
(2009) 09 P&H CK 0086
In the Punjab And Haryana At Chandigarh

Rama Fruit Company

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 157 PLR 140 : (2009) 4 RCR(Civil) 389

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of C.W.P. Nos. 9396, 9397, 9399 and 9403 of 2009 as common facts and questions of law are involved. In these petitions filed under Article 226 of the Constitution challenge is made to the common order dated 17.4.2009 (except in CWP No. 9403 of 2009) passed by the Chief Administrator, Haryana State Agricultural Marketing Board (for brevity, "the Board") rejecting the claim of the petitioners) for allotment of plots in the New Fruit and Vegetable Market, Pehowa. The petitioner(s) have also challenged vires of Clause (iii) of Sub-rule (1) of Rule 3 of the Haryana State Agricultural Marketing Board(Sale of Immovable Property) Rules, 2000 (for brevity, "the Rules").

2. Brief facts of the case are that the petitioner(s) are Commission Agents carrying on their business of sale and purchase of fruits and vegetables in the Subzi Mandi (Vegetable Market), Pehowa, District Kurukshetra. The petitioner(s) have claimed that they are having license of Commission Agent issued by the Market Committee, Pehowa.

3. In 2007 land was acquired for the purpose of construction of a new Mandi. The draw of lots for allotment of plots to the old eligible licensees/Category-II licensees was fixed for 6.6.2007. Since by that time the land in question was not transferred in the name of the Market Committee, the draw of lots was

postponed for 25.7.2007. The land was transferred to the Market Committee on 3.7.2007. The Chief Administrator of the Board decided the cut-off date for establishing the eligibility of old licensees as 3.7.2007, vide letter dated 9.7.2007. The petitioner(s), except for M/s Rama Fruit Company (petitioner in CWP No. 9396 of 2009) applied for allotment of plots on reserve price being old licensees of the old mandi. However, after scrutiny of their applications by the Allotment Committee they were not found eligible for allotment of plots on reserve price. Their applications were rejected on the ground that they were possessing licenses for less than two years from the cut off date and also do not fulfill the requisite condition of payment of Market Fee as stipulated in Clause (iii) of Sub-rule (1) of Rule 3 of the Rules. The lists of eligible and ineligible applicants, was displayed on the notice board of the Market Committee. The draw of lots was conducted on 25.7.2007.

4. Feeling aggrieved against non-inclusion of their names in the list of eligible applicants, the petitioner(s) preferred appeals under Rule 11 of the Rules before the Chief Administrator of the Board, inter alia, on the ground that it is obligatory on the part of the respondents to provide sufficient accommodation to the old licensees and their applications have been wrongly rejected. In support of their claim the petitioners) have placed reliance on the judgment of Hon"ble the Supreme Court rendered in the case of Labha Ram and Sons and Others Vs. State of Punjab and Others, . The Chief Administrator clubbed all the appeals and by a common order dated 17.4.2009 rejected the claims of the petitioner(s) in light of the judgment of this Court rendered in the case of M/s Rozy Trading Company v. State of Haryana and Ors. C.W.P. No. 4175 of 2007, decided on 1.12.2008. Against the said order the petitioners) have filed the instant petitions.

5. In the written statements filed in respective cases on behalf of the Market Committee and the Board, the factual matrix has not been disputed. However, the respondents have justified rejection of the claim of the petitioners as they do not fulfill requisite conditions as laid down in Clause (iii) of Sub-rule (1) of Rule 3 of the Rules.

6. Having heard learned Counsel for the parties and perusing the paper book with their able assistance, we are of the considered view that there is no merit in these petitions and the same are liable to be dismissed. It would be profitable first to analyze whether the petitioner(s) fulfil the requirements of Clause (iii) of subrule (1) of Rule 3 of the Rules, accordingly the following chart is prepared:

						Name	
Date of Market Fee	Annual Turnover	License paid during the	during the	relevant	relevant	period	period
period	relevant	period	2005-06	2006-07	2005-06	2006-07	
						M/s	
Rama Fruit	11.5.2007	Not	Not	Not	Not	Company disclosed	disclosed
disclosed (CWP No. 9396 of 2009	M/s Bhola Fruit	7.12.2006	Not	Rs. 5,009	Not		
Rs. 2,50,450	Company disclosed	disclosed (CWP No. 9397 of 2009)	M/s Durga				
Fruit 12.1.2006	Rs. 5,326	Rs. 9,733	Rs. 2,66,000	Rs. 4,92,050	Company (CWP		

7. A bare perusal of the chart reveals that none of the petitioner(s) possess license of category (ii) for two years preceding the cut-off-date of 3.7.2007, The market fee paid is also short than stipulated in the Rules. Moreover, we find that the controversy raised in these petitions is no longer res Integra and stands settled by a Division Bench of this Court in the case of M/s Rozy Trading Company (supra). After noticing the judgment of Hon"ble the Supreme Court rendered in the case of M/s Labha Ram (supra) and the provisions of Rule 3(1) of the Rules, the Division Bench of this Court came to the conclusion that provisions of Rule 3(1) of the Rules shows that the shops/plots are to be allotted to the old licensees of old market, which is to be de-notified resulting in their displacement. The benefit has been extended to the licensee of category (ii) for allotment of plot/shop on free hold basis for conducting the business of sale and purchase of agricultural produce in the new market subject to various terms and conditions. A category (ii) licensee has been defined by Rule 2(b) of the Rules to mean a person to whom a license is granted for doing the business of katcha arhtia u/s 10 of the Punjab Agricultural Produce Market Act, 1961. A number of conditions have been laid down. The object of the Rule appears to be to identify the genuine category (ii) licensee by excluding those who, in fact, do not require a plot or shop. The Division Bench also referred to para 54 of the 7-Judge Bench judgment of Hon"ble the Supreme Court rendered in the case of The State of West Bengal Vs. Anwar Ali Sarkar, , prescribing two conditions for passing the test of classification, which reads thus:

54. ...In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differential which is basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrary selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary....

8. The aforementioned tests have also been approved by Hon"ble the Supreme Court in the case of Confederation of Ex-Servicemen Associations v. Union of India (2006) 8 S.C.C. 399. The Division Bench dismissed the case of M/s Rozy Trading Company (supra) by observing as under:

10. ...The basic principle which informs Article 14 of the Constitution is equality and inhibition against discrimination. Article 14, however, permits reasonable

classification for the purpose of legislation and such classification must satisfy the aforementioned twin test of being founded on an intelligible differentia which must distinguish persons or things that are grouped together from others who are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

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 Avinash & Co. v. State of Haryana and Ors. 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. As a sequel to the above discussion, these petitions fail and the same are accordingly dismissed.