

(2019) 03 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No.200467 Of 2015 (Apmc)

Mohammed Shah Nawaz,

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 — Section 9
Code Of Civil Procedure, 1908 — Order 1 Rule 10
Allotment Of Property in Market Yard Rules, 2004 — Rule 3, 4, 3(1), 3(3), 3(4), 5, 7, 8(1), 8(1)(iii), 13

Citation : (2019) 03 KAR CK 0036

Hon'ble Judges : G.Narendar, J

Bench : Single Bench

Advocate : Srivatsava, V.K.Naik, R.V.Nadagouda, Shivaputra Udbalkar, Mallikarjun Basareddy, Deepak V. Barad

Judgement

1. The case of the petitioner is that he is carrying out business under the name and style of Shah Nawaz and Brothers at vegetable market at Kalaburagi and a licence granted by the 4th respondent since 2008. The Copy of the registration and licence is produced as Annexure - A.

2. That the 4th respondent in order to better regulate the yard and to facilitate the wholesale business in fruits and vegetables of the licencees, constructed a market yard at Taj Sultanpura Area, Kalaburagi. That the petitioner and similarly situated businessmen applied for sites and shops. The applications were made pursuant to notification dated 12.04.2010. The notification was issued by the 5th respondent. That the petitioner has applied for allotment of site No.73 and the copy of the application is marked as Annexure - B to the writ petition.

3. That the 5th respondent prepared a provisional list of allottees and also published the same in a daily Kannada newspaper and in the publication dated 01.09.2013, the name of the petitioner was listed at Sl. No.76. Copy of which is marked as Annexure - C to the writ petition.

4. It is contended by the learned counsel for the petitioner that the petitioner and other allottees were of the opinion that the rates fixed were on the higher side and hence, approached this Court in W.P. Nos.84305-394/2012 and aggrieved by the order passed therein, preferred W.A. Nos.50658-747/2012 and also preferred a Review Petition therein. The Division Bench after hearing the parties was pleased to reserve liberty to the parties to approach the 1st respondent - Appellate Authority and in pursuance thereof, the parties preferred an appeal, registered as Appeal No.CO 04 MLW 2013 and the Appellate Authority was pleased to check the same. But in the interregnum, the 2nd respondent reviewed the prices and was pleased to revise the price fixed by the 4th respondent by order dated 17.11.2012. The order dated 17.11.2012 was impugned by the petitioner and others in W.P. Nos.20494-20570/2013. This Court was pleased to reject the same. But while so rejecting the petition, this Court observed and directed that such of those petitioners whose names are found in the provisional list shall not be discriminated while making allotment merely because they have been litigating.

5. It is contended that despite the above direction, the name of the petitioner was deleted and did not find a place in the final list. It is submitted that aggrieved, the petitioner got issued the legal notice dated 07.08.2014 to the 4th respondent. That the 4th respondent though in receipt of the same, chose not to reply to the same and continued the process of allotment of the sites and more particularly the site in respect of which the petitioner had applied and the illegal allotment was further compounded by allotting the same to ineligible members.

6. That aggrieved by the same, the petitioner once again approached this Court in W.P. No.204990/2014 and when the petition came up for consideration, learned counsel for the respondent Nos.4 and 5 submitted that the 2nd respondent after considering the objections raised in respect of the selection of the petitioner was pleased to alter the seniority of the petitioner from Sl. No.76 to 79 and consequently on account of alteration of seniority, the petitioner was rendered ineligible for allotment. Recording the said submission, the writ petition was disposed off as not pressed and by reserving liberty to the petitioner to challenge the endorsement rejecting his application for allotment. That subsequently, the said endorsement was communicated vide endorsement dated 21.10.2014 produced as Annexure - G to the writ petition.

7. It is contended that the sole reason set out is that objections had been received and after considering the objections, it was found that the 6th respondent was higher in the order of merit and hence, the seniority of the petitioner had been altered and consequently down graded and hence, the petitioner was rendered ineligible for allotment. It is contended by the learned counsel for the petitioner that the impugned endorsement is borne out of mala fides and is per se violative of the principles of natural justice and that the adjudication by the 2nd respondent behind the back of the petitioner without affording an opportunity is highly illegal and unsustainable. That the 2nd

respondent failed to see that he was discharging a quasi judicial function and that he was adjudicating the rights of the parties.

8. It is further contended that the name of the petitioner having found a place in the provisional list, a semblance of a right was vested in the petitioner and determination of that right must necessarily be preceded by an opportunity. That the question of re-doing the seniority does not arise, as the 6th respondent was never an applicant for site No.73.

9. That the allotment in favour of the 6th respondent is a result of collusion amongst the respondent Nos.4 to 6 and is vitiated by mala fides. It is further contended by the learned counsel for the petitioner that the reliance on the provisions of Rule 8(iii) is merely a ruse to cloak their misdeeds. He would further contend that the question of higher market fee would come into play only if there are more than one applicant for a particular site. That in respect of site No.73, the petitioner is the sole applicant and hence, question of determination inter se seniority would not arise.

10. Learned counsel for the petitioner would further contend that the 6th respondent was an applicant in respect of site No.42 and in respect of the said site, there was one more applicant by name Mughed Ali Ladli Sab and the said third party having paid more market fee was chosen over and above the 6th respondent. He would further contend that the respondent Nos.4 and 5 have resorted to Rule 8(iii) and have manipulated the list. It is further contended that the applicants were required to specify the site number against which they were making application and it is not open to the respondent Nos.4 and 5 nor the 2nd respondent to allot sites of their choice and no such right being reserved in the respondent Nos.2, 4 and 5. The rejection of the petitioner's application in respect of site No.73 and allotment of the same to the 6th respondent is vitiated by arbitrariness.

11. It is further contended that mala fide stands demonstrated by the very seniority list which falsifies their assertion as people with lesser merit and people who have paid market fee for only one year have been placed higher in the order of seniority and that the same is contrary to the very rule itself.

12. Further inviting the attention of this Court to Annexure-C, learned counsel would submit that the persons with lesser merit and who have paid lesser market fee have been placed higher in the order of merit and in fact the site Nos.82 and 47 have been allotted to persons who have paid a lesser market fee and in fact the petitioner had preferred an application under Order 1 Rule 10 of CPC to implead the said persons Sri. Abdul Khadeer and Sri.Abdul Wahab, as the allotment is contrary to the very assertion of the Respondent Nos.4 and 5 that the seniority list is drawn up solely on the basis of contribution of market fee. Hence, this singular fact would suffice to draw an adverse inference against the respondent Nos.4 and 5 and also to reject the contention that the seniority of the applicants has been fixed solely on the basis of market fee contribution stipulated

under Rule 8(iii) and hence, he would contend that even if the stand of the respondent Nos.2, 4 and 5 is taken as correct, then the respondent Nos.2, 4 and 5 ought to have allotted either the site No.82 or site No.47.

13. Learned counsel for the petitioner would also invite the attention of the Court to key map produced along with the writ petition and enclosed along with Annexure - C to state that even the dimension of the site applied for by the 6th respondent and the dimension of the site applied for by the petitioner are wholly dissimilar and that the sites bearing Nos.47 and 82 are more similar to the size of the site applied for by the 6th respondent that is site No.42. That the site Nos.42, 82 and 47 are nearly twice the size of the site No.73 applied for by the petitioner and hence, the said fact alone is sufficient to demonstrate that the impugned action is for reasons and considerations other than those stated before this Court. He would further submit that the sites allotted to the various allottees is as per their applications and an exception has been made only in case of the petitioner wherein the authorities have chose to alter the dimension of the site and grant one contrary to the application.

14. The writ petition is stoutly resisted by the respondent Nos.4 and 5 by filing a detailed statement of objections. It is contended that the respondent Committee is established under Section 9 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966. That the object of the Committee is to establish market, market yards and sub yards to enable the registered licence holders/traders to carryon the business in notified agricultural commodities and in this direction, the Committee has endeavoured to create facilities by way of infrastructure in the form of sites and shops to enable smooth transaction of business in the market yards.

15. That in furtherance of the said objective, the 5th respondent established the Taj Sultanpur Fruits and Vegetable market. The fact with regard to the notification inviting applications for the sites and shops is admitted. It is also admitted that the petitioner made an application for allotment of site No.73. It is further admitted that initially the name of the petitioner was listed at Sl. No.76 of the provisional list and it is further admitted that the said provisional list was also published in the newspapers. It is submitted that subsequent to the publication of the provisional list, the 6th respondent submitted his objection and the copy of the same is annexed as Annexure -R1 to the statement of objection. That pursuant to the receipt of the objection, the 5th respondent issued notice of hearing to the 6th respondent to appear before the Committee on 01.10.2013 at 11:00 a.m. alongwith documents to substantiate his claim that he has paid higher market fee than the petitioner. It is further submitted that the Committee heard the 6th respondent on 01.10.2013 and the proceedings of the Committee are produced as Annexure - R2.

16. It is relevant to note at this juncture itself that the petitioner was neither notified nor heard by the Committee or by the Authority. The learned counsel would further place reliance on Annexure - R3 said to be the seniority list

prepared by the 5th respondent for the purpose of facilitating the allotment. Admittedly, the list is a truncated one and this Court has perused the original records, more particularly the seniority list produced from pages 1 to 35 of Book IV. This Court has examined the same in detail, as a consequence of which certain glaring omissions have become apparent. The said seniority list enclosed in Book IV and the Annexure-R3 are critical for deciding the lis, as the vortex of the respondents defence is Rule 8(1)(iii) of the Allotment of Property in Market Yard Rules, 2004. The said Rule reads as under:

"8. Principles for selection of applicant for allotment. - (1) The Market Committee shall in case of allotment of a site, shop, godown, or shop-cum-godown under Rule 3 or 13 consider the case of each applicant on merits and shall consider the following principles in making selection for allotment under Rule 3 or 13, namely:-

(i) xxxxx

(ii) xxxxx

(iii) The total market fee paid during the previous three years and the average market fee paid in a year."

17. From a bare reading of the above, it is apparent that the applicant must have paid market fee for three years and thereafter the Committee must calculate the average market fee per year and such average has to be taken into account to calculate the average market fee. In essence, the applicant - allottee must have paid market fee for three successive years preceding the notification inviting applications for allotment of sites/shops.

18. The moot question is whether the Respondent Nos.2 to 4 have followed the gamut of Rule 8(1)(iii) or the compliance is more in breach. It is contended by the learned counsel for the respondent Nos.4 and 5 that the legal notice has been suitably replied. On perusal of the records, this Court finds the purported reply at Annexure - R5. But there is nothing in the records to demonstrate as to whether the same is dispatched. On perusal of the original file, though at Sl. No.9 in the Index to the document is described as a reply to legal notice at page Nos.96 to 99. On perusing the same, it is seen that it is in fact a legal notice issued on behalf of the Merchants Welfare Association and has no relevance to the stand adopted by the respondents. Even along with the statement of objections, no material is produced to demonstrate the issuance of the reply notice. Though much importance is attached to market fee, the respondent is unable to demonstrate that it is the sole criteria. From a reading of the Rule, it is apparent that it is one of the criteria.

19. Be that as it may. The burden rests on the respondent Nos.4 and 5 to demonstrate that the allotment is atleast in accordance with the mandate of Rule 8(1)(iii) of the Allotment of Property in Market Yard Rules, 2004. To buttress his contention, the learned counsel would place reliance on the direction issued by this Court in the earlier writ petition observing that the allotment shall be made

fairly and strictly in accordance with law. There can be no doubt that the Courts will always insist upon proceedings be in accordance with law, as rightly observed by His Lordship, as he then was. But yet again, it is on the instant respondents to demonstrate that the allotment is fair and in accordance with law.

20. It is further contended by the learned counsel for the respondent Nos.4 and 5 that the notification inviting vests authority in the respondents to make an allotment and allot a site of their choice. To state, the very contention is reflective of arbitrariness. The moot question is whether the Rules of 2004 permit or vests such authority in the instant respondents. Rule 3 is the enabling provision which enables the respondents to make an offer for allotment and in response, the licence holders are entitled to make an application. Sub Rules (1) and (3) of Rule 3 are relevant for determining the sustainability of the afore stated contention.

"Rule 3(1), (3) and (4) reads as follows:

3. Offer of sites, etc., for allotment on lease-cum-sale basis.-(1) The Market Committee, may subject to these rules and the general or special orders of the State Government offer for allotment of sites, shops, godowns, or shop-cum-godowns in the market yard on lease-cum-sale basis.

(2) xxxxx

(3) Whenever the Market Committee calls for applications in respect of allotment of sites, godowns, shops or shop-cum-godowns on lease-cum-sale basis, any licensed market functionary who is registered under Rule 6 may apply to the market committee in Form III along with an initial deposit which shall not be less than twenty-five percent of the value of the site, godown, shop or shop-cum-godown as the case may be.

(4) If any applicant registered with the market committee fails to get the allotment of a site, godown, shop or shop-cum-godown on lease-cum-sale basis, the registration so made shall be valid for the subsequent allotments also unless the applicant withdraws the registration by surrendering registration certificate."

21. On a bare reading of the above, more particularly sub Rules (1) and (3) of Rule 3 of the Allotment of Property in Market Yard Rules, 2004, it is apparent that no such discretion is vested in the respondent Nos.4 and 5. Sub Rule (3) of Rule 3 of the Allotment of Property in Market Yard Rules, 2004 makes it apparent that the application must be accompanied by an EMD amount equivalent to 25% of the value of the site or godown or shop or shop cum godown, as the case may be. The phrase, highlighted, has an implication, which will be discussed later.

22. That lease cum sale deeds have been executed in favour of all the allottees except the 6th respondent in compliance with the interim order granted by this Court. It is further contended that the petitioner had an option of making an application in the market yard that was subsequently formed and in respect of which a notification came to be issued on 25.08.2015 inviting applications for

allotment, but the petitioner has not made any such application. That pursuant to the notification applications having been received and the same having been scrutinized and a provisional list is also been prepared. It is fairly admitted that the EMD amount deposited by the petitioner is in respect of site measuring 25 X 60 feet or in other words measuring 1500 square feet.

23. It is further contended that available sites were allotted to the members who were found at Sl. Nos.77 and 78 and that they have been allotted sites of different dimensions and no site measuring 25 X 60 feet was available. Consequently, no allotment was made to the petitioner and he would pray for dismissal of the writ petition.

24. The learned counsel for the 6th respondent contends that the allotment is in accordance with the notification and the Rules of 2004. He would reiterate the contention of the Respondent Nos.4 and 5 to state that the authority is vested in the respondent Nos.4 and 5 to allot such site as they deem fit. He would invite the attention of the Court to the terms and conditions stipulated under the notification, more particularly to the one at Sl. No.12 which reads as under:

"12. ?????????? ???????? ???????? ???????? ?????? ?????????? ?????????????????? ???
????? ??? ?????????????? ???????? ??????????????????. ? ???????? ?????????? ??????
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25. From reading of the above, the same belies the contention canvassed on behalf of this respondent. It states that in the event of the site applied for not being available, a site of similar nature would be considered and the applicant is required to submit an affidavit to this effect. It is not in dispute that the application was in respect of site No.42. It is also fairly admitted that the site No.42 is of much larger dimension than site No.73. But curiously the EMD amount depicted in Annexure - R10, the copy of the application is equal to the amount that is deposited by the petitioner while submitting his application. Prima facie, it appears to be contrary to the provisions of Sub Rule (3) which mandates that the EMD amount should be equivalent to 25% of the sital value. No explanation is forthcoming for the same and this fact alone does not inspire confidence in the sanctity of Annexure - R10, leading to a suspicion in the mind of the Court that it has been got up subsequently to suit the case of the respondents.

26. This Court is constrained to opine as above in view of the key map of the sites placed before the Court. Even to the naked eyes, it is apparent that the site Nos.42 and 73 are of totally different dimensions. If that be the case, then the EMD amount ought to have been more, as it is required to be equivalent to 25% of the value.

27. Having heard the learned counsels and having adverted to the contentions and having given my anxious consideration to the material on record, the point that falls for consideration of this Court is:

"Whether the allotments/distribution of sites/shops/godowns is in compliance with the provisions of the Rule 8(iii) and sub Rules (1), (3) and (4) of Rule 3 of the Allotment of Property in Market Yard Rules, 2004?

28. For the sake of convenience, Rules 3 and 8 of the Allotment of Property in Market Yard Rules, 2004 are reproduced herein below:

3. Offer of sites, etc., for allotment on lease-cum-sale basis.-(1) The Market Committee, may subject to these rules and the general or special orders of the State Government offer for allotment of sites, shops, godowns, or shop-cum-godowns in the market yard on lease-cum-sale basis.

(2) Due publicity shall be given in respect of such allotment specifying the location, number of sites, godowns, shop-cum-godowns, if any, last date for submission of application and such other particulars by affixing a notice to the notice board of the office of the market committee and [specifying 15 days time for the submission of application towards such allotment shall be made by publication in not less than two Kannada newspapers widely circulated in the market area.]

(3) Whenever the Market Committee calls for applications in respect of allotment of sites, godowns, shops or shop-cum-godowns on lease-cum-sale basis, any licensed market functionary who is registered under Rule 6 may apply to the market committee in Form III along with an initial deposit which shall not be less than twenty-five percent of the value of the site, godown, shop or shop-cum-godown as the case may be.

(4) If any applicant registered with the market committee fails to get the allotment of a site, godown, shop or shop-cum-godown on lease-cum-sale basis, the registration so made shall be valid for the subsequent allotments also unless the applicant withdraws the registration by surrendering registration certificate."

(4) If any applicant registered with the market committee fails to get the allotment of a site, godown, shop or shop-cum-godown on lease-cum-sale basis, the registration so made shall be valid for the subsequent allotments also unless the applicant withdraws the registration by surrendering registration certificate.

(5) The market committee having regard to the provisions of Rules 4, 5, 7 and 8 may allot a site, shop, godown or shop-cum-godown on lease-cum-sale basis."

"8. Principles for selection of applicant for allotment. - (1) The Market Committee shall in case of allotment of a site, shop, godown, or shop-cum-godown under Rule 3 or 13 consider the case of each applicant on merits and shall consider the following principles in making selection for allotment under Rule 3 or 13, namely.-

(i) xxxxx

(ii) xxxxx

(iii) The total market fee paid during the previous three years and the average

market fee paid in a year."

29. As the entire gamut of the procedure stipulated under the Rules for allotment of sites/shops/godowns is governed by the provisions of the aforesaid Rules. Rule 3 of the 2004 Rules is apparently the enabling provision. More particularly sub Rule (1) enables the Market Committee to offer for allotment sites, shops, godowns, or shop cum godowns in the market yard on lease cum sale basis and the only caveat being that such allotment is subject to the Rules and the general or special orders of the State Government.

30. From bare reading, it is apparent that the allotment of sites involves an offer. The use of the word 'offer' by the legislature cannot be without significance. If the word 'offer' is read with reference to the provisions of sub Rule (3) and (4), it is apparent that the applicant is required to make an application in respect of a site or a godown or a shop etc. It is relevant to note that the words site/godown/shop is used in the singular and not described in a pluralistic sense. This conclusion is further strengthened by the imposition of the condition of a pre-deposit in the form of an EMD equivalent to 25% of the value of the site or the godown or the shop or the shop cum godown. This interpretation draws further sustenance from the phrase "as the case may be". On a cumulative reading of the provisions of sub Rules (1) and (3) of Rule 3, the only conclusion that one can draw is that an applicant can make an application in respect of a "particular" site/shop/godown, only, thereby meaning that the applicant would be required to identify the particular site or shop or godown or shop cum godown in his application. If this interpretation is read with the word 'offer', then the inescapable conclusion is that the offer is accepted by the trader when he identifies the site or the shop or the godown or the shop cum godown by the number assigned to it and further makes a pre-deposit in the form of EMD equivalent to 25% of its value or as stated in sub Rule (3) "shall not be less than 25% of the value of the site, godown, shop or shop cum godown, as the case may be".

31. If this be the inference, that one can draw from the provision and if this be the interpretation that one can place after a cumulative reading of the provision of sub Rules (1) and (3) of Rule 3, then the only conclusion that can be drawn is that there can be no question of any unfettered discretion being vested in the Market Committee i.e., respondent Nos.4 and 5 to allot any site to anyone whomsoever they deem fit. Even if such member is not an applicant in respect of that site or shop etc. The offer by the market committee by the sub Rule (1) stands accepted in the form of a pre-deposit or as prescribed under sub Rule (3) an "initial deposit" of not less than 25% of the value of the site or shop, etc. If that be the case, the application by the licenced trader shall be considered only as against the site for which the application is made.

32. In the considered opinion of this Court, the above can be the only interpretation that can be placed for, if any other interpretation more so as canvassed by the respondent Nos.4 to 6, if is accepted, it would open the field

for manipulation and arbitrariness by the Market Committees in collusion with ineligible applicants.

33. Hence, in view of the above discussion, it is concluded that the consideration of the application by the Market Committee, in respect of an application in response to the offer of allotment by the Market Committee shall be restricted to the site or to the shop or to the godown or to the shop cum godown in respect of which the application is made. The Rules do not envisage the allotment of a site or shop or godown or shop cum godown other than the one applied for and consequently the implication is that no discretion is vested in the market committee to make an allotment of a shop or site or godown or shop cum godown independent of the contract between the Committee and the applicant.

34. The above view of this Court is further strengthened by the language of sub Rule (4) where an option of discretion is vested in the applicant who was unsuccessful on account of non-availability of a site or shop or godown or shop cum godown. The applicant may seek for continuation and consideration of the registration in the subsequent round of allotment. The provisions of sub Rule (4) make it amply clear that the market committee has no right even to reject the application or cancel the registration of an unsuccessful applicant.

35. Now coming to the defence of the respondents which centers around clause (iii) of sub Rule (1) of Rule 8 of the Rules, it is seen that the respondents have tweaked the Rules to suit their needs.

36. A bare reading of the Rule and the language employed in clause (iii) makes it apparent that the said clause (iii) is applicable only in case of there being more than one applicant in respect of a site or godown or shop. This Court draws sustenance for this interpretation from the provisions of sub Rule (2) of Rule 8, wherein it is stated that if sufficient number of applications are not received, then the application of the above Rules may be relaxed with the previous approval of the 2nd respondent. If that be so, then whether the manner in which the clause is applied by the respondents is justified. The applicability of the Rule ought to be with reference to the provisions of Rule 3 in order to render a meaningful interpretation.

37. As discussed above, while interpreting the provisions of Rule 3, this Court has concluded that the applicant can make an application in respect of a site or shop or godown, as the case may be and the applicant is not entitled to make multiple applications. If that be the admitted position then a case for applicability of sub Rule (1) of Rule 8 would arise when there are more applicants than one in respect of a shop or a site, a godown or shop cum godown and the question of applicability of sub Rule (1) of Rule 8, in the event of there being a single applicant does not arise and only when there are multiple applicants in respect of a site, then the question of fixation of inter se seniority will arise.

38. In the instant case, the petitioner was the only applicant in respect of site No.73. Whereas, in the case of site No.42, there were two applicants i.e., the 6th

respondent and another trader. Hence, the act of the respondent Nos.4 and 5 in fixing the inter se seniority as amongst the 6th respondent and the third party is correct and consonance with sub Rule (1) of Rule 8. But the further action of the respondent Nos.2, 4 and 5 in trying to misinterpret the provisions of sub Rule (1) of Rule 8 more particularly clause (iii) is contrary to the mandate of sub Rule (1) of Rule 8.

39. The question of preparation of the seniority list by itself would not become a determining factor unless and until a situation arises where there are more than one applicant in respect of a site and only in such a scenario would necessitate the applicability of inter se seniority.

40. Further one glaring omission that this Court has observed in the preparation of the seniority list is the consideration of members who have paid market fee for a single year only. The very inclusion of such persons is contrary to the mandate of clause (iii) of sub Rule (1) of Rule 8. The legislature in its wisdom has stipulated that the criteria with regard to market fee would be average market fee arrived at after taking into consideration the market fee paid in the previous three years, implying thereby the applicant to qualify for consideration under this clause ought to have paid market fee in the three years preceding the year of consideration and thereafter the market fee paid in the previous three years is required to be added up and the average market fee to be arrived at. If that be the case, then a person to even qualify for being considered ought to have paid market fee in the preceding three years. In view of the language of clause (iii), no other conclusion is possible.

41. Thus, it is held that for consideration of seniority, the trader or the applicant must have paid market fee for a minimum period of three years preceding the year of consideration. Traders and applicants who have not paid market fee for three previous years are not entitled to be considered vis-à-vis, with persons who have paid market fee for the previous three years.

42. It is held that a trader or applicant to be eligible for being included in the seniority list must have paid market fee in the previous three years to the year of consideration. It is held that persons who have paid market fee either in one or two of the previous three years are not entitled to be included in the seniority list.

43. In the instant case, on perusal of the seniority list as contained in the records, it is seen that the persons whose names are found at Sl. Nos.8, 65, 83, 90 have paid the market fee for one year only. The persons whose names are found at Sl. Nos.9, 43, 64, 67, 68, 82, 84, 87, 88 and 89 have paid the market fee for two years only and the names of the persons found at Sl. Nos.5 to 7, 10 to 42, 44 to 63, 66, 69 to 81, 85, 86 and 91 have paid the market fee for three years only. Thus the inclusion of the names found at Sl. Nos. 8, 65, 83, 90, 9, 43, 64, 67, 68, 82, 84, 87, 88 and 89 is illegal as they were ineligible to be included in the seniority list and on this count, the seniority list stands vitiated.

44. The aforesaid finding clearly supports the case canvassed by the petitioner

that ineligible persons have been included in the seniority list and allotments made. The original records reveal a sordid story of tweaking of the Rules for reasons best known to the respondent Nos.4 and 5.

45. It is reiterated and held that in terms of clause (iii) of sub Rule (1) of Rule 8, only persons who have paid market fee in the previous three years alone qualify for being considered for the preparation of seniority list.

46. The only exception to this finding would be a situation where either the market committee is newly formed. Secondly, where the number of shops or sites available for allotment is more than the number of applicants. In such a situation, the fixation of the seniority would be on the number of years market fee is paid i.e., in respect of members who have paid the market fee in the previous three years a separate list shall be drawn up. Another seniority list consisting of members who have paid market fee for two years should be drawn up separately and another seniority list of the members who have paid market fee for one year only ought to be drawn up separately. For otherwise, if the market committee is permitted to pool all the members in the same list, it would amount to defeating the provisions of clause (iii) and also give scope for manipulation and mischief as done in the instant case. An analogy may be drawn to demonstrate the mischief. There may be a member who has contributed a sum of Rs.3,000/- by way of market fee over the last three years. The average amount would work out to Rs.1,000/-. There may be a trader who is a new entrant and would have paid market fee of Rs.1,100/- in the single year. Then his average would be worked out at Rs.1,100/- as done in the instant case. The legislature only to prevent such a mischief has stipulated the period of previous three years.

47. Hence, in view of the above discussion, it is held that the market committee is not vested with any unfettered right to allot a site or shop or godown to an applicant other than the one for which he had applied and deposited the EMD.

48. It is further held that in respect of an applicant who has remained unsuccessful, then as provided under sub Rule (4), he would be entitled to such site or shop or godown, as the case may be, that remains unallotted for any reason whatsoever and which has not been allotted to anyone or the allottee has withdrawn his application. Then in such circumstance only the unsuccessful allottee would be entitled for allotment of that site or shop or godown.

49. It is held that in the event of an applicant being unsuccessful on account of there being no sites or shops or godowns being left over, then the registration and the application shall be continued if desired by the applicant and considered during the next round of allotment.

In view of the fore-going reasons, the writ petition is allowed.

The impugned endorsement dated 21.10.2014 passed by the respondent No.5 vide Annexure - G are quashed.

It is held that the allotment in favour of the 6th respondent being contrary to the provisions of sub Rules (1) and (3) of Rule 3 of the Allotment of Property in Market Yard Rules, 2004, the same stands quashed.

Consequently, the application of the petitioner is required to be considered in the light of the observations made hereinabove.

The counsel for the respondent Nos.4 and 5 is permitted to receive the original records from the Additional Registrar General, Kalaburagi Bench, Kalaburagi, after retaining the copies of the same.