
(2011) 09 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5886 of 2009

Sood Brothers

APPELLANT

Vs

Union Territory, Chandigarh and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

General Clauses Act, 1897 — Section 26

Punjab Agricultural Produce Markets Act, 1961 — Section 10, 13, 20, 9

Citation : (2012) 1 ILR (P&H) 986 : (2012) 2 RCR(Civil) 171

Hon'ble Judges : K. Kantian, J

Bench : Single Bench

Advocate : Vikas Bahl and Chetan Mittal, with Kunal Mulwani, for the Appellant;
Parveen Gaur and J.R. Sayal, for the Respondent

Judgement

K. Kantian, J.

(1) The petitioner challenges the rejection of his application for renewal of licence as Kacha Aartiya under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called, "the Act"). The admitted case is that he had been a licensee since the year 1970 and he was running his business from SCF 27, Sabji Mandi, Sector-26, Chandigarh. The petitioner had been evicted by the landlord and he had entered into a fresh arrangement with another owner of SCF 12 in the same Mandi. The application was rejected on the ground that the renewal was not in respect of the same shop at SCF 27 but it was for shop SCF 12 and the rule did not permit the renewal when he has changed the shop to another premises.

II. Renewal of licence is a right; Change in place of business cannot be made under Rule 20; Renewal under Rule 21 for different place of business is not however barred

The learned counsel appearing on behalf of the petitioner states that the scheme of the Act and the relevant Rule under Rule 21 provide for a right of renewal and there was no scope for rejecting the relief only on the ground that there had

been a change of the premises where the business had already established. The learned counsel refers to the language in Section 10 that provides for application for licensees, which enables "any person" to apply to the authority specified u/s 9 for a licence. The counsel would refer to Rule 20, which enables a licensee to apply for marking addition or deletion in the particulars of business for which licence has been issued to him. This according to him would include a change in the premises also.

(2) The counsel for the petitioner, Sh. Vikas Bahl points out to certain instances where such changes have been made and produces before me the data collected through applications filed under the RTI Act. The counsel appearing on behalf of respondents No. 2 and 3 admits to such instances but he would argue that these were clearly irregularities and actions have been taken against officials, who were responsible for entertaining change in place of business in applications for renewal of licences under the Act. I would let it rest there and will not cite instances of such changes effected as governing the rights of the parties to entitle the petitioner to ask for a change of address, since the respondents No. 2 and 3 admit that their early actions were erroneous.

(3) Responding to the contention that the application could be entertained under the Rule 20, the counsel appearing on behalf of the Market Committee argues that the form of licence itself provides distinctly for two details, inter alia, namely, particulars of business for which the licence is valid in column no. 5 and place of business in column no. 6. The counsel would, therefore, contend the change in style and membership of the firm that Rule 20 contemplates and the marking of addition or deletion in the particulars of business for which a licence has been issued to him must be understood as any change in the particulars referred to in column no. 5. Consequently, a change in place of business, which is a distinct clause, cannot be accommodated in a petition for change as contemplated u/s 20. I uphold the contention and hold that the Mandi Board would be competent to state that it is not possible to make a change in the place of business in the existing licence issued u/s 10 or 13.

(4) I do not, however, rule out a right of renewal of licence, even if the licensee were to change the place of business within the market area. The form of licence contains the place of business. The application form for issue of licence also requires the particulars of form of licence to be filled. Issue of licence is done, sourced to the power u/s 10 of the Act. The relevant Rule 21 that allows for renewal of licence obtained u/s 10 or 13 contains no fetter to a licensee to obtain such renewal only by reference to a change of place of business within the notified area. Indeed a right to issue licence carries with it a right to make modifications or corrections, as provided u/s 26 of the General Clauses Act. The petitioner cannot be denied the right of renewal of licence only because in the form of application, a licensee has changed the place of business within the notified area. This ought to actually dispose the writ petition itself, upholding the petitioner's claim but a subsidiary issue relating to allocation in auction platform

turns out to be the actual theme to the dispute and it cannot be discarded. The petitioner feels aggrieved by the rejection of the claim for renewal and fights shy to make a fresh application only because, by such a process, he will be compelled to forsake his claim to the auction platform.

III. Renewal of licence carries with it right to allocation of right to auction platforms, if it already exists

(5) The learned counsel for the petitioner would point out that if the licence should be surrendered and a fresh licence were to be obtained, he would lose the seniority and as is wont to the Market Committee, they will secure an affidavit from the fresh licensee that he will not stake any claim for the auction platform. The petitioner as an old licensee, who has an auction platform carved out to him during the time when he was running a shop in SCF 27, will face the prospect of losing the auction platform, if a fresh application were to be filed. However, he would point out that his landlord, who is 5th respondent, did not himself suffer any such difficulty only by the fact that the officials were hand in gloves with the 5th respondent and applied a different yardstick to allot to him a space in the auction platform, even though persons, who had been granted licenses prior to the 5th respondent, were forced to give affidavits that they would not seek for any allotment in auction platforms.

(6) The Senior counsel Sh. Chetan Mittal appearing on behalf of 5th respondent denied this and he would argue that each shop is attached to a particular auction platform and if the petitioner had been evicted from SCF 27, the auction platform should be available only for the portion marked for SCF 12. The counsel would also show to me some instances of how when new licenses had taken by persons, who had other shops, they had also been allotted places in the auction platforms attached to the respective shops. For instance, in Sr. No. 8 M/s Banshtu Appel Company was reported to have been granted a licence on 16.08.2004 and he had been granted the auction platform attached to SCF 23. He would also cite several other licensees, who had been allotted auction platforms against specific SCFs on the grant of fresh licenses.

(7) Since the petitioner's grievance was only that if he was to surrender his licence and apply for a fresh licence, he might lose the seniority and he would be forced to forsake a claim for any allotment in the auction platform, I asked the counsel appearing on behalf of the Market Committee whether the petitioner would lose such seniority and whether he would be compelled to give an affidavit in the same manner as some of the new licensees have been forced to give for inadequacy of space for allotment of auction platforms. The counsel for the Committee was not prepared to give any assurance that any place in the auction platform would be given to the petitioner on the basis of seniority.

(8) The question would, therefore, be whether it is possible to predicate a particular area in a platform and attach it to the shop, which is specifically secured either as an owner or as a lessee. Although the counsel for the petitioner

began with this argument that it was possible for any person to be a licensee even though he may not have any shop within the Market Committee, the counsel for the 4th respondent pointed out and, in my view correctly, to the Licensing of Auction Platform Rules 1981 that spell out the conditions of eligibility and Clause 4(b) provides as follows:

4. Conditions of eligibility - Unless the Market Committee otherwise decide, the following shall be eligible for the grant of a licence of the auction platform and shet thereon:

(a) xxxxxxxx

(b) the holder of the licence referred to in sub-clause (a) above who actually carries on trade of fruit and vegetable, in any of the shops/sites allotted by the Estate Officer, Chandigarh for the trade of fruit and vegetable in the market area of Sector 26, Chandigarh.

There is therefore no doubt in my mind that the expression "any person" u/s 10 for grant of licence ought not to be seen without reference to the above rule insofar as a claim for an auction platform is made. A mere licensee, who does not have a shop cannot have a right to an auction platform. Since the dispute centres around the prospect of losing seniority and also a loss of entitlement to space in the auction platform, I would hold that a licensee cannot have a right to auction platform if he did not a right to a shop in some capacity either as an owner or as a tenant. In this case, however, it is not as if the petitioner does not have a shop within the premises. He has taken a lease of shop No. 12 and the claim for renewal itself is made only in respect of his business at shop No. 12. He cannot, therefore, be denied either the entitlement of a right of renewal of the licence or a right of allotment of space in auction platform, if he already held such aright.

(9) If the petitioner's entitlement for renewal cannot be denied and is also seen to be eligible for allotment of space in the auction platforms as per the rules then, the issue is whether the petitioner can apply for a renewal without forfeiting his claim to a space in the auction platform. I have gone through the provisions of the Act and the rules and they do not state anywhere that each shop will have a place predicated to a specific space in the auction platform. The requirements in the rules state no more than the necessity of having a shop in the premises. What space it shall be in the auction platform is not set out through any of the provisions of the Act or the rules. This assumes significance because there is admittedly a shortage of space in the auction platforms and, therefore, there has to be a workable policy to accommodate persons, who are the licensees. It is a matter of fact that licences have been given to number of persons without reference to the availability of space in the auction platforms. Therefore, there must be a restriction in the grant of fresh licenses, which are not in the nature of renewals so that the availability of space in the auction platforms is not an issue. If it is not possible to make such restriction, the only

method of addressing the issue justly shall be to attach the right to the auction platform on the basis of seniority on "first come, first served" basis. It is not perhaps the most ideal situation, but it is at least exigent to a reality of non-availability of space in the auction platforms. The "first come, first served" basis cannot be breached by contending that he will lose the right to the auction platform, the moment a licensee loses control over a particular shop and has perforce to move himself to yet another place within the Market area, such as when he is in occupation of shop as a tenant and he is evicted by his landlord. In this case, the typical situation that has emerged is that the petitioner, who had been a tenant, is evicted by the landlord and the landlord, who comes later, seeks to dictate to the tenant that even if he obtains a new shop in the premises, the earlier licensee, such as the petitioner may not stake a claim for retention of the auction platforms. If this were to be accepted, the tenant, who is a licensee, and who has an auction platform, may lose the auction platform. It would also lead to an absurd situation of when for any reason, the landlord ejects a tenant within the Mandi and does not himself want to take a licence as a Kacha Aartiya. If a place in the Mandi must be attached specifically to a particular shop then, the owner of the shop, who is not a licensee, will lock up a space in the auction platform without putting it to use and not making possible for any other licensee also to use the place. This will be grossly inequitable.

(10) There seems to be a recent attempt of the authorities to attach each shop to a space in the auction platform. So long as there are no rules or provisions in the Act any such attempt, which will prejudice the existing licence holders, it cannot be tolerated. Indeed, the Supreme Court has held in "Chint Ram Kaur versis State of Punjab" (1) that a licence granted under the Act and Rules entitles the licensee to run his business anywhere within the area of the Market Committee. It may be that a new licensee could use his own shop as an auction platform in a situation where no auction platform is available. There is however no justification to deny to an existing licensee who applies for renewal should lose his auction platform, if he already held one.

(11) The 5th respondent has filed CWP No. 12684 of 2009 challenging the allocation of auction platform to the petitioner in CWP No. 5886 of 2009 against Shop No. 27, since he has vacated and shifted to Shop No. 12. Having regard to my decision that a right to auction platform cannot be attached to a particular shop number, this writ petition has to be dismissed. The restraint sought against the writ petitioner in CWP No. 5886 of 2009 cannot also be granted, so long as the petitioner cannot be assured by the Market Committee of adequate alternate space in auction platform, commensurate with his seniority and the right that he has acquired.

V. Disposition

(12) The dispensation has, therefore, to be that the petitioner in CWP No. 5886 of 2009 cannot be denied as a right of renewal of his licence and his application for renewal under Rule 21, shall be granted for the shop SCF 12 without insisting

on any form of affidavit that he shall not have any space in the auction platform. The petitioner is entitled to retain the space which he has, till any other alternative policy comes through either an amendment in the Act or in the Rules, which shall duly take note of the existing rights which are reasonable and just. The writ petitions are disposed of with the directions as above.