

(2015) 05 AHC CK 0043

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 46958 of 2004, 39836 of 2010, 33461, 67297 of 2012, 16634, 33873, 48111, 65667, 65669 of 2013, 61128 and 63428 of 2014

Saingar Trading Co. and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Citation : (2015) 7 ADJ 82 : (2015) 4 AWC 4004

Hon'ble Judges : Arun Tandon, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Vinod Sinha, S.P. Singh and B.C. Sharma, for the Appellant; Hina Rizvi and Satish Mandhyan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. This bunch of 11 writ petitions pertains to the allotment of the shops at New Mandi Sthal, Sector 88, Noida, District Gautambudh Nagar. The controversy has basically narrow down after exchange of affidavits to the legality of the mode and manner of 140 newly constructed shops at new Mandi Sthal, Noida, District Gautam Budh Nagar. Facts in short relevant for deciding these writ petitions are as follows:

2. Civil Misc. Writ Petition No. 46958 of 2004 has been filed by 21 petitioners, who claim to be carrying on wholesale trade in fruits and vegetables at Noida within the territorial limits of Krishi Utpadan Mandi Samiti, Ghaziabad but their place of business at the relevant time was within the territorial limits of Noida. Petitioners have prayed for quashing of the notices dated 12th October, 2004, dated 14th October, 2004 and dated 18th October, 2004 issued by the Secretary, Krishi Utpadan Mandi Samiti, Ghaziabad as also for a writ of mandamus directing the respondent Nos. 3 and 4 to allot the land to the petitioners at Sector 88, Noida Gautambudh Nagar so that they may carry on their wholesale business. In the writ petition an order was passed on 5th November, 2004, whereby the

operation of the impugned notices/circulars was stayed. The writ petition is pending since then.

3. Civil Misc. Writ Petition No. 39836 of 2010 has been filed by 19 petitioners with a prayer that they may be allotted permanent shops/place in New Mandi Sthal at Sector 88 Noida, Gautambudh Nagar for carrying on their business of wholesale fruits and vegetables within a fixed period. Petitioners claim to be the licensee of the Krishi Utpadan Mandi Samiti, Ghaziabad as per the provisions of Krishi Utpadan Mandi Adhiminiyam.

4. On 13th December, 2010 writ petition was initially disposed of on the statement of the learned counsel for the Mandi Samiti that petitioners will be allotted suitable place at New Mandi Sthal. But the order was recalled and the writ petition has been restored to its original number under order dated 21st September, 2012.

5. Civil Misc. Writ Petition No. 33461 of 2012 has been filed by 9 petitioners, who claim to be the licensee of the Mandi Samiti, Ghaziabad as wholesale vendors of fruits and vegetables. They have prayed for a writ of mandamus commanding the respondent Mandi Samiti to make permanent construction/market at Sector 88 Noida, Gautam Budh Nagar and to allot permanent shops to the petitioners and other wholesale fruits and vegetables vendors.

6. While the aforesaid writ petition was pending, it appears that 140 shops were constructed at Sector 88 Noida by the Krishi Utpadan Mandi Samiti and auctions were held on 19th January, 2013. Right to participate in the auction was confined to the persons having a valid license from the Krishi Utpadan Mandi Samiti.

7. As per the minutes of the auctions signed on 23rd January, 2013, 96 shops were allotted. This allotment of shops by auction was approved by the District Magistrate on 28th May, 2013. However, it appears that Secretary and other officers of the Krishi Utpadan Mandi Samiti, Noida submitted a select list of 133 dealers vide minutes of selection dated 23rd January, 2013, before the District Magistrate, who approved the same vide order dated 31st May, 2013 and the selected dealers were required to deposit the premium money and one year advance usual charges and to get the deed executed and to take possession of the allotted shops. This select list comprised of 133 allottees.

8. Large number of complaints were received by the District Magistrate in respect of the illegalities and irregularities committed in the auction and therefore, a Committee was constituted by the District Magistrate. On 6th April, 2013 a report was submitted by the said Committee suggesting cancellation of the entire auction because of irregularities and illegalities on large scale including favoritism.

9. Civil Misc. Writ Petition No. 67297 of 2012 has been filed by 42 petitioners claiming to be licencees of Krishi Utpadan Mandi Samiti, for quashing of the circular dated 26th October, 2012 as also for a writ of mandamus commanding the respondents to allot the shops constructed within the premises of the Krishi

Utpadan Mandi Samiti, Noida to the petitioners on preferential basis, as they had deposited a sum of Rs. 20,000/- each in the year 2001 and to follow the circular dated 10th December, 2010 and the conditions mentioned in the Registration Book. It is their case that this sum of Rs. 20,000/- was got deposited from them by the authorities of the Krishi Utpadan Mandi Samiti on the assurance that they shall be allotted suitable sthal/shops whenever a new Krishi Utpadan Mandi Samiti premises is constructed.

10. Civil Misc. Writ Petition No. 16634 of 2013 has been filed by 5 petitioners, who claim to be wholesale dealers having valid license from Mandi Samiti, for quashing of the circular dated 26th October, 2012 as also for a writ of mandamus directing the respondents to allot the shops to them constructed at Sector 88 Noida, Gautam Budh Nagar and to hold an enquiry into the misdeeds of the respondent Secretary, Krishi Utpadan Mandi Samiti in respect of the auction held.

11. Civil Misc. Writ Petition No. 31045 of 2013 has been filed by 86 petitioners for a writ of mandamus requiring the District Magistrate to issue allotment letters to the petitioners with reference to the auction proceedings held on 19th May, 2013. In the said petition, an order was passed on 29th May, 2013 requiring the District Magistrate to take appropriate decision on the proposal pending before him.

12. Civil Misc. Writ Petition No. 32665 of 2013 was filed by four petitioners questioning the auctions. A Division Bench of the Court vide order dated 31st May, 2013 directed that the petition be connected with Writ Petition No. 31045 of 2013 and required the District Magistrate to decide the pending proposals in accordance with law on the basis of material before him.

13. Civil Misc. Writ Petition No. 33873 of 2013 was initially filed by the same petitioners, who had filed Civil Misc. Writ Petition No. 32665 of 2013 for quashing of the allotment list dated 31st May, 2013 as also for restraining the respondents from giving effect to the said list. In this writ petition, a Division Bench of the Court, after taking note of the aforesaid earlier writ petitions, on 19th November, 2013 passed a detail order for an independent agency to inquire into the entire episode of allotment of shops by Krishi Utpadan Mandi Samiti, Section 88 Noida, Gautam Budh Nagar.

14. The Special Investigating Team (for short "SIT") was directed to be placed before the Chief Secretary, U.P. Government who was to examine the same and to submit report along with his comments for perusal of the Court within the time permitted.

15. All the aforesaid writ petitions were clubbed together and were directed to be placed in February, 2014 along with report. It is worthwhile to reproduce paragraphs 22 to 29 of the order of the Division Bench dated 19th December, 2013, which reads as follows:

22. Along with aforesaid report dated 13.5.2013, and covering letter dated

14.5.2013, a copy of list of 133 applicants/licensees sent by Fax, by Secretary, KUMS, Noida, has been placed on record from page 51 to 59 to the counter-affidavit. At the bottom of this list on page 59 there is an endorsement by Deputy Director (A & M) showing his signature dated 13.5.2013 as under:

"Photocopy attested and on the date of bidding the said licence holders were entitled to take part in the allotment process.

Sd/-(dinesh) 13.5.2013

(English Translation by the Court)

23. This is a photocopy of the fax message and the mention of fax number from which this list was faxed as also the date and time shows that on 13.5.2013 at 6.35 p.m. to 6.44 p.m. the aforesaid list was faxed from Noida number-01202460931. Now to whom it was faxed is not very clear but on page 51 there is an attestation of the photocopy by Deputy Director (A & M), Mandi Parishad, Meerut. In what context this fax report was furnished on 13.5.2013 is not very clear.

24. This report was forwarded to DM, GBN by Deputy Director, Mandi Parishad, Meerut along with his letter dated 17.5.2013 which is on page 45 to the counter-affidavit. Thereafter the then DM, GBN, Sri Kumar Ravikant Singh, passed order dated 28.5.2013, copy whereof has been filed at pages 27 to 44 in which he approved 59 shops of "B" category and 37 shops of "C" category. He thus approved allotment/auction proceedings in respect to aforesaid shops.

25. The documents placed on record alongwith counter-affidavit shows that a total number of 140 dealers participated in the auction proceeding. Their details are from pages 105 to 108 of the counter-affidavit. (1) The Actual bidding was done by 133 licensees, out of which 49 were such who were granted licence on the same day on which the application was submitted. (2) Twenty two were such who were granted licence on a date before the date of submission of application forms. (3) Nineteen applicants were such who have left column No. 13 of their application forms blank, which require the details of employees engaged by them to work at Mandi area. (4) 104 applicants had given incomplete information in column No. 13. (5) Two application forms did not have any signature of the applicants. (6) 44 application forms did not have signature of accountant which would have verified payment of fee etc. (7) 83 applications though contain signatures of accountant but without any date. (8) Eight applications did not have the signature of Secretary. (9) 91 applications though are signed by Secretary but without date. (10) 109 allotted licensees were found to have no operating shop at the site, i.e., address given by them. (11) The list of eligible firms included 18 of such firms, the permanent address of their owners were not mentioned. (12) 75 firms were such which are owned by persons residing out of Uttar Pradesh, i.e., at Delhi, Haryana, Punjab and Jharkhand. (12) 19 shops were bid by only one candidate each. In respect to certain individual participants detail irregularities have also been noticed.

26. Sri Mandhyan, learned Senior Advocate has also produced before this Court the original record containing entire correspondence, inquiry report etc. and there from we prima facie find that the committee headed by Additional Director (Administration), Chaired by Dr. Ram Vilas Yadav, considered the reference made by DM GBN along with inquiry report. It considered entire matter on 12.4.2013 itself and a 16 pages report signed by all the members is there which apparently show an attempt to hush up all the irregularities and to protect Mandi officials. The reasons are very shallow and casual. It has brushed aside serious findings recorded by inquiry committee, after scrutiny of entire record, in a very superficial and clumsy manner. Some of the reasons to ignore inquiry committee's findings are either without any reason or gives self created and imaginary justifications.

27. Since any further observations on this aspect is likely to prejudice interest of individual dealers also, therefore, we do not find it appropriate to go ourselves in detail thereof and instead, in our view, it would be appropriate that an independent agency should enquire into the entire matter and submit a proper report.

28. Looking to the nature of irregularities pointed out by inquiry committee and other attending facts and circumstances, in our view, this matter should be enquired into by a Special Investigating Team, which shall be constituted by Chief Secretary, U.P. Government within 15 days from the date of communication of this order. He shall ensure that aforesaid team must have, besides other officials, a member of Higher Judicial Service and a senior Police Personnel from the cadre of Indian Police Service. The aforesaid team shall make investigation in the entire matter and submit report/progress report within three months from the date of its constitution. The aforesaid report shall be examined by Chief Secretary and with his own comments, he shall place it for this Court's perusal after three weeks thereafter.

29. We do not propose, at this stage, to interfere with the allotment in question, but provide, that allotment, if any, shall be subject to the result of this writ petition."

16. In pursuance to the said order of the Division Bench dated 19th November, 2013, a SIT was constituted vide Government Order dated 17th December, 2013. SIT completed its investigation and submitted its report dated 3rd August, 2014. The report of the SIT was brought on record before the Court along with an affidavit filed on behalf of the Chief Secretary by one Abhay Kumar, Under Secretary, Agriculture Marketing and Agriculture Foreign Trade Development, Government of U.P. Lucknow dated 11th August, 2014 in writ petition No. 33873 of 2013. The Chief Secretary submitted his comments and conclusions in respect of the report of the SIT dated 21st September, 2014. The Chief Secretary in his comments point-wise dealt with the report of the SIT and thereafter recorded his conclusion, which read as follows:

17. Civil Misc. Writ Petition No. 48111 of 2013 has been filed by an individual petitioner, who claim to be licensee of wholesale business of fruits and vegetables, for quashing of the auction dated 19th January, 2013 and the allotment list dated 31st May, 2013.

18. Civil Misc. Writ Petition No. 65667 of 2013 and Civil Misc. Writ Petition No. 65669 of 2013 have been filed by 23 and 11 petitioners respectively for quashing of the auction/allotment dated 31st May, 2013 and the order of the Secretary dated 19/22nd October, 2013, as also for a writ of mandamus commanding the respondents to not to interfere in the running of the wholesale business by the petitioners at Old Fruit & Vegetable Market, Bhangel, Sector 82, Noida, Gautam Budh Nagar and further for a mandamus directing the respondent to issue licenses only to genuine businessmen.

19. Civil Misc. Writ Petition No. 61128 of 2014 and Civil Misc. Writ Petition No. 63428 of 2014 have been filed by 7 and 4 petitioners respectively for quashing of the comments of the Chief Secretary dated 21st September, 2014 referred to above in the matter of cancellation of allotments, as also for a writ of mandamus restraining the respondents to not to interfere in the peaceful possession of the petitioners over the shops allotted in their favour till the report of the SIT is examined by the High Court and appropriate orders are issued.

20. This bunch of writ petitions was heard by us on 20th May, 2015. We took note of the statement made on behalf of the respondent Mandi Samiti that it was ready and willing to provide shops to 62 persons. We also noticed the dispute qua the aforesaid 62 persons being actually involved in the wholesale business of fruits and vegetables and as to whether they had a right to allotment of the shops or not. We required the Mandi Samiti to produce the original records in respect of the payment of Mandi fee as well as such other documents as may establish as to what exact business was being done by these 62 persons to whom Mandi Samiti is ready and willing to offer the sthal. Parties were also given an opportunity to address the Court on the merits of the report of the SIT and the comments of the Chief Secretary as noticed above. For advising a fair opportunity to the parties, we permitted that a copy of the report of the SIT and the comments of the Chief Secretary be provided to them. The case was adjourned for today i.e. 29th May, 2015.

21. Today, when the matter was taken up, all the learned counsels appearing for respective parties were called upon to address the Court on the correctness or otherwise of the facts noticed in the report of the SIT and the comments of the Chief Secretary as noticed above.

22. At the very outset we may record that all the counsels appearing for respective parties fairly agreed that nothing much can be said about the report of the SIT and the comments of the Chief Secretary as noticed above. As a matter of fact the irregularities and illegalities pointed out in the matter of allotment of shops as per the auctions of January, 2013 by the Krishi Utpadan Mandi Samiti,

Noida could not be explained by any of the learned counsels for the parties.

23. In view of the material noticed in the report of the SIT and the comments of the Chief Secretary as recorded above, the learned counsels for the parties agreed that the auction/allotment made in January, 2013 in respect of the newly constructed shops cannot be legally sustained.

24. We also examined the report of the SIT and the comments of the Chief Secretary in great detail. We are in agreement with the suggestions made by the Chief Secretary that on the face of the report of the SIT, there is little or no option but to cancel the auction of the shops as held by the Krishi Utpadan Mandi Samiti on 19th January, 2013 as well as to quash the allotment list dated 31st May, 2013. In view of the aforesaid conclusion and in view of the suggestion made in the matter of mode and manner of fresh allotment of the newly constructed shops and sthal at Sector 88, Noida District Gautambudh Nagar, we dispose of all the writ petitions with following directions:

(1) Auctions held on 19th January, 2013 for settling the shops constructed by Krishi Utpadan Mandi Parishad, at Sector 88 Noida, District Gautambudh Nagar are hereby quashed. The allotment made in accordance thereto falls automatically.

(2) Fresh auctions for grant of licences for the shops constructed by the Krishi Utpadan Mandi Parishad shall be undertaken by the District Magistrate, Ghaziabad himself and he shall not delegate his power to any other authority.

(3) The District Magistrate shall publish a list of persons, in whose favour, licences have been issued by the Krishi Utpadan Mandi Parishad, within two weeks of the receipt of the certified copy of this order. This list shall be notified on the notice board of the Mandi Parishad and a news item shall be published in the newspaper by the District Magistrate himself indicating to the public at large that such list of licencees is available on the notice board and any person interested may have a look of the same in the office of the Mandi Parishad.

(4) Any person, whose name is not mentioned in the list but claims to be a valid licensee, may file an application along with attending documents, (i) which may disclose his place of residence on the date the licence was granted in his favour, (ii) which may show that he was actually residing in the premises on the date the licence was prepared, (iii) which may establish that he had actually been doing business within the territorial limits of the Mandi Parishad and has paid requisite mandi fee.

(5) Any person disputing the inclusion of the name of a person in the list, for whatever reasons it may be, may file his objections in the matter of inclusion of name of such person in the list as also for questioning the grant of license within the same period, supported by such documents as he may be advised.

(6) The District Magistrate shall get the address of the licencees verified by some Senior Officer and he shall himself verify the genuineness of the licences granted

as well as the fact as to whether the particular licensee had been doing any business within the territorial limits of the Mandi Parishad or not between the period for which licence was granted is asked for till the date of earlier auction.

(7) The District Magistrate shall record his reasons in respect of each licensee separately either for holding them to be eligible to participate in the auction or for refusing such permission.

(8) After the final list is prepared, it shall again be published on the notice board and a date for auction shall be fixed after due advertisement in the newspapers.

(9) The minimum price of the shops to be put to auction shall be determined by the District Magistrate on the basis of the actual cost incurred for construction of the same, so that even a small shop owner may participate in the auction.

(10) After the auctions are completed and if any shop remain still available, it shall be open to the Mandi Parishad to settle the same by open public auction.

(11) All such licence holders, which are not provided shop in the auction, for whatever reasons it may be, and had deposited a sum of Rs. 20,000/- in the year 2001 and had actually been doing business continuously, shall be provided suitable place (Sthal) within the new Mandi Samiti premises for carrying on their business on terms and conditions to be fixed by the Mandi Samiti.

(12) Objections, which may be raised by the society in the name of style of Bhangale Phalva Sabzi Thok Vikreta Welfare Association, Noida, shall also be taken into consideration by the District Magistrate, while determining the eligibility of persons entitled to participate in the auction as well as in the matter of grant of place (Sthal).

(13) If the District Magistrate decides to score out the name of certain licensees holding them to be ineligible for participation in the auction, then such candidate would be at liberty to file a representation for his name being restored back within a week from the date the final list published, which shall be considered by the District Magistrate under a reasoned order.

(14) The entire exercise as aforesaid must be completed within three months of the receipt of the certified copy of this order by the District Magistrate, Ghaziabad.