations are appearing and are seeking to intervene. Each such Association shall file in this Court, and also give to the Bombay Municipal Corporation, a list of all its members with the address of each member. The Association and each such member shall file an undertaking before this Court that they will cooperate with the Bombay Municipal Corporation in the implementation of the Scheme. Any Association or member who does not file list/undertaking not to be considered for allotment of space."

LICENSED HAWKERS

Regarding licensed hawkers, after hearing the parties at length, we left it to be considered only after the position regarding total number of available sites becomes available. The question whether the licensed hawkers, who had been operating for a long period of time must also stand in line with others, was also left open.

HANDICAPPED HAWKERS

With regard to handicapped hawkers, which was not covered by our order dated 9.12.2003, was clarified in our order dated 30.7.2004 as under:

"We, however, modify our order dated 9th December, 2003 by permitting handicapped persons who have been granted license for running the PCOs/Aarey/Sarita stalls to continue to run those stalls even in non-hawking Zones. No further or new licenses to be granted to any other person even a handicapped person in non-hawking zones. We, however, clarify that a license to run the PCO stalls would mean running a PCO stall. No other activity can be carried out from the PCO stall. Similarly, even in respect of other stalls, only the activity permitted by the license can be carried on."

Pursuant to our order aforesaid, the three Committees, constituted by us, have submitted their reports, after hearing the parties and receiving objections, if any, as directed. The Committees suggested some deletions/additions, which are to be considered by this Court. That is how the matter is placed before us once again for issuing further appropriate directions. The principal contention of all the counsel is that this Court identified 187 roads plus 49 roads as hawking Zones. However, the Committees had upset the approval of this Court, which is not permissible.

To answer this question, we need to harmonize our directions in paragraphs 13 and 16 of our judgment of 9.12.2003. In paragraph 13 of our judgment, we have approved 187 plus 49 roads as hawking Zones. We, however, clarified that so far as 49 roads are concerned, the same are subject to the approval/NOC from the Traffic Police. We also clarified that even though a road may be within a hawking Zone the restrictions regarding distances from railway stations, hospitals, educational institutions, places of worship etc. on that road, if any, would continue to apply. We further clarified in paragraph 16 of our order that merely because in the scheme, as sanctioned, an area has been shown as a hawking zone or a non hawking zone, will not preclude the

Committee from considering whether hawking can be permitted on that road/street. Reading paragraphs 13 and 16 of our order conjointly, would clearly show that although we have in principle approved 187 roads as hawking Zones, we have permitted the Committees to further consider whether hawking can be permitted on such road/street or not. In our view, therefore, the contention of the petitioners that the Committees had reduced the roads, which had been declared the hawking Zones by this Court, without any authority, must be rejected. In our view, the Committees had exercised their powers in consonance with the directions issued by this Court. The other contention that due to reduction/deletion of some roads, approved as hawking Zones by this Court, the hawkers have been deprived of their right to hawk on the streets declared as hawking Zones has also no substance. This contention also deserves to be rejected outright. The statements showing number of Hawking Zone Roads and available pitches thereat recommended by all the Three Members' Committees are as follows:

"Annexure - VIII

Statement showing Number of Hawking Zone Roads and available pitches thereat recommended by all the Three Members Committees

City
Committee
Eastern Subs
Committee
Western Subs
Committee

No.of
Rds.
No.of
pitches
No. of
Rds.
No. of
pitches
No. of
Rds.
No. of
pitches
Hawking Zones out of
196 Roads approved By
Hon'ble Supreme Court

57
4088
59
7658
80
7255
Less Roads deleted by
Committee
06
205
12
454
80
7255
Rds. Remained out of 196

Roads
61
3885
47
7204
-
-
Plus After considering
suggestion & objections
newly added roads &
pitches
44
2275
50
8288
56
2670
Plus Hawking Plaza
(K/W)
-
-
-
-
01
226
Actual available Roads
for Hawking zones &
number of pitches
available
95
6138
97
15492
56
2896

Summary Statement showing total number of available Hawking
Zone Roads & Pitches as recommended by all the Three Members
Committees.

Sl.No.	Committee	Roads	Pitches	Hawking Plaza Pitches	Total
A					
B					
C					
D					
E					
F					
G (D+F)					
1					
City					
95					
		6138			
-					
-					
6138					
2					

Eastern

97

15492

-

-

15492

3

Western

56

2670

1

226

2896

248

24300

1

226

24526

Out of 248 roads, recommended as hawking Zones by the Committees, 27 roads fall within 100/150 mtrs. from the places of worship and educational institutes. The suggestion of the Committees to modify and relax direction No. 3 of this Court is rejected. Such suggestion cannot be accepted because this has been the consistent view even in 1985 case, which has been adopted by this Court. Therefore, the 27 roads, identified and suggested by the Committees and included in total roads of 248, have to be deducted. Therefore, the total roads as hawking Zones shall remain only at 221. Out of 24,300 pitches, 2429 pitches have to be excluded. Then it comes to 21871 plus 1853 plus 226 pitches. The total final figure comes to 23,950 pitches.

The break-up figures shown in the recommendations of the Committees show that there are in total 15,159 existing licensed hawkers in the city of Bombay. Out of these 5555 licensed hawkers are pertaining to PCOs/ Handicapped Persons' Stalls, Cobbler Pitches, Cobbler Stalls and Aarey Sarita, which had been permitted by this Court in our order dated 9.12.2003 and 30.7.2004. From the remaining 9604 licensed hawkers, 2083 are in hawking Zones and 7521 are in non-hawking Zones.

STATUS OF LICENSED HAWKERS

The question whether licensed hawkers already operating in hawking Zones should be allowed to continue irrespective of draw of lots had been kept open by this Court to be decided after the submission of the Committees' Report. The Committees recommended that it would not be advisable for the licensed hawkers who are hawking for the last so many years to stand in a queue for the draw of lots alongwith unlicensed hawkers. Mr. G.E. Vahanvati, learned Solicitor General appearing for B.M.C. has no objection if the licensed hawkers, already operating in hawking Zones, should be allowed to continue irrespective of draw of lots. We accept the suggestion of the Committees. Accordingly, we issue the following directions:

(A) 5555 licensed hawkers pertaining to PCOs/ Handicapped Persons' Stalls, Cobbler Pitches, Cobbler Stalls and Aarey Sarita are allowed to continue their business irrespective of draw of lots till the regulations are framed by the Government of Maharashtra.

(B) 2083 licensed hawkers hawking in hawking Zones shall be allowed to continue the hawking irrespective of draw of lots till the regulations are framed by the Government

of Maharashtra.

(C) 7521 licensed hawkers, who are in the non-hawking Zones, must be shifted to hawking Zones and allowed to continue hawking till the regulations are framed by the Government of Maharashtra.

We have noticed that total pitches now available in the hawking Zones are (23950 minus 15159) = 8791. For these 8791, there shall be draw of lots.

Each Committee shall print a format for draw of lots.

Amongst others, the application form for draw of lots shall contain the following information:

i) Every applicant shall affix his/her latest passport size phot on the application form;

ii) Fathers' name/ Name of the spouse, if married and address;

iii) Ward No., whether his/her name appears in the Electoral Roll as a Voter, Sl. No. in the Voter's List etc. ;

iv) An undertaking that he/she has not applied in any other ward/zone other than the ward/zone applied;

v) Must undertake that the information furnished, if found false, fabricated or if any fraud is played, he/she will be disqualified, even subsequent to the draw of lots. In other words, the application shall be treated as null and void;

vi) Each Zone shall constitute a Screening Committee and the Screening Committee, after properly scrutinizing each and every applicant, shall fix the date for draw of lots;

vii) The Screening Committees are entitled to devise their own modalities in order to ensure that no applicant/family secures more than one pitch.

The Committee (Zone 1 & II) in the Report dated 20.1.2005 pointed out certain difficulties in effectively implementing the hawking and non-hawking Scheme, as framed by this Court. The Committee pointed out the problems of unauthorized parking of vehicles/ lorries/ tempos/ two wheelers etc. by the shopkeepers and customers. In paragraph 37(vii), the Committee pointed out as under:

"37(vii) The problem of unauthorized parking of vehicles/ lorries/ tempos/ two wheelers etc. is the case of much greater nuisance for vehicular as well as pedestrian traffic as compared with the problem of unauthorized hawking. At the time of the visit of the Committee in C-Ward, it was found that from Princess street junction upto Abdul Rehman Street, major portion of the road was blocked by unauthorized parking. On enquiry I was told that the unauthorized parking is on account of parking of vehicles of shopkeepers of the said road or their customers or visitors. Not only that, but the shopkeepers have allowed unauthorized parking for themselves and their customers near their shops and they have also extended the area of their shops in front of the shops and in some cases by keeping temporary stalls or stools for exhibiting their goods. Such was the position in practically all Wards."

The same was reiterated again by the Report of the Committee dated 29.3.2005 as under:

"In order to effectively implement hawking/non-hawking zone scheme it is also desirable that necessary direction may also be given regarding unauthorized parking and unauthorized extension

of their shops by several shopkeepers as stated in detail in para 37(vii) on page 28 of my earlier report."

Our orders dated 9.12.2003 and 30.7.2004 make it abundantly clear that all concerned shall abide our directions. This would mean including shopkeepers, house owners and vehicle owners. We make it clear that if there is any obstruction by any authority including the shopkeepers, house owners and customers and if any extension of shop is made or if there is any unauthorized parking by the shopkeepers, which hampers or creates any impediment for effectively implementing our directions in hawking and non-hawking zones, the Committees shall immediately report to the concerned authorities, and such authority shall immediately remove/demolish such extended area of shops or unauthorized parking which hampers or creates impediment for effectively implementing the directions of this Court.

The suggestion of the Committee to relax the order of this Court dated 9.12.2003 to accommodate some more hawkers in regard to certain spots in Zone-I and II as done in the case of Dadasaheb Phalke Road where distance to be left from Dadar Station (East) was only 25 meters instead of 100/150 meters is rejected.

HAWKERS' PLAZA

In our order dated 9.12.2003, we noticed as under:
"It will be open for BMC to set up hawking plazas. However, when BMC sets up a hawking plaza the allotment of 1m x 1m pitches in those hawking plazas must be made on the above terms and conditions \005\005"

Pursuant to our order, the Committees examined the following areas for Hawkers' Plazas:

- "1. Plot No. T/4 on Lokmanya Tilak Road, Borivali (W).
2. Hawkers Plaza at Navrang Garden now known as Ganpatrao Ambre Maharaj Udyan in K/West on J.P. Road, Andheri(W).
3. Sainath Road, Malad(W) near subway.
4. Andheri Palika Bazaar Hawkers' Plaza (Below Gokhale Flyover Bridge) at Andheri(W)."

After examining the areas, the Committees have made certain recommendations, which are accepted. B.M.C. now to undertake immediate steps for making infrastructure available, as suggested by the Committees.

INTERVENTION APPLICATIONS

Many Intervention Applications have been filed. The counsel for the respective applicants made an attempt to argue on such intervention applications. This Court on 30.7.2004 clarified that each such association shall file in this Court, and also furnish to the Bombay Municipal Corporation, a list of all its members with the address of each member. The Associations and each such member were required to file an undertaking before this Court to the effect that they will cooperate with the Bombay Municipal Corporation in the implementation of the Scheme. This Court further said that any Association or member who does not file list/ undertaking not to be considered for allotment of space.

None of the applicants satisfied and fulfilled the conditions inasmuch as no such undertaking has been filed before this Court, nor any list of members has been filed in this Court, as directed. All such intervention applications, which had not fulfilled the conditions/criteria, as set out by

this Court are accordingly dismissed.

HANDICAPPED HAWKERS

I.A.Nos.28,29/04,78,100-101,158,159/05and 200, 201/06

These intervention applications have been filed by the handicapped hawkers. They have filed an undertaking before this Court. This Court on 30.7.2004 passed the following order:

"We, however, modify our order dated 9th December, 2003 by permitting handicapped persons who have been granted license for running the PCOs/Aarey/Sarita stalls to continue to run those stalls even in non-hawking Zones. No further or new licenses to be granted to any other person even a handicapped person in non-hawking zones. We, however, clarify that a license to run the PCO stalls would mean running a PCO stall. No other activity can be carried out from the PCO stall. Similarly, even in respect of other stalls, only the activity permitted by the license can be carried on."

The grievance of the applicants is that despite their having licenses of 1m x 2 m. stalls, notices have been issued by the Corporation to the disabled licensed stall holders to reduce the size of stall to 1m x 1m. It is stated that the license for running stalls of 1m x 2m had been issued to them because many of them have locomotor disability. They have to take the assistance of wheelchairs, crutches, Jaipur foot and other enabling aids of the like (which are non-foldable) and consequently, they need ample space within their booths to accommodate these compensatory aid devices. The applicants have also annexed a specimen of the license issued to them, which is 1m x 2m.

By our order dated 9.12.2003, in direction No. 1, we have allowed Aarey/Sarita stalls and sugar cane vendors who may require an area of more than 1m. x 1m. and accordingly permitted them to utilize the space of not more than 2m. x 1m. Accordingly, the applicants in these intervention applications are permitted to stalls of 1m. x 2m. as provided in their license. This permission, however, is subject to verifications by the Committee that the allottees have locomotor disability and they have to take the assistance of wheelchairs, crutches, Jaipur foot and other enabling aids of the like (which are non-foldable).

NATIONAL POLICY ON URBAN STREET VENDORS

National Policy on Urban Street Vendors has been framed as far back as in 2004. Its Introduction reads:

"Introduction

Street vending as a profession has been in existence in India since time immemorial. However, their number has increased manifold in the recent years. According to one study Mumbai has the largest number of street vendors numbering around 250,000, while Delhi has around 200,000. Calcutta has more than 150,000 street vendors and Ahmedabad has around 100,000. Women constitute a large number of street vendors in almost every city. Some studies estimate that street vendors constitute approximately 2% of the population of a metropolis. The total number of street vendors in the country is estimated at around 1 crore. Urban vending is not only a source of employment but provide 'affordable' services to the majority of urban population. The role played by the hawkers in the economy as also in the society

needs to be given due credit but they are considered as unlawful entities and are subjected to continuous harassment by Police and civic authorities. This is reported to be continuing even after the ruling of the Supreme Court that "if properly regulated according to the exigency of the circumstances, the small traders on the side walks can considerably add to the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after a day's work can pick up these articles without going out of his way to find a regular market. The right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and no other use."

Section 10 of the Policy deals with the role of the State Governments. Section 10.1 provides that the State Governments should ensure that institutional arrangements, legislative frameworks and other necessary actions achieve conformity with the National Policy for Street Vendors. At the time of hearing of these petitions, it had been brought to our notice by Mr. Raghupati, learned counsel for the State that a Committee has been constituted by the State of Maharashtra to go into the whole gamut of the issues and necessary regulations will be framed by the State. We insisted that the Government should file an affidavit explaining their position and the time framework within which regulations can be framed. Pursuant to our direction, a counter affidavit of Dr. Jairaj Phatak, Principal Secretary, Urban Development Department, Government of Maharashtra has been filed. It is stated that to implement the national policy on urban street vendors in the State the matter was thoroughly discussed in the meeting held on 29.11.2005. It is stated that to implement the National Policy on urban street vendors a Committee has been constituted with the following persons:

- | | | |
|---|---|----------|
| 1. Principal Secretary II,
Urban Development Department,
Mantralya, Mumbai. | : | Chairman |
| 2. Principal Secretary, Home (Special) :
Mantralya, Mumbai. | : | Member |
| 3. Municipal Commissioner,
Brihanmumbai Mahanagarpalika,
Mumbai. | : | Member |
| 4. Police Commissioner, Mumbai | : | Member |
| 5. Commissioner & Director of
Municipal Administration,
Worli, Mumbai. | : | Member |
| 6. Municipal Commissioner,
Thane Municipal Corporation, Thane | : | Member |
| 7. Municipal Commissioner,
Nagpur Municipal Corporation, Nagpur | : | Member |
| 8. Municipal Commissioner, | : | Member |

Pune Municipal Corporation, Pune.

9. Shri M.K. Puradupadhye, : Member Secretary
Deputy Secretary, (UD-20)
Urban Development Department,
Mantralaya, Mumbai.

It is also stated that the first meeting of the Committee was held on 5th September, 2006 and various issues about the street hawkers were discussed. A decision was also taken in the said meeting to inform all the Municipal Corporations/ Councils about the said Committee and a copy of the National Policy on Urban Street Vendors was also circulated. It is stated that the next meeting has been fixed towards the middle of February, 2007.

Finally, it is stated in the affidavit that the issue requires survey and study of the various urban areas falling within the jurisdiction of various Municipal Corporations / Councils and, therefore, the State Government requires some time to frame the regulations for implementing the National Policy on Urban Street Vendors. It is stated that the State Government would be able to decide on the feasibility of the implementation by May, 2007.

After noticing the contents of the statements in the counter, we are happy to note that the State Government is initiating a process for implementation of National Policy on Urban Street Vendors by framing regulations as envisaged in Section 10.1 of the National Policy. We hope and trust that the State Government will pursue the matter with right earnest and bring it to logical conclusion within the time stipulated.

We clarify that the regulations so framed by the State would be in consonance with the aims and objects of the National Policy to render some sort of succour to the urban street vendors to eke out a living through hawking.

We also clarify that State Government shall frame regulations in order to solve the problem of hawkers independently without being influenced by any scheme framed by us or any direction issued by this Court in the interregnum. We further clarify that the schemes and directions issued by this Court are purely temporary in nature and subject to regulations framed by the State Government in terms of Section 10.1 of the National Policy on Urban Street Vendors. In other words, the schemes and directions issued by this Court shall be valid only till the regulations are framed and implemented.

All the Writ petitions, Contempt petitions except Contempt petition No. 140 of 2006 are accordingly dismissed. Issue notice in Contempt Petition No. 140 of 2006, returnable within six weeks.

We would like to reiterate that no other Court shall interpret the order of this Court or pass any order touching upon the subject matter dealt with by this Court concerning the issues in hand. Any writ petition pending in any High Court on the same subject shall remain stayed. If any clarifications/ modifications are required, the same must be obtained from this Court.

List the matter for further orders after six months.