

(1996) 05 DEL CK 0057

In the Delhi High Court

Case No : Civil Writ Petition No. 2242 of 1994

Naresh Chand Jain and Sons.

APPELLANT

Vs

Lt. Governor, National Capital Territory and Others

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 64 DLT 88

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : S.S. Panwar and A. Ahlawat, for the Appellant;

Judgement

Lokeshwar Prasad, J.

(1) The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the decision of the Delhi Agricultural Marketing Board denying the allotment of the shop to the petitioner in the grain market at Najafgarh. The case of the petitioner, briefly stated, is that the petitioner has been marketing and dealing in the business of agricultural produce since 1981 under a valid license from respondent No. 3 which has been renewed on year to year basis and is valid up to 31st March, 1995. It is alleged that in 1984 respondent No. 1 and 2 developed a general market in Najafgarh in which various plots were developed to be allotted to the traders of "A" and "B" category whose average annual turn over of the notified commodities of the license during the period from 1.4.1980 to 31.3.1995 was not less than Rs. 50,000/- Priority was to be given to those traders who were operating within the notified market yard in the Najafgarh town. In November, 1985 and January, 1985 respondent No. 3, with a view to allot shops/plots asked from the various licensees the applications in the form of affidavits showing that the licensee satisfied the above criteria entitling him for the allotment of the shop site. On 20.1.1986 Along with other licensees, the petitioner also applied for allotment of shop/plot in the market developed by respondent No. 3.

(2) It is further alleged that respondent No. 2 in the meantime developed one more site for marketing agriculture produce in the same locality by name "New Anaj Mandi, Najafgarh" and by means of a separate notification dated the 12th September, 1986 asked for applications from the licensees of Najafgarh market for being considered for the allotment of developed shop /plots in the New Anaj Mandi Market at Najafgarh. The petitioner, who satisfied all the conditions prescribed for such allotment by respondent No. 2, applied for being considered for the allotment of a plot for shop vide application dated 29.9.1996. The grievance of the petitioner is that the petitioner was not allotted plot for the shop either in the General Market at Najafgarh or in the "New Anaj Mandi Market Najafgarh" although the respondent issued a list of 88 persons some of whom were not fulfilling the above mentioned conditions. It is alleged that the petitioner appealed to respondent No. 3 about his illegal and unjustified exclusion from the allotment of plot but respondent No. 3 did not give any reply to the above said appeal of the petitioner. It is alleged that the petitioner, though eligible as per the criterion laid down by the respondents, has not been allotted a plot for the shop and it has been prayed that this Court may issue a writ of mandamus restraining the respondents to proceed further and direct the respondents to allot a plot/shop in the Najafgarh market or in the markets being developed by the respondents.

(3) In the counter filed on behalf of the respondents it is stated that in the year 1986 in the New Grain Market, Najafgarh, 99 plots/shops were developed for allotment to categories "A" and "B" license holders. In the meeting held on 21.8.1986, the "Delhi Agricultural Produce Marketing Board" had taken a decision that the existing commission agents and the whole-sale dealers, working in the market yard of existing grain market at Najafgarh be considered for allotment of developed plots in the New Grain Market at Haibetpur, Najafgarh and that the average annual turn over of the allottees should be Rs. 50,000.00 or more during the period from 1980- 81 to 1985. It is further contended that a list of 105 commission agents and whole sale dealers functioning in the market at Najafgarh was prepared on the basis of average annual turn over and they were placed either in A or in B category. Before finalizing the above said list and putting the same in the draw of lots the Deputy Secretary(E&M) had personally visited the shops of every "A" and "B" categories commission agent and whole-sale dealer and as the petitioner could not produce any evidence about his annual turn over of Rs. 50,000.00 , he was not considered eligible and no allotment was made to him under any category in the draw of lots held on 31.3.1987. Somewhere in November, 1988 the petitioner made a representation alleging therein that he had a turn over of more than Rs. 50,000.00 and that he had lost all the records in the year 1989. It is stated that on 8th November, 1988 the petitioner was informed by the respondents that he should give the names of the traders/ commission agents with whom he had a dealing in the years 1981-82 to 1984-85 and also the name of the Bank and the account number which was being operated by him. However, the petitioner could not give the above information.

The petitioner vide letter dated 11th December, 1988 informed the respondent that he had no record and it was difficult for him to give the information. He also stated that he had no Bank account and his business was on cash payment basis. The petitioner in his application submitted by him in November, 1988 had stated that about the loss of the records he had reported the matter at Police Station, Najafgarh. The respondents in their counter have stated that the Fir, so lodged by the petitioner was not about any missing document for the years 1981 to 1985. What was stated in the Fir was that a bag in which some papers of the shop, house-hold goods and apart piece were there, was inadvertently left at the stand and when the petitioner came back to collect the same the same was not found there. The petitioner, it is contended, later on tried to produce some duplicate documents to show that he had a turn-over of Rs. 50,000.00 and above during the above said period. It is contended that the petitioner's turn-over could not be verified as his business premises were found locked. Moreover, the duplicate bills which were later on filed by the petitioner were found to be without buyer's name and even on those duplicate bills the sale was found to be less than Rs. 50,000.00 . It is contended that the duplicate bills and the statement that the petitioner could not produce the record earlier, was not believed for the reason that the records required to be produced were for the period from 1.4.1980 to 31.3.1985 whereas the Fir was lodged on 20.9.1986 and it was not indicated therein as to which were the documents in the bag which got lost. The respondents have contended that even on the alleged figure, given by the petitioner, the average turn over worked out was Rs. 35,378.00 . It is stated that whenever the officials visited the shop of the petitioner the same was found locked. Even in 1990 when the case of the petitioner was considered the petitioner could not produce the bills and books of accounts and the duplicate bills, produced by the petitioner were only of one firm of Naresh Chand, "Jharoda" and not of "Najafgarh". In short, the contention of the respondents is that the petitioner could not be allotted the plot for the shop in the newly developed markets at Najafgarh as he was not found eligible as per the criterion laid down by the respondents and his case was rejected in February, 1991. It is contended that the petition, filed by the petitioner is misconceived, devoid of merit and be dismissed with costs.

(4) We have heard the learned Counsel for the parties and have also gone through the documents/material on record. With a view to satisfy ourselves, we directed the respondents to produce the original records for our perusal which were produced by the respondents and we have perused the same. From a perusal of the documents on record and the material made available to us for our perusal, it is apparent that the petitioner was not allotted a plot for the shop in the newly constructed markets at Najafgarh by the respondents as he was not found eligible as per the criterion laid down by the respondents for the allotment of the shops to the commission agents/whole-sale dealers in the above said markets. No fault, in our opinion, can be found with the above said decision of the respondents in not allotting a plot/site for the shop in the newly constructed

markets at Najafgarh.

(5) During the course of arguments the learned Counsel for the petitioner submitted that the petitioner has been subjected to hostile discrimination by the respondents inasmuch as three traders, namely, M/s Trilok Chand Anand Kumar, M/s Ramesh Trading Company & M/s Gupta & Company whose total turn-over was much less as compared to petitioner were included by the respondents in the list of 105 persons considered for allotment. In our opinion the above submission too is without any substance and in no way helps the case of the petitioner because as per the contents of Annexure R-3, annexed with the counter it is apparent that some of the Traders, who were not found eligible for allotment of shop plots at Najafgarh as per the policy laid down by the respondents, represented that they had functioned for less than five years and hence their average turn-over should be calculated by dividing the total turnover with the actual number of years they had functioned. On the basis of the above revised criteria it was found that the average turn-over of M/s Trilok Chand Anand Kumar was Rs 75,556.00 , M/s Ramesh Trading Company Rs 59,875 & that of M/s Gupta & Company at Rs 51,270.00 . The claim of the petitioner was also verified on the basis of material (duplicate purchase vouchers) made available by him. On verification it was noticed that most of the duplicate vouchers were in the name of "Naresh Chand Jain, Jharoda". On visit to village "Jharoda" it was found that at the above said village there was a shop which was being run by Shri Naresh Chand Jain at his residence dealing in similar items. Accordingly, the bills were separated and the petitioner's average turn-over for the licensed shop at Najafgarh came to Rs 18,981 .00 only. In the presence of the above facts, it cannot be stated that the petitioner was subjected to any hostile discrimination as alleged.

(6) In view of the above discussion, in our opinion the petition, filed by the petitioner is devoid of substance. The same merits dismissal. Accordingly the same is dismissed with no order as to costs.