
(2013) 07 P&H CK 0209
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6684 of 2009

Bimla Rani

APPELLANT

Vs

Finance Secretary, Chandigarh Administration and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 172 PLR 158

Hon'ble Judges : Satish Kumar Mittal, J; Mahavir S. Chauhan, J

Bench : Division Bench

Advocate : Yogesh Chaudhary, for the Appellant; Sanjay Kaushal, Senior Standing Counsel, for the Respondent

Judgement

Satish Kumar Mittal, J.—The petitioner has filed the instant writ petition under Article 226/227 of the Constitution of India for quashing of the order dated 22.02.2006 (Annexure P-20), whereby the claim of the petitioner for allotment of built up booth under the Allotment/Transfer of Built up Booths in any Sector on Lease/Hire Purchase basis in Chandigarh Rules, 1991 (herein after referred to as "the 1991 Rules"), have been rejected and her hawker licence has been cancelled by the Estate Officer, U.T., Chandigarh on the recommendation of the Screening Committee constituted by the Chandigarh Administration to decide the claim of the eligible person for allotment of built up booths under the 1991 Rules. The appeal filed against the said order has also been dismissed vide order dated 25.02.2009 (Annexure P-23). The claim of the petitioner's husband for allotment of built up booth under the 1991 Rules was also rejected by the Estate Officer, U.T., Chandigarh, on 17.02.2006 and appeal filed against the said order was also dismissed on the ground of being not maintainable vide order dated 16.07.2008 (Annexure P-24). The claim of the petitioner and her late husband have been rejected on the ground that both, the petitioner and her husband Joginder Pal, were having hawker licences and they had obtained those licences on the same day for doing hawker business. It has been stated that both the applicants while filing their claim and giving affidavit in support of said claim on Form "B"

provided under the aforesaid 1991 Rules, have concealed these facts. However, before the Screening Committee, they have admitted that both of them were having hawker licences.

2. In the written statement filed by the respondents, the respondents have taken a stand that since both, the petitioner and her husband, were having hawker licences, therefore, they were not eligible under the scheme for allotment of the booth. As they have filed false affidavit, therefore, the claims of both the persons have rightly been rejected on the said ground by the Screening Committee. It is admitted fact that except the said ground, both, the petitioner and her husband, were eligible for allotment of the booth under the aforesaid 1991 Rules. However, as per the policy, only one member of the family is to be allotted the booth site. Immediately, after the rejection of the claim of the petitioner, her husband has expired and affidavit has been given by the petitioner and her legal representatives that only petitioner be allotted booth under the aforesaid scheme of the Chandigarh Administration.

3. We have heard learned counsel for the parties and considered the issue whether on the aforesaid ground, the petitioner can be denied the allotment of the built up booth under the aforesaid scheme.

4. Rule 5 of the 1991 Rules deals with eligibility of a person, who can be allotted a built up booth in the market in any sector, which reads as under:-

5. Eligibility. - The Competent Authority may allot a built up booth in the market in any sector to a person if:-

(a) he holds a valid hand cart licence or hawkers licence as well as a driving licence and owns a hand cart or a behnigi/khoncha/phari on the date of issue of the notification or on the date as may be prescribed for the purpose by the competent authority.

(b) he does not own a commercial site/shop in Union Territory of Chandigarh, Mohali or Panchkula in his own name or in the name of any member of his family dependent upon him and the total family income from all sources does not exceed Rs. 7,500/- per mensem (Rupees seven thousand and five hundred only) for which he shall have to furnish an affidavit duly attested by the Executive Magistrate, Chandigarh to this effect.

(c) he does not suffer from any contagious disease for which he shall furnish a medical certificate of fitness.

5. A perusal of aforesaid Clause (b) reveals that only that person is not entitled for built up booth, who owns a commercial site/shop in Union Territory of Chandigarh, Mohali or Panchkula in his own name or in the name of any member of his family dependent upon him, and the total family income from all sources does not exceed Rs. 7,500/- per mensem. For these two conditions the applicant is required to file an affidavit duly attested by the Executive Magistrate, Chandigarh. Under these Rules, a pro-forma of the affidavit has been provided,

which is to be filed in requirement of this rule. The said proforma is appended as Form "B. Clause 3 of the said Form "B" reads as under:-

3. That I do not own any commercial site, booth or any commercial building, industrial site, industrial shed rehri site or rehri elsewhere in Chandigarh, Manimajra, Panchkula, or Mohali and I have neither any interest in any such trade or business or any other Handcart licence within the Union Territory of Chandigarh. My spouse or any member of my family dependent upon me also do not own any commercial industrial Rehri/Phari etc. or business in Chandigarh. I am dependent on the rehri business exclusively.

6. The requirement of deposing that the dependent neither have any interest in any such trade or business or any other Handcart licence within the Union Territory of Chandigarh and the spouse of the deponent or any member of his/her family dependent upon him/her also does not own any commercial industrial Rehri/Phari etc. or business in Chandigarh, are beyond the Rule 5 of the 1991 Rules.

7. It is the case of the Chandigarh Administration that according to this proforma, the appellant has to file an affidavit with regard to that the spouse of the applicant do not own any rehri/phari/handcart licence. On a specific question that whether the bye-laws for Regulation of Hawkers in Chandigarh provides any condition that both, the husband and wife, cannot obtain hawker licences for doing the hawking business, the learned counsel for the respondents replied that there is no such condition in the bye-laws for Regulation of Hawkers in Chandigarh. Therefore, merely because the husband and wife both want to do hawking business and had obtained hawker licence under the byelaws for regulation of hawkers in Chandigarh, they have not committed any illegality. Both man and woman have equal right to business. Therefore, it cannot be said that by obtaining licence on the same day they have committed any fault.

8. On the one hand, there was no restriction for obtaining license for hawking business under the aforesaid rules and on the other hand there was no requirement under the Rules that if both, the husband and wife, are having the hawker license, the said family became ineligible for allotment of built up booth. The claim of the petitioner was rejected for allotment of built up booth merely on the ground that her husband was also having hawker licence, is unsustainable and not supported by any legal sanction.

9. As per the aforesaid policy, only one member of the family is entitled for one booth site. In the present case the respondents have rejected the claim of the petitioner as well as her husband. The petitioner's husband had died and all the family member had given affidavit that the one booth may be given to the petitioner, who was eligible and who is taking care of the entire family. In view of these facts, the petitioner is entitled for allotment of one booth. Consequently, the petition is allowed and the order dated 22.02.2006 (Annexure P-20), passed by the Estate Officer, U.T., Chandigarh, is hereby set aside. The respondents are

directed to re-consider the allotment of the built up booth to the petitioner, in terms of the aforesaid order, within a period of three months from the receipt of certified copy of this order.