
(1965) 01 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 438 of 1964

Rama Nand Broker

APPELLANT

Vs

Kundan Lal and Others

RESPONDENT

Date of Decision : 18-01-1965

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 12(2)(a)(iii)

Citation : (1965) 2 ILR (P&H) 65 : (1965) 67 PLR 665

Hon'ble Judges : Dua, J;Capoor, J

Bench : Division Bench

Advocate : B.S. Bindra, for the Appellant; G.C. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—This Letters Patent is directed against an order of a learned Single Judge of this Court setting aside the election of the appellant (who was respondent No. 2 before the learned Single Judge) as a result of rejection of his nomination papers which necessarily followed from the order quashing the resolution of the Market Committee Nakodar dated 11th August, 1964 renewing the appellant's license.

2. The controversy centers round the election of one member of the Market Committee Nakodar, District Jullundur, u/s 12(2) (a) (iii) of the Punjab Agricultural Produce Markets Act, 1961, (hereinafter called the Act). For this election, the Deputy Commissioner framed the election programmed under Rule 5 of the Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961 (hereinafter called the Election Rules). This programme was as under:

- (a) For filing of nomination paper, from 3rd August, 1964 to 12th August, 1964.
- (b) For scrutiny 14th August, 1964.
- (c) For withdrawal 17th August, 1964 and

(d) For polling-13th September, 1961.

Kundan Lal, writ petitioner in this Court (and respondent No. 1 in the Letters Patent Appeal) and the appellant Rama Nand (respondent no. 2 in the writ petition) contested the election, all other candidates, having withdrawn their nomination papers on 17th August, 1964. Rama Nand's nomination papers filed on 12th August, 1964 contained the certificate of the Chairman of the Market Committee, Nakodar, that he was a licensee u/s 13 of the Act and on the basis of that certificate the Returning Officer accepted his nomination papers. On 18th August, 1964 Kundan Lal came to know that Rama Nand was not legally a licence-holder and, therefore, could not contest the election in question. An application was accordingly filed by Kundan Lal on 19th August, 1964 to the Market Committee for a copy of the resolution by which Rama Nand's licence was renewed. From this resolution, he learnt that Rama Nand's original licence was to expire on 31st March, 1964 and an application for the renewal of the said licence was made by him on 30-5-1964 which was allowed by the Market Committee on 11-8-1964 as per its resolution No. 6-A. In the writ petition dated 24-8-1964, Shri Kundan Lal averred that according to Rule 21 (3) of the Punjab Agricultural Produce Markets (General) Rules 1962 (hereinafter described as the General Rules), an application for renewal of a licence should have been made at least 30 days before the date on which the licence was due to expire. Though according to the proviso, thirty days' period of grace is allowed for getting an annual licence renewed and according to the second proviso, the authority competent to renew a licence is empowered on the applicant's paying a penalty equal to the amount of annual licence fee to grant an application for renewal made within thirty days after the date of expiry of the licence or in the case of an annual licence within thirty days of the expiry of the period of grace, in the instant case no application having been made by Rama Nand up to 30th April 1964 he ceased to be a licensee on 31st March 1964. Under the law, therefore, the Market Committee, Nakodar, had no jurisdiction or power to entertain Rama Nand's application dated 30th May 1984 for renewal of his licence. The impugned resolution dated 11th August 1964 was thus described to be null and void. The Chairman of the Market Committee who gave the certificate on the nomination paper in Form "F" had accordingly no power to certify that Rama Nand was a licensee. It was further averred in the petition that Rama Nand being the real brother of the Vice-Chairman of the Market Committee, Nakodar, the impugned resolution had apparently been passed at the instance of the said Vice-Chairman in order to help his brother in an illegal manner. Rama Nand not being a holder of valid licence he could not file the nomination paper and was, therefore, not entitled to contest the election. On this ground, it was prayed that the impugned resolution be quashed and Rama Nand be held not to be a licensee under the said resolution and, therefore, debarred from contesting the election which was going to be held on 13-9-1964.

3. The learned Single Judge came to the conclusion that Rama Nand did not have an annual licence and if that be correct, then the licence could not be renewed

since the renewal fee together with penalty had been deposited on 30th May 1964 instead of on 30th March 1964. The renewal, according to the learned Single Judge, was thus contrary to the rule. Dealing with the alternative contention that the application for renewal could be treated as a fresh application and that the resolution should be deemed in law to have the effect of granting a fresh licence, the learned Single Judge observed that in view of the clear terms of the impugned resolution it was not possible to accede to this submission. The imputed resolution was accordingly held to be invalid and illegal. The objection that this Court should not interfere under Article 226 of the Constitution was negatived as, in the opinion of the learned Single Judge, there was hardly any effective alternative remedy open to the petitioner.

4. On Letters Patent Appeal before us, the learned counsel for the appellant has drawn our attention to sections 11, 12 and 13 of the Act and Rules 19 and 21 of the General Rules. Section 11 provides for the establishment of a Market Committee for every notified area and for specification of its headquarters. According to section 12 a Market Committee is to consist of 9 or 16 members as the State Government may in each case determine, provided that where in a notified market area there is in existence a co-operative society, the Committee is to consist of 10 or It members, as the case may be. In the case in hand, it is common ground that the committee is to consist of 10 members. Under sub-section (2) (iii) of this section, one member is to be elected by the persons licensed u/s 13 from amongst themselves. Section 13 prescribes duties and powers of a Committee and sub-section (3) lays down that "subject to such rules as the State Government may make in this behalf, it shall be the duty of a Committee to issue licences to brokers, weighmen, measurers, surveyors, godown-keepers and other functionaries for carrying on their occupation in the notified market area in respect of agricultural produce and to renew, suspend or cancel such licences." Rule 19 of the General Rules provides for licences to brokers, weighmen, measurers, surveyors, godown-keepers and palledars and in sub-rule (4), the licence-fee for a broker's license is fixed at Rs. 3/- per annum or Re. 0.25. nP. per month or part thereof. Rule 21 deals with renewal of licence and issue of duplicate thereof and under sub-rule (3), an application for the renewal of licence has to be made at least 30 days before the date on which the licence is due to expire. There are, however, two provisos to this rule. According to the first proviso, 30 days" period of grace is allowed for getting an annual licence renewed. According to the second proviso, the authority competent to renew a licence is empowered on the applicant's paying a penalty equal to the amount of annual licence fee to grant an application for renewal made within 30 days after the date of expiry of the licence or in the case of an annual licence within 30 days of the expiry of period of grace. The authority competent to renew a licence may remit the penalty in whole or in part if it is satisfied that the delay was for reasons beyond the control of the applicant. According to sub rule (5), except as provided in sub-rule (3), every application for renewal of a licence made after the date of expiry thereof is to be treated as an application for the

grant of a fresh licence. The learned Single Judge has observed in his order that according to the office note of the Committee, as disclosed from Annexure 'A' to the writ petition, Rama Nand had deposited on 30th May 1964 Rs. 3/- licence-fee and Rs. 3/- for late fee which was after two months-from the expiry of the licence and because the licence had been issued-for September, 1963 to 31st March, 1964, he was not entitled to the grace period. According to Rule 21 (5), his application for renewal could only be treated as a fresh application. The Committee by means of the impugned resolution unanimously decided to renew Rama Nand's-licence on the ground that he had deposited the fee including fine on 30th May, 1964 treating the licence to be within limitation. The learned Single Judge did not believe the assertion of the Committee and of Rama Nand that the latter had held an annual licence observing that according to the petitioner before him the licence-fee paid by respondent No. 2 was Rs. 1.75 nP. at the rate of 25 nP. per mensem. The renewal was in the circumstances considered by the learned Single Judge to be contrary to the rule. The contention that the application for renewal could have been treated as a fresh application and the impugned resolution should be deemed in law to have the effect of granting a fresh licence did not find favour with the learned Single Judge on the ground that the resolution was clear in its terms and was not susceptible of the construction suggested.

5. It is very strongly argued on behalf of the appellant that the learned Single Judge has treated the writ petition as if it was an appeal from the order renewing a licence. Whether the appellant's application for renewal is treated as one for renewal of an annual licence or as a fresh one, it is a matter essentially for the Committee to deal with and this Court is not entitled on writ side to act as an appellate Tribunal and to scrutinise the committee's order on the merits. There being no finding of the impugned order being mala fide, it is emphasized that the order renewing the appellant's licence for carrying on his trade, business or profession deserves to be upheld rather than set aside on the immaterial and feeble infirmity-if at all it is an infirmity-suggested on behalf of the writ-petitioner. It has also been submitted that whether or not the office note was quite accurate, it was for the Committee to consider and if the Committee has unequivocally renewed the appellant's licence in the absence of any violation of an imperative and essential provision of law, this Court should not in its supervisory jurisdiction interfere with such orders.

6. After devoting my most earnest attention to the case, I am constrained with respect to allow the appeal. This Court has not been constituted as an appellate Tribunal against orders granting or renewing licences under the Act. Indeed, appeal has expressly been provided by section 40 of the Act from orders passed inter alia by a Committee u/s 13. It is quite true that under Rule 21 (3), a certain period has been fixed within which an application for renewal of a licence should be made, but keeping in view the basic object and purpose of this rule, the provision fixing the period seems to me to be clearly directory in nature in the sense that if the Committee grants a licence on an application, which may be

somewhat belated, then this breach would not completely invalidate or nullify the final order renewing the licence so as to deprive the licence-holder of the right to carry on his trade, business or profession. I certainly do not mean to lay down that this provision is not intended to be obeyed or that it is intended to be disregarded all provisions of law, I must point out. are meant to be obeyed, honored and observed : I am merely considering the importance of the literal and punctilious observance of this provision to the object the rule-making authority had in view, and what I propose to lay down is that mere entertainment of a belated application for renewal of a licence could not have been intended by the said authority to be fatal to the subsequent proceedings and necessarily to result in invalidation or nullification of the licence actually renewed. In each case, the Court has a duty to discern the legislative intent whether a particular provision in a statutory instrument is mandatory, meaning thereby that it is so essential or fundamental that non observance thereof must automatically involve the consequence of invalidity, or is merely directory, which means that it embodies a direction, the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur In order to get at the legislative intent in making a given statutory provision, the Court is expected to consider, not only the actual words used which, of course, must be duly taken into account, but the entire scheme and subject-matter of the statutory instrument, the intended purpose to be achieved by the enacting provision immediately in question and its importance the relation of this specific provision to the general object intended to be accomplished by the statute as a whole, whether the right affected is public or private, and the probable consequences which must flow from treating it as mandatory or directory. The balancing of probable consequences that may result from alternate construction may often be an important yardstick. It is, of course, neither possible nor; is it expedient to phrase with conciseness and exactitude of expression an absolute test of universal rule for distinguishing a directory provision from a mandatory one; indeed, each case calls for scrutiny in its own setting. If the thing directed is of the essence of the thing required to be done or ultimately achieved and relates to a matter of substance, it may partake of mandatory character; whereas if it is a mere matter of form relating to some immaterial matter as to which compliance is a matter of procedural convenience rather than substance or in other words, the direction is designed merely with a view to the proper, orderly and prompt dispatch of business, then unless it is followed by an absolute prohibition, it may be construed as directory, particularly when no injury can result from ignoring it and the legislative purpose can fairly be accomplished in a manner other than the one prescribed. Considering Rule 21(3) and 21(5) in the light of the test just laid down, in my opinion, the impugned order renewing the appellant's licence on the basis of an application which may have been presented beyond time along with the deposit of the notified licence-fee and the penalty actually accepted by the Committee, cannot be construed to be tainted with a jurisdictional infirmity or such a basic fundamental legal defect that this Court should feel compelled to quash it on its writ side. A provision like the one

before us directing "the doing of a thing within a certain time without any negative words restraining the doing of it afterwards, would seem to me, as at present advised, to be of a directory nature and not one which imposes a limitation on the power or authority of the Committee, particularly when no injury would appear to follow from it, with the result that entertainment of a delayed application would not render the licence wholly invalid or void. I am also inclined, with all respect, to take the view that merely because the resolution in terms spoke of renewing Rama Nand's licence, if under the law, there was in serious legal impediment in treating the application to be one for a fresh licence, and the Committee actually granted to him a licence clothing him with the status of a licensee, this Court should not in the exercise of its extraordinary writ jurisdiction set aside and quash the resolution, which must, from the very nature of things, have the consequence of depriving the appellant of his right to carry on his business, trade or profession. Unless there could be shown a glaring violation of an essential provision of law which embodies an antecedent prerequisite or a matter of real substance, I am inclined to think that this Court's interference on writ side in the present case would be inappropriate and instead of promoting the cause of substantial justice, it may on the whole result in some injustice.

7. It is helpful at this stage to turn for a moment to section 37 of the Act which makes contravention of sections 6 and 8 penal. Section 6(3) prohibits persons who are not exempted by rules made under the Act, except under a licence granted in accordance with the provisions of the Act, the rules and the bye-laws made there under, inter alia to purchase, sell, store or process agricultural produce notified u/s 5.

The appellant had applied for the renewal of his licence on 30th May, 1964. At that time, apparently, there was no immediate prospect of election u/s 12(2)(a) (iii) for which the programme was framed by the Deputy Commissioner under election Rule 59 presumably sometime in the end of July, 1964, as it was to be published seven days before the date of filing the nomination papers. Every renewal of a licence under general Rule 21 is to be deemed to take effect from the date following that on which the licence expired vide Rule 21(4). These provisions more than amply demonstrate the far reaching consequences of this Court's order quashing in writ proceedings the renewal of the appellant's licence at the instance of the writ-petitioner. This order may thus expose the appellant to the possibility of penal action in addition to deprivation of his business or trade. This aspect may legitimately deserve due consideration when determining whether it would promote the cause of substantial justice for this Court in its discretion to issue a writ or a direction quashing the Committee's impugned resolution. On a consideration of all the relevant factors and circumstances, I am constrained, with respect, to take the view that it is not a fit case in which this Court should in the interest of justice allow its writ jurisdiction to be successfully invoked by the writ-petitioner.

8. The order of the learned Single Judge quashing the impugned resolution necessarily involved rejection of the appellant's nomination paper which in turn resulted in the election held on 13th September, 1964 being set aside. This seems naturally to give rise to one other aspect to which I may appropriately advert at this stage. It was open to the writ-petitioner to object to the appellant's nomination paper at the time of scrutiny on 14th August, 1964, but the writ-petitioner did not care to be vigilant and careful enough to make timely enquiries and gather the necessary material required by him for objecting to the appellant's nomination paper under Rule 9 on the ground that the appellant was not a valid licensee. It is not his case that his efforts to secure the relevant information had been frustrated or obstructed by any wrongful act of the appellant or of any one else. It was only after all other candidates had withdrawn from the contest and the appellant and the writ-petitioner alone were left in the field that the latter on 24th August, 1964 approached this Court with a challenge directed against the impugned resolution of the Committee apparently with the object of assuring his own election under Rule 13. The question naturally arises, if consistently with the essence and true dictates of justice this Court should on the facts and circumstances permit its extraordinary writ jurisdiction to be invoked to give relief to the writ-petitioner and to deprive the appellant of his licence, leave alone his right to contest the election in question. The whole controversy seems *prima facie* to have been created for the purpose of keeping out the appellant from the election to the Market Committee and with that object, he has been sought to be deprived of his broker's licence as well on a ground which does not seem to me even remotely to touch the basic merit of his claim or qualification to such licence. It is not suggested that but for the belated nature of his application for renewal of his licence, he was otherwise disentitled to secure the licence whether by renewal or by means of a fresh application. This aspect also to some extent weighs against the writ-petitioner. From whatever point of view we may consider the case, I am unable, with all respect, to find any manifest injustice resulting from any such grave or serious error of law apparent on the face of the record which could justify successful approach to this Court on writ side for quashing the impugned resolution, for rejecting the appellant's nomination paper and for setting aside the impugned election.

9. Before parting with the case, I cannot help observing that the fact that the appellant's application dated 30th May, 1964 for renewal of his licence was not disposed of till 11th August, 1964 does not reflect creditably on the promptness in the despatch of its business by the Committee. Had this application been disposed of with due despatch and promptitude, the writ-petitioner would perhaps have not found it so easy to attempt to utilize his challenge to the impugned resolution for securing his election without a poll. But this apart, in the interest of healthy development of rural economy and better regulation of purchase etc. of agricultural produce in this State, it is highly desirable that the Market Committees perform their duties and functions under the Act with reasonable promptitude and without undue delay, particularly where citizens'

rights to carry on trade or profession are involved.

10. In view of the foregoing discussion and for the reasons contained therein, this appeal succeeds and allowing the same I set aside the order appealed against and dismiss the writ petition with costs.

Capoor, J.

11. I agree.