
(2013) 12 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4477 of 2010 (O and M)

M/s. Girdhari Lal Krishan Lal	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0023

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Advocate : Aalok Jagga, for the Appellant; Ajay Gupta, Addl. A.G. Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—By this order, we propose to decide two writ petitions, i.e., CWP No. 4477 of 2010 and 5933 of 2011 as common questions of facts and law are involved in these cases. Facts are being taken from CWP No. 4477 of 2010 for the sake of convenience. The petitioner firm is a Commission Agent (Katcha Arhtias) and has been granted Category (ii) licence for doing the business u/s 10 of the Punjab Agriculture Produce Market Act, 1961 (for short "the Act"), which was issued to it on 28.04.1976. The firm was working in the Sabzi Mandi in the town of Sampla continuously from the date of the grant of the licence, when a decision was taken by respondent Nos. 1 to 3 to shift Old Sabzi Mandi on establishment of a New Sabzi Mandi. Applications were invited from old Arhtias, who were holding Category (ii) licence for the last more than five years for allotment of 26 shops/plots on preferential reserved price. Petitioner also submitted an application, but the same was rejected on the ground that it did not fulfill the requirement of Rule 3(1)(iv) of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for short "2000 Rules"). This order was passed on 30.11.2007 (Annexure P-1) and it was mentioned therein that the market fees deposited by the petitioner for the last two years prior to the decision taken for shifting of the Sabzi Mandi was less than

Rs. 5,000/- per year as it had deposited Rs. 515/- for the year 2005-06. This order was challenged by the petitioner by filing an appeal under Rule 11 of the 2000 Rules before the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula. The said appeal was dismissed on 17.03.2008. Petitioner thereafter preferred a revision petition before the Financial Commissioner, Agriculture, Haryana which was also dismissed on 25.05.2009, leading to filing of the present writ petition before this Court challenging the orders passed by the respondents.

2. In the present writ petition, petitioner has also challenged the vires of proviso to clause (iv) of sub-rule (1) of Rule 3 of the 2000 Rules to the extent it stipulated that the annual turnover for the last two years should be considered only for those who does not pay the market fee himself on the ground that it is contrary to the object of the 2000 Rules, which aims at allotting the immovable properties in the vegetables Sabzi Mandies to the genuine traders of the displaced markets, this being contrary to the principles of reasonable classification, intelligible differentia and does not have any nexus with the object sought to be achieved.

3. It has been contended by the counsel for the petitioner that if the said Rule is quashed to this limited extent, petitioner would become eligible for consideration as it has an annual turnover of more than Rs. 2.5 lacs during the relevant period of two years. He has placed reliance upon the observations made by the Division Bench of this Court in Civil Writ Petition No. 4175 of 2007 (M/s. Rozy Trading Company v. State of Haryana and others), decided on 01.12.2008 (Annexure P-8). While upholding the vires of clause (iv) of sub-rule (1) of Rule 3 of the 2000 Rules, it has been observed that the object of the Rule is to help old licensed dealers who have been transacting business in the old market area and would also be needing plots in the new market area. He, on this basis, contends that the spirit of the Rule is to give benefit to the genuine traders and deleting the bogus and fictitious persons, who may try to acquire the shop or plot for the purpose of selling it at a higher rate and earn profit therefrom. Accordingly, he contends that the proviso to the said Rule to this extent deserves to be quashed.

4. His further submission is that although the petitioner has not deposited the requisite licence fees during the last two years, but his annual turnover during the relevant period has been more than Rs. 2.5 lacs and, therefore, the petitioner was a genuine Katcha Arhtia, who was entitled to the benefit of the Rule. His contention is that the petitioner had been depositing substantial amount of market fees subsequently with effect from 2006-07. It is merely that in the year 2004-05 and 2005-06 that he could not deposit the requisite market fees. The respondents should have taken into consideration the annual turn over of the petitioner which was more than Rs. 2.5 lacs, which would bring the petitioner within the ambit of the zone of consideration as per the requirement of the statutory rules. For the year 2005-06, petitioner has been buying the vegetables inside the market and selling it also within the market and, therefore,

was not required to deposit the market fees as the market fees was being paid by the person from whom he had been buying the goods. In support of this contention, he has placed reliance upon the information supplied to him giving details of the vegetables sold by M/s. Kasmiri Lal & Sons at Sabzi Mandi Sampla showing the sale of the vegetables to the petitioner. Reliance has also been placed upon the information supplied by the Market Committee, Sampla giving details of the receipt numbers and the fee deposited by M/s. Kasmiri Lal & Sons. On this basis, it has been contended by the counsel for the petitioner that the vegetables sold to the petitioner by M/s. Kasmiri Lal & Sons, the market fees has been deposited on the said vegetables by the seller and, therefore, under these circumstances, the annual turnover of the petitioner should have been taken into consideration by the respondents, which was more than the required minimum of Rs. 2.5 lacs.

5. His contention is that as per clause (iv) of sub-rule (1) of Rule 3, one of the two conditions, i.e., either payment of market fees of Rs. 5,000/- annually for the last two years, or having an annual turnover during the last two years of more than Rs. 2.5 lacs, is required to be fulfilled, which the petitioner had and, therefore, rejection of the claim of the petitioner by the Executive Officer-cum-Secretary, Market Committee, Sampla vide order dated 30.11.2007 (Annexure P-1) cannot sustain. The orders passed by the Appellate Authority as also by the Revisional Authority also deserve to be set-aside. Prayer has, thus, been made for allowing the writ petitions.

5A. On the other hand, counsel for the State-respondent No. 1 has submitted that the statutory rules governing the eligibility of the Katcha Arhtias, to be entitled for the consideration for allotment of a place in the new market area, stipulates two separate conditions. As regards the Katcha Arhtias who themselves are paying the market fees, the requirement is of deposit of such market fees of not less than Rs. 5,000/-. However, where the market fees is not being deposited by the Arhtia in his own name, then the annual turnover during the last two years has to be looked at, which should be not less than Rs. 2.5 lacs. Petitioner admittedly does not fulfill the said condition and, therefore, his application has rightly been rejected. Referring to the order passed by the Appellate Authority, his submission is that the claim of the petitioner with regard to the requisite condition of turnover, it has been observed that the appellants only produced the documents issued by some commission agents showing the products to have been sold to the appellant, but these documents did not prove the turnover in respect of the commission agents. Petitioner failed to produce any documentary proof in respect of sale of agricultural produce by it, which may prove their turnover for the relevant period. His further contention is that the Katcha Arhtia cannot deal with the other Katcha Arhtia and if the market fees is already paid on agricultural produce, then its further sale is considered only as a sale by a Pucca Arhtia and the turnover for such further sale (transaction) is not considered as turnover of the Katcha Arhtia. Further, Katcha Arhtia is bound to submit the "M" Form for such transaction in the office of the concerned Market

Committee with a copy to be retained as a proof by it, which, the petitioner failed to submit as proof of his transaction. Therefore, he cannot claim any benefit of annual turnover of more than Rs. 2.5 lacs. In any case, if the petitioner had been paying the market fees himself, the requirement as per rule is that it should be at least Rs. 5,000/- per year for the last two years, which the petitioner failed to pay and, therefore, the application has rightly been rejected. Reliance has also been placed on the judgment in the case of M/s. Rozy Trading Company (Supra) to contend that the vires of clause (iv) of sub-rule 1 of Rule 3 of the 2000 Rules having been upheld by this Court and the same having been found to be fulfilling the test of it being reasonable, just and equitable, prayer as made by the petitioner for quashing the proviso to the said clause may not be accepted. Dismissal of the writ petitions is prayed for.

We have considered by submissions made by the counsel for the parties and have gone through the records of the case.

6. Before we proceed further, the relevant Rules of the 2000 Rules need to be quoted here, which would be Rule 2(b), (c) and relevant part of Rule 3, which read as follows:-

2. Definitions

(b) category (ii) licences, means a person to whom a licence is granted for doing a business for katcha arhtias u/s 10 of the Act.

(c) immovable property, means shop plot, booth plot or other commercial sites owned by the Board or a market committee.

3. (1) All immovable properties in the markets developed by the Board or market committees shall be disposed off by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shop plots will be allotted to the old licences of category (ii) of old market which is to be de-notified, resulting in displacement of such licensed dealers of category (ii) on free hold basis, for conducting the business of sale and purchase of agriculture produce in the new markets, on the following terms and conditions namely:-

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(iii) Only those category (ii) licences shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of Mandis where some auctions have already been held. In the case of already developed Mandis where no auctions have so far been held, the licensee should have valid licence of category (ii) for atleast 5 years as on 1st January, 2000. In the case of Mandis to be developed in future the licensees should have atleast two years licence of category (ii) on the date of issuance of notification u/s 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the market committee if the land is obtained otherwise as the case may be;

(iv) such licences must have paid market fee of Rs. 5000/- annually for the last

two years;

Provided in the case of category (ii) licencees who does not pay the market fees himself, his annual turnover during the last two years should be at least rupees two lacs fifty thousand.

7. A perusal of the above Rules would show that a Katcha Arhtia is a person to whom a licence has been granted of category (ii) u/s 10 of the Act. Rule 3 indicates the mode by which all immovable properties in the markets shall be disposed off, which means shop plot, booth plot or other commercial sites owned by the Board or a Market Committee. The mode prescribed is by way of allotment or transfer or open auction in accordance with the provisions of these Rules. The shop/plots are required to be allotted to the old licenses of category (ii) of the old market to be de-notified, which would result in the displacement of such licenced dealers of category (ii) on free hold basis subject to the terms and conditions stipulated thereunder. The eligibility of category (ii) licences for allotment of plots has been provided in clause (iii). The period for which a valid licence is required to be held by a category (ii) licensee, which would determine the eligibility for allotment of plot, has been provided.

8. Clause (iv) of sub-rule (1) of Rule 3 further qualifies that the licencees who fulfill the conditions of clause (iii) should have paid market fee of Rs. 5,000/- annually for the last two years. However, proviso to this sub-clause states that in case category (ii) licensee who does not pay the market fees himself, his annual turnover should be at least Rs. 2.5 lacs during the last two years. This is an exception to the general rule that the licencees who fulfill the criteria of length of possession of the licence must pay the minimum market fees as prescribed for the last two years. If licensee pays the market fees himself, then this exception would not be applicable and his annual turnover is not to be looked at. This exception, which has been carved to the general rule has a purpose and that is to give benefit to such licensees who do not pay market fees in their own names. It is under these circumstances that the annual turnover of such a licensee during the last two years is to be seen and taken into consideration. The object of clause (iv) of sub-rule (1) of Rule 3 has been dealt with and considered by the Division Bench of this Court in its judgment in M/s. Rozy Trading Company (Supra). In Para 11 thereof, it has been held as follows:-

11. When we apply the aforementioned twin test to the facts of the present case, it is evident that the classification has been created with the object of allotting shops/plots to the licensee of category (ii) to whom a license is granted for doing the business of katcha arhtia u/s 10 of the Punjab Agricultural Produce Market Act, 1961 in the new market area where the old market has been de-notified and the old license dealers of that category have been displaced. Clause (iv) of sub-rule (1) of Rule 3 of the Rules has excluded from the benefit all such persons who have virtually no business and clause (iv) lays a test to find out a genuine dealer transacting business by stating that such a licensee must have paid market fee of at least Rs. 5,000/- per year for the last two years. In case he

does not pay market fee then his annual turn over during the last two years is required to be at least Rs. 2,50,000/-. Such like licensees have been left out of the group to whom the plots/shops are to be allotted on reserve price as provided in the Rules. It is, thus, obvious that a licensee who does not deposit market fee of Rs. 5,000/- has hardly any business to transact in the market committee and would not be entitled to any concessional rate which are applicable to the classified group. The object of the Rule is to help the old licensed dealers who have been transacting business in the old market area and would also be needing plots in the new market area. The criterion laid down by clause (iv) has a direct relationship with the object sought to be achieved, namely, allotment of shops/plots to old licensed dealers in the new market area. The classification is reasonable and is based on a rationale principle which is correlated to the object sought to be achieved. Therefore, we do not find that clause (iv) of sub-rule (1) of Rule 3 of the Rules suffers from the vice of arbitrariness so as to declare the same violative of Article 14 of the Constitution. The clause, in fact, satisfies the twin test. Moreover, very recently a similar controversy came up for our consideration in the case of M/s. Avinash & Co. v. State of Haryana and others (2009(5) R.C.R. (Civil) 620: C.W.P. No. 18321 of 2008, decided on 22.10.2008). In the said case the order passed by the Chief Administrator rejecting the claim of the old licensee, who did not fulfill the stipulation of clause (ii) and (iv) of sub-clause (1) of Rule 3 of the Rules, was the subject matter of challenge. After referring to the aforementioned provisions of the Rules, we have dismissed the petition vide order dated 22.10.2008.

9. The vires of the statutory rules having been upheld and having said the criteria laid down in clause (iv) has a direct relationship with the object sought to be achieved, namely, allotment of shops/plots to old licensed dealers in the new market area and that too for the genuine dealers transacting business, it cannot be said that the proviso to the said sub-clause would be unreasonable, unjust and unconnected with the object sought to be achieved. The challenge to the rule, thus, stands rejected.

10. The contention of the counsel for the petitioner with regard to the non-consideration of the annual turnover of the petitioner by the respondents for the relevant two years is not available to the petitioner in the light of proviso to clause (iv) of sub-rule (1) of Rule 3, but still the Appellate Authority while passing the order rejecting the appeal dated 17.03.2008 has considered this aspect with regard to the claim of the petitioner of having a turnover Rs. 2.5 lacs for the relevant period. The portion dealing with the consideration of this aspect by the Appellate Authority in the order is as follows:-

The plea raised by the appellant that they fulfill the requisite condition of Rule 2000 because of their turn over for the impugned period is more than Rs. 2.50 lacs is also not tenable because as per proviso to Rule 3(iv) in case of a category (ii) to the licensee who does not pay market fee himself, his annual turn over during the last two years should be at least Rs. 2.50 lacs. In the present case,

the appellants used to pay market fee themselves, therefore the proviso to Rule 3(iv) does not apply to them. Had the appellants not paid the market fee themselves, the condition of turn over as per the above proviso would have been applicable to them. Moreover, the appellants also failed to show that they fulfill the requisite condition of turnover as they did not show any proof of their turn over. The appellants only produced the document issued by some commission agents which shows that the said agents sold produce to the appellants. But the said documents also prove the turn over in respect of the commission agents who issued the same and do not prove the turn over of the appellants. The appellants failed to give any documentary proof in respect of sale of agricultural produce by them which may prove their turnover for the impugned period. As such I am of the considered view that as per provisions of Rules, 2000 the appellants are not entitled to allotment of plots in the New Fruit and Vegetable Market Sampla.

11. Since the petitioner has failed to produce any documentary evidence proving its turnover for the relevant period, this submission of the counsel for the petitioner itself cannot be accepted. Moreover, as per reply filed by respondent Nos. 3 and 4, it has been clearly stated therein that the Katcha Arhtia cannot deal with other Katcha Arhtia as a person dealing with the Katcha Arhtia is considered as a Pucca Arhtia for which the petitioner does not have the licence. In any case, if a Katcha Arhtia deals with another Katcha Arhtia, the said transaction cannot be treated to be that of such a Katcha Arhtia, who sells the product. The turnover of a Katcha Arhtia is relatable to the transaction on which the market fees is paid to the Market Committee whether it is paid by him or other purchaser of the agricultural produce. If the market fees is already paid on agricultural produce, then its further sale is considered only as a sale by Pucca Arhtia and the turnover of such further sale (transaction) is not considered as turnover of a Katcha Arhtia. The first time sale of agricultural produce is restricted to be held only in a notified market yard and the further sale can even taken place outside the market yard. However, the petitioner has failed to submit "M" form, which is an evidence of his transaction as a Katcha Arhtia and in the absence of "M" Form, he cannot claim turnover as a Katcha Arhtia. It has further been stated that the petitioner did not mention the figure of his turnover when he submitted "A" Form and, therefore, the turnover of the petitioner for the year 2005-06 claim to be of Rs. 2,69,650/- is without any basis and unsubstantiated. Reliance of the counsel for the petitioner on the sale documents, which were available before the Appellate Authority, also do not persuade us to accept this contention that he did have a turnover of over Rs. 2.5 lacs for the years 2005-06 and 2006-07. On this score also, the claim of the petitioner although not as per the requirement of the statutory rules, but still if taken into consideration, would not be sustainable.

We do not find any merit in these writ petitions and, therefore, dismiss the same, leaving the parties to bear their own costs.