

**(2012) 11 P&H CK 0011**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 9071 of 2009 (O and M)

Santosh Rani

APPELLANT

Vs

Chandigarh Administration and Others

RESPONDENT

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**Date of Decision :** 16-11-2012

**Acts Referred:**

**Citation :** (2013) 169 PLR 310 : (2013) 2 RCR(Civil) 591

**Hon'ble Judges :** Mahesh Graver, J

**Bench :** Single Bench

**Advocate :** Vipin Mahajan, for the Appellant; Sanjiv Ghai, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mahesh Graver, J.—The grievance of the petitioner is that she be given a licence to operate her small business at a Rehri site/shop No. 23, Sector 23-C, Chandigarh which was initially allotted to her father Sh. Ram Chander in the year 1971. Initially this licence pertained to running of a handcart and subsequently by virtue of the policy of the Administration, a Rehri site was allotted to the father of the petitioner. According to the terms of the licence it expired on 31st March of each following year of the its issuance and was thus required to be renewed annually. It is the conceded case that the licence was got renewed by the father of the petitioner till 1996. On 19.12.2001 the father of the petitioner died. The respondents, a week prior to his death, had initiated proceedings for cancellation of the licence on the ground that some other person other than the licensee had been round operating from the site. In the impugned order, a reference has been made to the notices which have been issued to the father of the petitioner on 13.2.2001, 23.1.2004, 4.2.2004, 16.2.2004 and 2.3.2004. An ex parte order was, thereafter, passed cancelling the licence of the father of the petitioner.

2. Upon coming to know of this order, the petitioner preferred an appeal before the Chief Administrator on 16.8.2007 which was dismissed on 26.8.2008.

3. Revision against this order was also declined.

4. Upon perusal of the material on record, it transpired that the respondents have been persuaded to take a stand against the petitioner on the following grounds:-

i) That the licence issued to the petitioner's father stood expired on 31.3.1996 and was not got renewed thereafter and hence the petitioner could not get the benefit of the earlier licence issued to the father of the petitioner.

ii) The legal heirs have got no right to use the site unless hand cart licence got renewed or transferred in their name.

iii) The petitioner was treated as a fresh applicant.

5. Learned counsel for the petitioner has contended with reference to Annexure P-11 and bye law 21 and 22 to contend that the Administration is vested with a power to grant a licence to the legal heirs of the original allottee in the cases of extreme compassion and hardship and that this power has been invoked liberally by the Administration but the benefit has been denied to the petitioner for no ostensible reason to substantiate this plea. The petitioner has appended documents indicating such allotment and transfer in favour of legal heirs of the deceased. Annexures P-9 and P-11 bear a testimony to that where Annexure P-9 is in favour of the widow of a deceased and Annexure P-11 is in favour of a daughter of one Krishan Lal who was an allottee.

6. If that be so, then I am of the opinion that the respondents have unfairly denied the concession to the petitioner. The reasoning that the licence stood expired in 1996 does not in any manner enamour this Court for the reason that the father of the petitioner continued to operate from this site uninterruptedly till 2001 without any question being raised by the Administration. The solitary attempt made prior to the death of the original allottee on 13.2.2001 was not followed up for atleast till the death of the father of the petitioner and it is subsequent thereto that repeated notices were sent which would have no meaning as they were issued to a dead person. The only notice of 13.2.2001 prior to the death of the petitioner's father would also be meaningless as it was not followed up atleast for 10 to 11 months and during which period the original allottee i.e. father of the petitioner died. The ex parte proceedings were, therefore, completely unwarranted in the given set of circumstances where no reasonable attempt was made to ascertain whether original allottee was alive or not.

7. Be that as it may, the fact remains that the father of the petitioner was a beneficiary of the licence since 1971 and therefore, after his death the petitioner being the daughter had reasonable legitimate claim to ask for a licence of her father. Bye laws 21 and 22 are extracted here below:-

21. Notwithstanding anything contained in these bye-laws the Adviser to the Administrator may on compassionate ground in case of extreme hardship grant a

handcart licence to any person who is otherwise not eligible under these bye-laws.

22. In case the licensee of a handcart dies or become incapable of running his business himself on account of his old age, infirmity, invalidity or any physical handicap, the Licensing Officer may, for reasons to be recorded in writing, grant a licence out of turn to his son or widow who fulfills the conditions for the grant of licence under these byelaws.

8. Evidently, the Administration has ample power to exercise its discretion which power they have been exercising in favour of certain persons as indicated in Annexures P-9 and P-11. It is not conceivable as to why such a power has not been exercised in favour of the petitioner and when confronted with this situation, learned counsel for the respondents vehemently stated that no extreme hardship was indicated in the case of the petitioner. If the orders Annexures P-9 and P-11 are seen then they do not reflect any reasoning noticing any "peculiarly strong hardship" faced by the allottees mentioned therein. It is thus clear that the Administration is adopting a policy of pick and choose in making an allotment when it suits them without any cogent reason and decline the same for equally no cogent reason. The Court, therefore, feels that the case of the petitioner has been unfairly dealt with and its concern was made evident to the learned counsel for the respondents on atleast 2 to 3 occasions when the matter was argued before it. According to learned counsel for the respondents intimation was sent to the Administration which has chosen not to budge from its stand. Accordingly this Court is of the view that the respondents-Administration has arbitrarily declined to exercise its power conferred by bye laws 21 and 22 and has been down right unfair. Writ petition is, therefore, allowed. Respondents are directed to re-consider the matter in the light of what has been stated above and grant the licence to the petitioner who is the daughter of an original allottee.