
(2013) 08 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7014 of 2002

Mecan Batteries

APPELLANT

Vs

Union Territory

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2014) 1 PLR 120

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

Bench : Division Bench

Judgement

Mahavir Singh Chauhan, J.—By way of this writ petition, the petitioner prays for issuance, of a writ of certiorari canceling re-allotment made

by the respondents on 22.8.2001 in favour of respondent No. 3, and a writ of mandamus to direct the respondents not to cancel, without affording

an opportunity of hearing, allotment of Shop No. 189, Sector 48, Chandigarh, made in its favour on 15.06.2001. The petitioner, a member of

Chandigarh Automobile Association, claims that the respondents, with a view to rehabilitate auto mechanics and spare part dealers, conducted a

survey in January, 1985, wherein 686 persons/parties, including the petitioner, were identified. On 22.01.1986 petitioner deposited with the

respondents, an amount of Rs. 11,700/- by way of a pay order bearing No. 613066 dated 22.01.1986. In the meantime, Civil Writ Petition No.

14083 of 1993 which was filed to challenge the scheme formulated by the respondents, came to be decided by this Court, vide order dated

10.12.1996, directing the respondents to conduct a fresh survey, identify the persons engaged in the business of repair of automobile and sale of

spare parts and, thereafter, determine their eligibility.

2. Accordingly, in the month of June, 1997, a fresh survey was conducted wherein 1307 auto mechanics and spare part dealers, including the petitioner, were identified as working at different places during the period 13.06.1997 to 30.06.1997. After verification, 231 persons/parties were shortlisted in pursuance of order dated 07.03.2001 passed in CWP No. 5720 of 1996. Petitioner's name was found mentioned in the list, so prepared after verification. Complying with the directions issued vide order dated 10.12.1996 in CWP No. 14083 of 1993, on 16.02.1999, a scheme known as "The Allotment of Sites on Lease Hold Basis to Auto Spare Parts Dealers and Auto Repair Mechanics Scheme, 1999" (for short the 1999 Scheme") (Annexure P2) was notified by the respondents. Then, in pursuance of order dated 07.03.2001 passed in CWP No. 5720 of 1996 respondents published a public notice dated 29.12.2000 (Annexure P3), which followed by a corrigendum dated 06.02.2001 (Annexure P4) and another public notice dated 17/18.03.2001 thereby inviting applications for allotment of sites. Petitioner also received, from the respondents, a notice dated 23.03.2001 (Annexure P5) asking it to deposit 10% of the tentative price of the site as earnest money to the tune of Rs. 1,40,740/-, which the petitioner deposited vide receipt dated 04.04.2001 (Annexure P6/2), A Screening Committee verified the eligibility and, thereafter, a draw of lots was held on 15.06.2001 wherein petitioner was declared successful.

3. To its complete dismay, petitioner received a notice dated 09.07.2001 (Annexure P8) from respondent No. 2 stating that pursuant to a complaint, spot inspection was carried out and the petitioner was not found present/working at the site, i.e., SCF No. 7, Sector 27, Chandigarh (hereinafter referred to as the disputed site"). The petitioner was asked to appear, before the Screening Committee, on 16.07.2001, which the petitioner did and submitted proof in support of its claim.

4. Having heard nothing in the matter for quite some time, the petitioner, vide letter dated 24.09.2001 (Annexure P10), followed by reminders, requested respondent No. 2 to issue the letter of intent in its favour. This letter and subsequent reminders, however, remained un-responded. The petitioner then visited the site and came to know that the disputed site stood allotted to respondent No. 3, vide letter of allotment dated

27.10.2001 after holding a fresh draw of lots on 22.08.2001. Petitioner then made a representation dated 16.01.2002 (Annexure P13) which was also not replied.

5. Official respondents have filed a written statement wherein it has been averred that the name of the petitioner was tentatively included in the list

of eligible persons on the basis of survey conducted on 23.03.1999 because son of proprietor of the petitioner, who was found present at the site,

had claimed that petitioner was carrying on business of sale, charging and minor repairs of batteries which does fall within the meaning of "General

Trade". Though the petitioner was not found present at the site but benefit of doubt was still given to it and its name was provisionally included in

the draw of lots held on 15.06.2001 subject to verification of genuineness of its claim but in the inspection carried out on 28.06.2001 the

petitioner, once again, was found not present at the site which led to issuance of notice dated 09.07.2001 to it. During the course of personal

hearing, it was claimed by the petitioner that it was carrying on business of sale of batteries and this business, according to the official respondents,

is covered under the head "General Trade" and, therefore, the petitioner was found to be ineligible for allotment of a site under the 1999 scheme

and its claim was rejected as the site wherefrom the petitioner was running its business, i.e. SCF No. 7, Sector 27C; Chandigarh is meant for

General Trade".

6. A replication has been filed on behalf of the petitioner and official respondents have filed rejoinder to the replication.

7. We have heard Mr. Chetan Mittal, Senior Advocate assisted by Mr. Kunal Mulwani, Advocate, counsel for the petitioner and Mr. K.K.

Gupta, Advocate, counsel for the official respondents and have gone through the record.

8. It is contended on behalf of the petitioner that it has already vacated the site under its occupation, i.e., SCF No. 7, Sector 27C, Chandigarh

after it was declared successful in the draw of lots held on 15.06.2001 as he was found entitled to be rehabilitated under the 1999 Scheme, which

was aimed at the rehabilitation of the persons of the ilk of the petitioner. It is also argued that as the petitioner was found eligible under the 1996.

Scheme, was allowed to participate in the draw of lots and was found successful

therein also. It is further argued on behalf of the petitioner that

responding to a notice dated 23.03.2001(Annexure P5) asking it to deposit 10% of the tentative price of the site as earnest money of Rs.

1,40,740/-, the petitioner deposited that amount vide receipt dated 04.04.2001 (Annexure P6/2) and the Screening Committee had verified its

eligibility before the draw of lots which was held on 15.06.2001 and that being so, the booth/site allotted to it could not be cancelled and allotted

to respondent No. 3 or to anybody else, that too without affording opportunity of hearing to it.

9. By referring to Rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (for short, the Rules) framed u/s 22 of the Capital of Punjab

(Development and Regulation) Act, 1952 (for short, "the Act") and Schedule-I, appended to the Rules, the learned Senior Counsel representing

the petitioner, has argued that sale and charging of batteries is not covered under the head "General Trade" and with the aid of a book, "Basic

Automobile Engineering, 6th Edition" authored by P.C. Nakra (page 439) the learned senior counsel has attempted to demonstrate that sale and

charging of batteries is not covered by the description, "Display and Sale" appearing in the Schedule-I appended to the Rules and is, thus, not

covered under the head "General Trade", therefore, rejection of petitioner's claim on the plea that the business carried on by him is covered under

the head "General Trade", is illegal.

10. The contentions, however, are refuted on behalf of the official respondents by stating that offer of allotment cannot be said to be a concluded

contract and the petitioner, having been found ineligible under the 1999 Scheme, has no right to allotment of booth/site only because its name was

included in the draw of lots held on 15.06.2001. It has been also been argued on behalf of the official respondents that name of the petitioner was

tentatively included in the list of eligible persons on the basis of survey conducted on 23.03.1999 because son of petitioner's proprietor, who was

found present at the site, had claimed that petitioner was carrying on business of sale, charging and minor repairs of batteries, however, the

petitioner was not found present at the site. However, benefit of doubt was still given to it and its name was provisionally included in the draw of

lots held on 15.06.2001 subject to verification of genuineness of its claim but in

the re-inspection held on 28.06.2001, the petitioner was, once again, found not present at the site which led to serving of notice dated 09.07.2001 on it. During the course of personal hearing, it was claimed by the petitioner that it was carrying on business of sale batteries. This business, according to the official respondents, falls under the head ""General Trade"" and, therefore, the petitioner was found to be ineligible for allotment of a site under the 1999 scheme and its claim was rejected as the site wherefrom the petitioner was running its business, i.e., SCF No. 7, Sector 27-C, Chandigarh, is meant for ""General Trade"".

11. Nothing more has been urged on either side.

12. The controversy, in fact, is in a very narrow compass. It is only to be seen if the petitioner is eligible for allotment of a booth/site under the

1999 Scheme (Annexure P-2). The notification opens with the words ""Whereas a number of Auto Spare Part Dealers and Auto Repair

Mechanics are carrying on the business of sale of Auto Spare Parts and Auto Repair work in the premises/sites/streets not meant for such use,

thereby causing unhealthy environment, traffic hazards and public nuisance in the city"". A bare reading of this assertion in the notification (Annexure

P-2) brings out that the scheme was aimed at rehabilitation of those auto spare part dealers and auto mechanics, who were likely to be dislodged

by the official respondents in view of unhealthy environment, traffic hazards and public nuisance being created by them by carrying on their business

at the premises/sites/streets wherein such business was not permitted to be carried out To put it straight, the intent of the policy framed is to

rehabilitate those auto spare part dealers and auto mechanics, who are carrying on their business in the open or at places not authorized or

permitted for such use. It is categorical stand of the official respondents in the written statement that the petitioner was found to be ineligible for

allotment of a site under the 1999 scheme and its claim was rejected as the site wherefrom the petitioner was running its business, i.e., SCF No.

7, Sector 27C, Chandigarh is meant for ""General Trade"". Nothing has been brought to our notice to show that the official respondents are not

permitting the petitioner to carry on its business of sale and charging of batteries from within SCF No. 7, Sector 27C, Chandigarh or that it has

been evicted therefrom by or at the behest of the official respondents. It would

be important to notice the conclusion of the Screening Committee

recorded by it after hearing the proprietor of the petitioner firm, which reads as under

Since Harjit Singh appear and has presented certified copies to show that he is running shop in the name of Meccan Batteries and state that he is

selling the batteries and spare parts as well as charging thereof. All these components are covered under the category ""Display and Sale"" and thus

is covered under the category of General Trade and hence declined.

13. The conclusion of the Screening Committee, in a way, reiterates the intent of the 1999 Scheme that only those auto mechanics/auto spare part

dealers are to be rehabilitated under the Scheme, who are carrying on their business as auto mechanics and/or auto spare parts dealers on

Government land and thereby causing public nuisance, traffic hazards or creating unhealthy environment in view of the categoric stand of the official

respondents that the site wherefrom the petitioner was running its business, i.e. SCF No. 7, Sector 27C, Chandigarh, is meant for ""General Trade

and failure of the petitioner to show that the official respondents are not permitting the petitioner to carry on its business of sale and charging of

batteries from SCF No. 7, Sector 27C, Chandigarh, or that it has been evicted therefrom by or at the behest of the official respondents, we are

not inclined to accept the contention that the business carried on by the petitioner is not covered under the head ""General Trade"".

14. Contention of the petitioner that it was not afforded an opportunity of hearing before rejecting its claim is factually incorrect because it is the

case of the petitioner itself that before rejecting his claim it was called for personal hearing vide notice dated 09.07.2001 (Annexure P8) and its

proprietor, Harjit Singh, appeared before the Screening Committee on 16.07.2001 and produced documents in support of claim of the petitioner.

15. Therefore, it is unhesitatingly held that the petitioner is not entitled to allotment of a booth/site under the 1999 scheme and its claim has rightly

been rejected by the official respondents. In the consequence the writ petition fails and is hereby dismissed, leaving the parties to bear their own

costs.