

(2016) 08 SC CK 0212

In the Supreme Court Of India

Case No : Civil Appeal No. 8267 of 2016 (Arising Out of S.L.P. (civil) No. 11247 of 2016)

Delhi Agricultural Marketing Board

APPELLANT

Vs

Hakumat Rai

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Citation : (2016) 166 AIC 257 : (2016) AII SCR 2119 : (2016) 6 AIIWC 6285 : (2016) 119 ALR 3 : (2016) 232 DLT 428 : (2016) 8 JT 355 : (2016) 3 LawHeraldSC 2573 : (2016) 5 RecentApexJudgments(RAJ) 450 : (2016) 8 Scale 252 : (2016) 15 SCC 196 : (2016) 3 WLN 194

Hon'ble Judges : V. Gopala Gowda and Adarsh Kumar Goel, JJ.

Bench : Division Bench

Advocate : Mrs. Avnish Ahlawat, Dr. Monika Gusain, Hari Om Yaduvanshi, Advocates, for the Appellant; Ms. Madhusmita Bora, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Adarsh Kumar Goel, J.—leave granted. This appeal has been preferred against the judgment and order dated 29th January, 2016 in LPA No.535 of 2015 passed by the High Court of Delhi whereby the Division Bench of the High Court affirmed the order of the Single Judge directing the appellant herein to allot a shop to the respondent- writ petitioner in Gazipur Mandi and also issue of category `B" license to him under the provisions of Delhi Agricultural Produce Marketing (Regulation) Act, 1998.

2. The above order came to be passed on the writ petition filed by the respondent. The averments in the petition are: The writ petitioner was a commission agent of fruits and vegetables at Phool Mandi, Darya Ganj, New Delhi. The appellant- Delhi Agricultural Marketing Board was a statutory body to regulate the marketing of agricultural produce and had declared certain areas as market areas. In the year 1998, the said Mandi at Darya Ganj was de-notified

and the commission agents were to be shifted from there. License of the petitioner was not renewed as the market was shifted to Okhla where a new market was to be constructed by the Delhi Development Authority (DDA). The petitioner was included in the list of eligible persons but was not successful in the draw of lots held in 1987. Those who were allotted shops at Okhla were shifted from Darya Ganj in the year 1992. Thereafter, the petitioner made a representation in the year 1994 for some alternative site at Keshopur Mandi, Tilak Nagar, Delhi which was closer to his residence as he was not successful in the draw of lots held in the year 1987. In the year 1999, the name of the petitioner was recommended by the Secretary, APMC but he was not allotted a shop. In the year 2002, the petitioner again represented that as no shops were available in Okhla, he may be accommodated at new wholesale market. In 2003, the Agenda Item No.8 for allotment of shop to the petitioner was approved on 18th December, 2003 but he was not allotted a shop. In 2008, the petitioner represented for allotment of shop at Gazipur market and again in the year 2011, he sought allotment of shop at Keshopur, Okhla, Gazipur or any other market. Earlier, he had approached the High Court in Writ Petition (Civil) No.547 of 1993. He was given liberty to file representation. He also relied upon the order dated 24th January, 2003 in another case in Writ Petition (Civil) No.790 of 2000. In substance, the case put forward by the petitioner was that he was running his business at Darya Ganj since long and as the said market had been de-notified, he was entitled to be allotted an alternative shop at Gazipur or any other newly developed market.

3. The writ petition was opposed by the appellant by submitting that 'B' Category license can be granted only to the persons owning a shop in the market area/ yard of the APMC. Alternative shops in Gazipur market were being given only to those who were bona fide licensees of APMC, Shahdara. Thus, the petitioner was not eligible for allotment of shop in the said market. The learned Single Judge allowed the writ petition on the ground that the petitioner was waiting for allotment of shop since the year 1985 and was entitled to be accommodated at Gazipur particularly when no other markets were coming up in the near future. The observations of the learned Single Judge are :

"6.1 I have asked Mr. Sinha, the learned counsel for the respondent as to whether the petitioner's case was considered by the Board. Mr. Sinha informs me that the petitioner's case was rejected, as the petitioner was not found eligible.

6.2 On being queried further, as to when, a decision, to reject the petitioner's claim, was taken by the Board. Mr. Sinha candidly stated that there was no reference to the same in the counter affidavit. This apart, the record would show that no document has been filed, which would demonstrate that the petitioner's case was rejected.

6.3 On the contrary, there are documents on record which show that the APMC has approved the case of the petitioner, and it is the Board which has not moved further in the matter.

6.4 Undeniably, under the Delhi Agricultural Produce Marketing (Regulation) Act, 1998, APMC is an adjunct of the Board. Therefore, the recommendations of the APMC, should carry the necessary weight. The petitioner has waited long enough for the relief in the matter. The genuineness of the case and/ or the eligibility of the petitioner for allotment is not in doubt as is recorded in APMC's letter dated 12.8.1999.

7. Therefore, given the facts and circumstances obtaining in the case, according to me, the petitioner is entitled to the reliefs as prayed.

7.1 Mr. Sinha says that the directions sought for allocation of a shop are not feasible as, under the policy, shops in Gazipur can only be allotted to those persons, who were carrying on business at Shahdara. In my view, present piquant situation is, a creation, of respondent's own making.

7.2 Having regard to the fact that the petitioner has been waiting patiently for relief since 1985, if not earlier, the respondent will have to make necessary accommodation for the petitioner. This is especially so, since, Mr. Sinha says that there are no other "mandis", which are coming up, except one, in Gazipur, in the near future. To ask the petitioner to wait for any further, will be a travesty of justice. Accordingly, necessary directions are issued in terms of the relief sought for by the petitioner.

7.3 In view of the above, the respondent will allot a shop to the petitioner in the Gazipur Mandi, and thereafter, also issue a category 'B' License to the petitioner."

4. The Division Bench of the High Court upheld the above direction as follows :

"11. We may also deal with the submissions of the learned counsel for the appellant. The contention is that as the respondent's name did not figure in the draw of lots, he became ineligible. It was put to learned counsel for the appellant to show if there is any policy that an eligible person seeking an alternate place at Okhla Mandi would become ineligible in case he did not succeed in the draw of lots. Learned counsel has not been able to show any such policy on record. The contention is clearly without any merits. Regarding the contention of learned counsel for the appellant that the impugned order would cause confusion inasmuch as the shops which are being constructed at Gazipur are only meant for those who have been working at Shahdra Mandi, the impugned order rightly states that this is a piquant situation which is a creation of the appellant's own making."

5. We have heard learned counsel for the parties.

6. The main contention raised on behalf of the appellant is that allotment of shop in a notified market area is not a legal right. Accommodation in the notified area depended upon the number of shops available. Further, vide notification dated 2nd September, 2014 it was notified that no license will now be required for the marketing of fruits and vegetables in Delhi except in the notified market areas.

Thus, the appellant could continue to carry on his business at Phool Mandi, Darya Ganj. If he was not to be displaced from the place of his business, subject to his having right to occupy the shop from the premises where the business was being carried on, the appellant was under no obligation to allot an alternative shop to rehabilitate him. The case of the writ petitioner was considered from time to time, but since the number of claimants was more than the shops available, he could not be allotted a shop. The High Court had directed allotment of shop to him merely on the ground that he was waiting from a long time. Moreover, in view of the notification dated 2nd September, 2014, no license is required for the writ petitioner to continue at the present place of his business. The said notification is as follows :

"Now, therefore, in exercise of the powers conferred by sub-section (I) and (4) of Section 4 of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998, and in supersession of notifications Nos.F.50(3)/77/DAM(i) dated 14.01.77, F.6(II)/78-DAM/7371-92 dated 21.11.78, F.8/4/83-DAM/ MR (i) dated 01.12.92, F.8(2)/85-DAM/MR/Vol.II/420 dated 29.01.2001 and F.8/4/83-DAM/MR (ii) dated 01.12.92, in so far as they relate to Fruits and Vegetables mentioned in the schedule to the above Act, the Lt. Governor of National Capital Territory of Delhi is pleased to declare that regulation of marketing of fruits and vegetable mentioned above shall cease beyond the markets/ market yard/ sub-yards of the respective marketing committees namely APMC MNI Azadpur, APMC Keshopur and APMC Shahdara, with immediate effect, and henceforth market area of these committees with respect to fruits and vegetables shall have the following boundaries..."

(emphasis added)

7. Learned counsel for the respondent- writ petitioner supported the impugned order but submitted that there are available surplus shops at Gazipur market and the petitioner was willing to offer 10 per cent over and above the highest auction bid. He has filed a copy of the letter dated 29th June, 2016 in response to an application under the RTI which is as follows :

"1. There are a total No. of 354 `B" Category license holders in Gazipur Mandi, out of which, 309 license holders have been allotted new shops. Out of the above 21 license holders are in waiting list for shops under construction.

2. As many as 9 blocks are constructed and ready in Gazipur Mandi. It has 288 `B" category shops. In 1 block 32 shops of `B" Category are raised.

3. In block 10 which is under construction, 21 shops of `B" category have already been allotted.

4. All the shops under construction and also those which are already constructed are under the Jurisdiction of the Office of the Parishad. The remaining shops are also under the jurisdiction of the Office of Parishad."

8. On due consideration of the submissions made by learned counsel for the

parties, it is clear that the respondent- writ petitioner is no longer to be displaced from his existing place of business. He was duly considered for the available shops in Okhla with the persons displaced from Phool Mandi, Darya Ganj who were eligible for an alternative allotment of shops, but he could not succeed. We have also noted the stand of the appellant that Gazipur Mandi shops are for the allotment of shops to persons who have been displaced from Shahadra, in which category the case of the respondent does not fall. It is not the case of the writ petitioner that he has been discriminated against or otherwise denied fairness in action. Thus, strictly speaking, the writ petitioner has no legal right for allotment of a shop at Gazipur. However, since his claim has been under consideration since long, he could be considered with other eligible applicants, for allotment of shop, subject to a surplus shop being available.

9. In these circumstances, we dispose of this appeal by modifying the impugned order to the effect that the case of the respondent, along with all eligible persons, be considered, subject to the availability of a shop, within six months, in accordance with law.