
(2009) 03 P&H CK 0161
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4904 of 2009

Amarjit Singh and Sons

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Citation : (2009) 3 PLR 116 : (2009) 2 RCR(Civil) 724

Hon'ble Judges : M.M.Kumar, J and H.S.Bhalla, J

Advocate : Mr. Tushar Sharma, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. The petitioner firm is a dealer of agricultural produce as a licensee in a market adjacent to the notified area of Subzi Mandi, Ludhiana. It has challenged order dated 1.11.2007 (P6) passed by the Market Committee and order dated 10.6.2008 (P8) passed by the Punjab Mandi Board respondent No. 2 upholding the order dated 1.11.2007 on an appeal filed by it under Rule 12 of the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (for brevity, 'the Rules').

2. Brief facts of the case are that Old Subzi Mandi was notified on 14.8.1963 as a Sub Market Yard of notified market area of Ludhiana Market Committee (P 1). The Old Subzi Mandi belonged to the Municipal Committee, Ludhiana but subsequently it was sold to the firms dealing with the sale and purchase of fruits and vegetables. The area of the Old Subzi Mandi was not owned or possessed at any stage by the Market Committee, Ludhiana. The respondents, in the year 1980/81 acquired an area of 53.4 acres at Bahadur Ke Road on Jalandhar Bypass to establish a new Subzi Mandi, which was conceived as a far bigger area and, therefore, considered sufficient to accommodate almost all the existing licensees. The petitioner firm admittedly does not transact its business of sale and purchase of agricultural produce in the Old Subzi Mandi whereas it is conceded position that they are carrying on their business at the Papita/Krishna Market, which is adjoining to the Old Subzi Mandi, though they have obtained a licence, which is

compulsorily required under the provisions of the Punjab Agricultural Produce Markets Act, 1961 (for brevity, 'the Act') and the rules framed thereunder. It is also not disputed that being a licensee, the petitioner firm has been carrying on its business under Licence No. 2781/LDN/SAMB, dated 2.1.1992, under Section 10 of the Act till 31.3.1997 in the Papita/Krishna Market. It could not get the said licence renewed after 31.3.1997. Consequently, a new licence bearing No. 3426/LDH/PMB, dated 3.11.1997 was issued to the petitioner firm after charging Rs. 600/ as penalty and since then it has been carrying on its business in the said Papita/Krishna Market. It has been paying the licence fee as well as market fee regularly without default.

3. An advertisement was published on 22.12.2004 in the punjabi daily, 'Punjabi Tribune' (P4), inviting applications for allotment of booths/shops at the proposed New Subzi Mandi. The advertisement clarified that the licensees of Old Subzi Mandi may also apply and they were to be allotted booths/shops @ Rs. 20,595/ per sq. yards as reserve price and an additional amount equal to 35% of the reserve price. The petitioner without realising that it is not a licence holder in the Old Subzi Mandi, made an application for allotment of booth/shop of the size measuring 16" x 60". The Allotment Committee constituted by the respondents for scrutinizing the applications for allotment of booths/shops rejected the application of the petitionerfirm on 1.11.2007 on the ground that it is carrying on its business from a shop situated outside the Old Subzi Mandi and, therefore, it was not qualified in terms of Rule 3 of the Rules. The operative part of the aforesaid order is discernible from paras 13 to 16, which reads thus :

"13. Whereas the allotment committee considered the claim and during the scrutiny of papers submitted by you along with the application the following shortcomings were found :

That your shop which is a part of Papita Market, Nanak Nagar, Ludhiana, falls out side the boundary of old Sabji Mandi Ludhiana as duly specified in the Notification No. 6009M.C. (Agri.)63/4404 dated 14.8.1963; thus not fulfilling the requirement of Rule 3.

14. Whereas the allotment committee after going through the document submitted by your firm for claiming for a separate shop in lieu of a Shop in Papita Market, Nanak Nagar, Ludhiana (outside the old Sabji Mandi) and in view of the provisions of the Rules did not recommend the case for allotment of a separate shop to your firm.

15. AND now a final decision has been taken regarding the claim of your firm for allotment of shop in New Sabji Mandi Ludhiana in lieu of a shop in Papita Market Nanak Nagar, Ludhiana (outside the old Sabji Mandi). As mentioned above, the case was not found to be covered under rule 3 of the Rules. Therefore, the claim is rejected. An amount of Rs. 500/ which was deposited by your firm along with the application form is also returned through a DD No. 78740 dated 1.11.07 which is attached with this order.

16. In case you have any objection to the above order, you can file an appeal before the Secretary, Punjab State Agricultural Marketing Board, as provided under rule 12 of the Rules within thirty days from the receipt of this order."

4. The aforesaid order, on an appeal filed under Rule 12 of the Rules, has been upheld by the impugned order dated 10.6.2008 (P8). The Marketing Board has placed reliance on Rule 3 of the Rules and has dismissed the appeal.

5. Mr. Tushar Sharma, learned counsel for the petitioner has argued that under Section 23 of the Act, the market fee paid by the petitioner firm is also applied for acquiring land for future expansion of the notified area and, therefore, the provisions of the rule restricting consideration to the licensees transacting their business in the old mandi would be arbitrary and ultravires of Article 14 of the Constitution. His further submission is that the petitioner firm has been transacting its business in the market adjoining to the Old Subzi Mandi and it is also entitled to be considered on the premise that huge market fee charged by the respondents is paid by the petitioner firm. Mr. Sharma has also placed reliance on the observation made by Hon"ble the Supreme Court in the case of Prem Chand Trilok Chand v. State of Haryana, (1998) 5 SCC 213, to argue that once the State Government start regulating the place of sale of agricultural produce and does not permit any other place to be used for the purpose of transacting business of agricultural produce then there is an inherent obligation for the Government to provide a new site for all the licensed dealers to accommodate them for carrying on their trade and that their business cannot be closed till such an arrangement is made.

6. Having heard learned counsel for the petitioner, we are of the considered view that the instant petition lacks merit and does not warrant admission. The petitioner firm does not qualify in terms of Rule 3 of the Rules, relevant portion of which reads thus :

"3. Sale of plots. [Sections 43 and 18 of Punjab Act 23 of 1961.] All plots in the markets developed by the Board or Committees shall be disposed of by way of open auction or allotment in accordance with the provisions of these rules :

Provided that the plots will be allowed to the licenced dealers of old market which are denotified resulting in displacement of such licenced dealers on freehold basis for conducting business of purchase or sale of agricultural produce in the new markets on the following terms of conditions, namely :"

7. The principal clause of the rule clearly spells out that all plots in the market developed by the respondents are to be disposed of by way of open auction or allotment in accordance with the provisions of the Rules. The petitioner firm is admittedly not a licenced dealer which has established its business in the old market that has been denotified. It has been carrying on its business from outside the notified market. It is well established that any person transacting any business of agricultural produce in the market area, whether within the notified area or outside, has to obtain licence and to pay market fee as per the provisions

of Section 23 of the Act and Rule 29(7) of the Punjab Agricultural Produce Markets (General) Rules, 1962. The aforesaid question has been subject matter of consideration of various judgments of this Court as well as Hon"ble the Supreme Court. In that regard reliance may be placed on the judgment of Hon"ble the Supreme Court in the case of *British India Corporation Ltd. v. Market Committee*, (1983) 1 SCC 196. In that case it has been held that market fee is leviable on a purchaser if weighment and delivery is taken by such a purchaser from the market area then irrespective of the fact whether he transact his business within the notified area or outside, the market fee has to be paid by such a purchaser. Therefore, the factum of payment of market fee by the petitioner firm being the purchaser would not advance its case in so far as allotment of a booth/shop in the newly established market is concerned. Moreover, by denotification of the old market the petitioner firm is not displaced and it continues to transact its business outside the market area where it was earlier transacting its business.

The argument of Mr. Sharma that Rule 3 of the Rules is ultra vires of Article 14 of the Constitution would not require any detailed consideration because there is a direct nexus between the class of persons who have been categorised for allotment of booths/shops at concessional rates than those who have been kept out of it. Moreover, a 5Judge Full Bench of this Court in the case of *M/s Harnam Dass Lakhi Ram v. State of Punjab*, AIR 1978 Punjab & Haryana 53 went into detailed discussion on Section 23 read with Section 2(q) of the Act and Rule 18 of the Rules and concluded as under :

"36. The contention of the learned counsel for the petitioners that the sales and purchases made by the petitioners, who alleged that their shops are outside the principal market yard or submarket yards, are not regulated sales and are sales by retail sellers, is really unfounded. As is clear from the provisions of the Act, all sales and purchases of agricultural produce made within each market area are being regulated under the Act. It is immaterial whether the said sales or purchases take place in the principal market yard or submarket yard or even outside. The retail sale has been defined in Cl. (q) of Section 2 of the Act to mean the sale of agricultural prduce not exceeding such quantity as may be prescribed. As has been pointed out in R. 18, the person whose turnover does not exceed Rs. 60,000 is exempt from taking a licence of retail seler. It is, therefore, idle to contend that the sales and purchases made by the petitioners are not regulated or that the petitioners are retail sellers. It would thus be seen that according to the averments made by the respondents as a matter of fact, the shop of the petitioners was situate within the market yard during the relevant period for which the impugned notice has been issued. Even if that may not be so, keeping in view the provisions of the Act and the Rules made thereunder, the transactions of the petitioners are regulated by the Act."

8. The proviso to Rule 3 of the Rules provides that plots were to be allotted to the licenced dealers of old market which have been denotified and which would

result in displacement of such licenced dealers on free hold basis for conducting business of purchase or sale of agricultural produce in the new markets. Such dealers by virtue of the denotification of the area would incur loss of business, which they have been transacting in the notified market area by virtue of shifting of the market to a new place. Such persons are required to be rehabilitated in the new market area. The aforesaid obligation has been cast on the respondents by virtue of the law declared by Hon''ble the Supreme Court in the case of Labha Ram and Sons v. State of Punjab, 1998(2) RCR(Civil) 529 : (1998) 5 SCC 207. It was after the judgment in Labha Ram's case (supra) that the Rules were framed and notified on 17.2.1999. Their Lordships'' in para 10 of the judgment in Labha Ram's case (supra) has observed as under :

"10. It is noted that learned Judges did not doubt the correctness of the principle that Government has an inherent obligation to provide all the licensed dealers sufficient accommodation for carrying on their trade. But can it be said that such obligation stands discharged merely by allowing them to compete with outsiders in the open auction. It must be remembered that even without any special provision the existing traders can have such a right to compete with rest of others. We find much force in the contention of the learned counsel for the appellant that merely providing an opportunity to compete with the rest of the public for getting accommodation in the new market, is not sufficient to discharge the inherent obligation of the Government to provide the existing traders at the new market area. Hence, it is difficult to concur with the view adopted in Chint Ram Ram Chand v. State of Punjab, 1996(1) RRR 625 : (1996) 9 SCC 338."

9. Once it is found that Rule 3 of the Rules is based on the judgment of Hon''ble the Supreme Court in Labha Ram's case (supra) then the Constitutional validity of the Rules itself stand established. Moreover, those who are not transacting their business in the notified market area have not been deprived of shifting to the new market area. However, they are required to participate in the open auction and pay the price which is payable by that class of dealers who have been transacting their business in the old market. Both are independent and distinct classes and, therefore, they would not be hit by the vice of Article 14 of the Constitution.

10. For the reasons aforementioned this petition fails and the same is dismissed.