

**(2009) 08 DEL CK 0445**

**In the Delhi High Court**

**Case No : Writ Petition (C) 3349 of 2007**

Mohd. Yunus Prevez

APPELLANT

Vs

Agriculture Mkt. Produce Comm

RESPONDENT

**Date of Decision : 04-08-2009**

**Acts Referred:**

Delhi Agricultural Produce Marketing (Regulation) Act, 1998 — Section 62  
Delhi Agricultural Produce Marketing (Regulation) General Rules, 2000 — Rule 17,  
17(1), 17(2), 38

**Citation : (2009) 08 DEL CK 0445**

**Hon'ble Judges : Sanjiv Khanna, J**

**Bench : Single Bench**

**Advocate : Anil Panwar and Arun Gupta, for the Appellant; Ajay Bhatnagar, for the Respondent**

**Final Decision : Allowed**

## Judgement

Sanjiv Khanna, J.—This is the third round of litigation. Mohd. Yunus Prevez was one of the petitioner in W.P.(C) 7627/2000. The petitioner was operating from Subzi Mandi, Shahadra, Delhi, which was required to be shifted to Gazipur area due to Delhi Metro project. The petitioner had made a request for issue of category B license which was not issued. Writ petition W.P.(C) No. 7627/2000 was disposed of vide order dated 22nd January, 2002 observing as under:

CWP No. 7627/00 & C.M.11760/00

This matter has been pending since December, 2000. I have heard learned Counsel for the parties.

The short surviving controversy in this case is with regard to the payment of the outstanding market fee. Learned Counsel Mr. Panwar does not dispute the figures of outstanding market fee as shown at page 103 of the paper book (internal pages 4 & 5 of the counter affidavit). It is stated that the parties at serial Nos. 10 & 11 are not the petitioners before the Court. After hearing the parties and

considering that the matter involved is only clearing of the outstanding amounts, let the entire outstanding amount, as shown, be cleared by the petitioners in six monthly equal instalments commencing from 10.2.2002. In case the amounts are paid in six monthly instalments, as stated above and latest by 31.8.2002, the petitioners would be eligible for being considered for allotment of premises on licence basis on the usual terms and conditions of the respondents. They would be eligible for allotment, subject to availability of the space. The respondents shall, however, endeavour to accommodate the petitioners if the outstanding payments are made as stated and latest by 31.8. 2002.

The writ petition stands disposed of in the above terms.

2. It is apparent from the order dated 22nd January 2002, that the objection raised by the Agricultural Produce Marketing Committee (APMC for short) was that the petitioner was liable to pay arrears of market fee and till the arrears were paid, the petitioner was not eligible for grant of said license. Accordingly, the Court directed that arrears of market fee should be paid within 6 months and thereafter the petitioners therein including Mohd. Yunus Prevez would be eligible for being considered for allotment of premises on license basis on the usual terms and conditions.

3. The petitioner Mohd. Yunus Prevez paid the license fee in installments and cleared the arrears. However, he was not granted licence for new subzi mandi at Ghazipur. He along with four others had filed the writ petitions in this Court in 2005. The said writ petitions were disposed of on 17th January, 2007, observing as under:

After some hearing it is agreed that if on verification it is found that the petitioners have paid the six monthly installments as directed in terms of the earlier orders passed by this Court and such petitioners had either not submitted appropriate applications or did not submit any application, the petitioners be permitted to apply afresh and on their furnishing appropriate application, the application be considered in accordance with the norms within a maximum period of two months from the date of submitting the complete application with the requisite fee. At the request of the learned Counsel for the petitioners it is directed that the petitioners can appear before the Secretary of the respondent on 29.1.2007 for issuance of the forms to the qualified persons. The forms to be submitted within seven (7) days thereafter.

The petitions and the applications stand disposed of.

Dasti to learned Counsels for the parties.

4. A bare perusal of the aforesaid order reveals that the petitioners had alleged that the respondents were not processing their applications for allotment of license in spite of payment of arrears of the market fee. The Court directed APMC to permit the petitioners to submit fresh applications within 7 days with requisite fee and the said applications would be considered within two months.

5. It may be noted that two of the petitioners, who had filed W.P.(C) 7627/2000 were issued category B licenses by the respondent APMC vide their resolution No. 57/2004 after they had filed contempt petitions in the High Court for non-compliance of the order dated 22nd January, 2002. The petitioner in fact had also filed a contempt petition before this Court but the contempt proceedings were dropped because the contempt jurisdiction was not invoked within time.

6. The respondent APMC has now rejected the application of the petitioner vide order dated 30th March, 2007 recording as under:

I have carefully considered the submission of Sh. Mohd. Yunus. A reference is made to Rule 17 of DAPM (G) (R) 2000. According to which grant, renewal or refusal of a license is subject to condition that the person applying for licence has to have premises to carry on business and the information stated in his application form has to be materially correct. It is correct (sic) on the part of Sh. Mohd. Yunus to state that Rule 17 is not applicable in this case. Such a presumption is today in correct. Further, it is incorrect for Sh. Mohd. Yunus to contend that none of the present licenses had space when they were granted/licenses. The contention related to ownership is totally miss conceived and Shri. Mohd. Yunus never complied to prove premises on ownership. As far as collection of revenue is concerned, same is subject to Section 62 of DAPM act 1998 and Rule 38 of DAPM (G) (R) 2000. the (sic) contention Shri. Mohd. Yunus that Rule 17 is not applicable as the land belong to Govt. of NCT of Delhi/APMC, it is found that same is not correct (sic) as the Rule 17 same is not correct as the Rule 17 is not subject to such condition, accordingly the grant of license can be refused under Rule 17(1) and (2) of DAPM (G) (R) 2000. It is also found that in his application firm, Sh. Mohd. Yunus mentioned the business address which according to him also stopped existing since 2001 when acquired for Delhi Metro hence the information stated by him in the application from was also not materially in correct (sic).

7. The impugned order records that the petitioner cannot be granted a license as he does not have place/premises to carry on business at Subzi Mandi, Ghazipur. It further states that reference to the earlier premises at Subzi Mandi, Shahdara is not relevant as the said mandi ceased to be in existence since 2001, when the area was acquired for the Delhi Metro project. Lastly, it is stated that the market fee has nothing to do with the issue of license.

8. The aforesaid order suffers from procedural illegality as it fails to notice the orders passed by the Court on 22nd January, 2002 and 17th January, 2007, which have been quoted above. The APMC has also failed to notice that till a license was issued, the petitioner cannot have the business place/premises at Subzi Mandi, Gazipur. License is an essential pre-requisite condition for having business place/premises. After a license is issued, the respondent APMC allots premises from where business can be undertaken. The question which was raised and required a decision by the respondent APMC was that whether the petitioner had necessary space/premises at Subzi Mandi, Shahdara before the mandi was

closed and not whether the petitioner had business space in the new Subzi Mandi, Gazipur. The order, therefore, refers to irrelevant facts and material and does not give weightage to the orders passed by the Court as well as the claim of the petitioner.

9. The respondent APMC has distinguished two cases of Mr. Babu Taslim and Mr. Rasid Nabab, who were issued category B license on the basis of order dated 22nd January, 2002. It is stated that Mr. Babu Taslim and Mr. Rasid Nabab had submitted their applications along with requisite documents for grant of category B license in time. The said contention and reasoning is incorrect as by the order dated 17th January, 2007, quoted above, the petitioner was given permission to file a fresh application. The respondent APMC cannot go behind the order, after having accepted the same. I may also note here that the petitioner had applied for issue of category B license since the year 2000. The contention of the respondent APMC that the petitioner did not apply for category B license and had subsequently made the request in the year 2007 is incorrect.

10. Another contention raised in the counter affidavit is that the petitioner's case is one of renewal of license, which was valid up to 31st March, 1994. This fact is not stated in the impugned order dated 30th March, 2007. The respondent cannot be permitted to raise this new contention for the first time in the counter-affidavit in view of the judgment of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The parameters applicable in the case of renewal of license are different from the parameters applicable in the case of fresh or new license. The conditions required to be satisfied are different. Admittedly the earlier license issued to the petitioner was valid upto 31st March 1994. This did not prevent the petitioner to apply for a fresh license in the year 2000. When the mandi was being shifted to new sabzi mandi at Gazipur, the petitioner had filed an application for issue of a new license and not renewal of an expired license.

11. In view of the aforesaid discussion, the writ petition is allowed and the impugned order dated 30th March, 2007 is set aside. The respondent APMC will pass a fresh order in the light of the orders passed by this Court and on merits, within a period of two months from today. The petitioner will appear before the respondent APMC on 18th August, 2009 at 3.00 P.M.