
(2014) 05 P&H CK 0392

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4561 of 2014 (O&M)

Surjit Singh

APPELLANT

Vs

Chandigarh Administration

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Citation : (2014) 175 PLR 207

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Rajeev Anand, Advocate for the Appellant; Sanjiv Ghai and M.S. Jandiala, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Rajesh Bindal, J.—The petitioners have approached this court seeking quashing of the order dated 8.1.2014 (Annexure P-7), passed by the Commissioner, Municipal Corporation, Chandigarh (for short, "the Corporation"), whereby he recognised the preferential right of 43 persons for allotment of parking sites in front of showrooms on Madhya Marg, Sector 7-C, Chandigarh for sale of old cars on Sundays and 17 balance sites were to be allotted by following a transparent procedure. Learned counsel for petitioners submitted that the Corporation decided to allot parking sites in front of one showroom to one car dealer on payment of fixed charges for carrying on their business of sale of old cars on every Sunday. There are 60 showrooms. Out of that, 43 sites were being allotted regularly to same persons who claim themselves to be the members of Car Dealers Association (for short, "the Association"), whereas the petitioners were being denied the same right. For balance 17 sites, the allotment is proposed to be made by adopting a transparent procedure by inviting applications from all interested persons. The submission is that the aforesaid process is totally arbitrary. Once there were total 60 sites available, there was no question of giving preferential treatment to a set of persons and allotting the sites to them as a matter of right, whereas rest of them were sought to be allotted by

following a transparent procedure as if that procedure was not required to be followed for allotment of 43 sites. He further submitted that in this process, the Corporation is trying to create an unhealthy competition. Once all the persons are to carry on business at same place in terms of the permission granted by the Corporation, all are similarly placed. They have to be treated equally. The prayer is that whatever procedure is to be followed, the same should be uniformly applied for allotment of all available sites.

2. On the other hand, learned counsel for the Corporation submitted that sale of cars at the site in question was continuing much prior to the Corporation came into existence. Whatever procedure was being followed, the same was inherited by the Corporation and it continued with the same. Vide communication dated 12.11.2002, the rates were fixed to be charged from all the persons carrying on business at the aforesaid sites for every Sunday. On 25.11.2008, a resolution was passed providing that parking in front of one SCO in Sector 7, Madhya Marg, Chandigarh, one dealer shall be allowed to operate for sale and purchase of old cars. Vide resolution dated 25.4.2011, the amount to be charged from the dealers carrying on business on every Sunday was increased from Rs. 500/- to Rs. 2,500/-. The aforesaid increase was challenged before this court. However, finally the writ petition was dismissed.

3. He further submitted that for preferential allotment of 43 sites to the members of respondent No. 3-Association, there is no material available on the file. They were being allowed as they were continuing with the aforesaid business for quite some time. He further submitted that business is being permitted to be carried on at this place as the Administration is to locate proper site for shifting the same, however, the needful has not been done till date. While not disputing the fact that in the impugned order, the Commissioner of the Corporation himself noticed that there is no reason for giving preferential treatment to 43 persons, but still he did not take any corrective steps. He further submitted that in response to the advertisement issued calling for applications for 17 available sites, 70 applications have been received. The manner in which the allotment is to be made is yet to be decided. In terms of office note dated 28.2.2014, it can either be by way of auction or draw of lots. He further submitted that whatever procedure is followed, the same will continue for granting permission for every Sunday. He further submitted that the Corporation is not averse to the proposal for auctioning of all the sites to make the system more transparent. He further submitted that the Corporation is ready and willing to re-consider the entire issue and frame a comprehensive policy, however, for that the matter will have to be put up in the meeting of the Finance and Contract Committee and thereafter final decision will be taken.

4. Learned counsel for respondent No. 3 submitted that members of the Association were carrying on their business much before the Corporation came into existence. It is a registered society. Its members are being regularly allotted the sites for years together. It is considering their fair dealing. They have a

system to check that no unscrupulous person enters into business, who may indulge in sale of stolen vehicles. However, he submitted that the Association do not have any objection even if all the allotments are made by auction or by following uniform method.

5. Heard learned counsel for the parties and perused the paper book.

6. The case set up by the parties is that business of sale of old cars was being carried on from the parking in front of showrooms on Madhya Marg, Sector 7-C, Chandigarh much before the Corporation came into existence. Earlier no amount was being charged from them. However, later on, a system was devised that Enforcement Staff used to visit the sites on Sundays regularly and recover the charges on spot. The aforesaid procedure was modified with the approval of the Commissioner of the Corporation w.e.f. 1.12.2002 in terms of which charges were to be deposited in advance @ Rs. 500/- per Sunday plus service tax. This is evident from memo dated 12.11.2002 available in the file produced before the court. Though in the aforesaid memo, it is mentioned that car and scooter bazaar are being held at certain approved sites in Chandigarh on Sundays, however, learned counsel for the Corporation was not able to show any material on record, in terms of which the site in Sector 7-C was ever approved for sale of cars on Sundays. Thereafter, the matter was considered in 180th meeting of Finance and Contract Committee held on 25.11.2008, where following resolution was passed:

After meticulous deliberations, the Committee unanimously resolved that only one car bazaar shall be allowed in front of one show-room and only the area in front of that particular show-room would be allowed for parking cars for sale. The Committee further resolved that the matter be examined by the office and should be brought before the Committee in the next meeting.

7. A perusal of the aforesaid decision shows that one dealer was to be allowed to operate in front of one showroom. The matter was required to be examined by the office and put up in the next meeting, but nothing was produced to show that the same was ever put up in the meeting again with reference to the aforesaid decision. Next time, the matter was put up in 206th meeting of the Finance and Contract Committee held on 25.4.2011, in which fee for permitting the dealers to carry on business was increased from Rs. 500/- to Rs. 2,500/- plus service tax per Sunday. It was to operate till such time a lay out plan for new car bazaar was prepared at Hallomajra. The aforesaid resolution was challenged before this court in CWP No. 9358 of 2011-Sanjeev Kumar and others v. Chandigarh Administration and another, in which initially interim stay was granted, however, finally the writ petition was dismissed.

8. As emerges from the facts on record, it is undisputed that there are total 60 showrooms on Madhya Marg in Sector 7-C, Chandigarh, where temporarily car bazaar is being permitted to be operated, out of which 43 persons are being given permission regularly as a matter of right. These allottees are claiming themselves to be members of respondent No. 3-Association and operating for

quite some time. 17 balance sites remained vacant. The petitioners in the present case had earlier approached this court by filing CWP No. 26494 of 2013. The grievance was that the legal notice got served by them had not been responded, wherein the petitioners claimed that they should also be allotted space out of balance 17 sites, but the needful was not done. The aforesaid writ petition was disposed of by this court on 3.12.2013 with a direction to the Commissioner of the Corporation to dispose of the legal notice within one month from the date of receipt of a copy of the order. As a consequence thereof, the impugned order dated 8.1.2014 was passed, which has been impugned in the present petition.

9. In the impugned order, it has been admitted by the Commissioner that 43 members of respondent No. 3-Association had been applying and getting permission to run their business regularly, whereas there was nothing available on record to show that any decision was taken ever to allow only the members of the Association to carry on the business. Despite the fact that the Commissioner of the Corporation in his order opined that transparency should always prevail and monopoly should be discarded and further that no vested right exists in 43 members of respondent No. 3-Association to use the parking space to the exclusion of others, but still he did not proceed further to take any corrective action and left the matter merely by noticing that as practice was going on since long, he is not inclined to mix up the issue. It is further noticed in the aforesaid order that 17 sites are still available against which the petitioners' claim can be considered, but in his opinion, the petitioners could not be given any preference for allotment of those sites. Even though he observed that equal opportunity is required to be given to all concerned in the process of allotment, but still he restricted the same to allotment of merely 17 vacant sites for which it was observed in the impugned order that transparent procedure be followed.

10. The approach of the Commissioner is not appreciable. Once the Commissioner of the Corporation had come to the conclusion that there is no right vested in 43 members of respondent No. 3-Association to have allotment of sites to carry on the business of sale of old cars on every Sunday, there was no question of them being allowed to continue and only 17 vacant sites are to be allotted by adopting a transparent procedure. The Corporation came into existence in the year 1994. It is claimed that system of car bazaar was continuing even prior to the existence of the Corporation. Meaning thereby, it is almost more than two decades old, but still as the facts on record suggest, except ad hocism, no proper policy has been framed, as nothing has been produced before the court. Initially, no amount was being charged. Then some staff of Enforcement Wing used to go on site every Sunday and collect the fee. With effect from 1.12.2002, the rate of Rs. 500/- per dealer per Sunday was fixed, which was revised to Rs. 2,500/- vide resolution dated 25.4.2011.

11. Another fact, which is important, is that though the Corporation always claims that it is short of funds, still in the case in hand, on account of non-

framing of proper policy for allotment of sites for carrying on the business for sale of old cars, the Corporation was certainly suffering in collection. Despite the fact that on 25.11.2008, a resolution was passed to allow one dealer in parking in front of one showroom on Madhya Marg, Sector 7-C, Chandigarh, which are 60 in number, but still till date only 43 persons were being permitted to carry on the business. 17 sites were not allotted. The Corporation continued to suffer loss on this account for the last more than 5 years, but no body ever thought of taking care of this. Even in the resolution dated 25.11.2008, the office was directed to examine the issue and put up the same, but nothing has been produced on record to show that the matter was put up again on that issue.

12. I do not find any justification in the action of the Corporation in allowing 43 members of respondent No. 3-Association as a matter of right to carry on the business of sale of old cars on every Sunday on payment of fixed fee of Rs. 2,500/- plus service tax, whereas balance 17 sites are to be allotted either by way of auction or draw of lots. Once some rights were being conferred on different persons in the same area, there was no question of applying two methods for allotment thereof. All have to be treated equally. The action of the authorities smacks of total arbitrariness. The Commissioner of the Corporation despite admitting all the facts in his impugned order did not propose any corrective steps, rather, in a way it was nothing else but shirking in his duties. The petitioners may or may not have raised the issue in their legal notice, but when the matter came to the notice of the Commissioner that 43 members of respondent No. 3-Association did not have any preferential right, he should have taken a comprehensive decision to bring more transparency in the process of allotment of sites for carrying on business of sale and purchase of old cars. Though, it was offered by learned counsel for the Corporation that the Corporation is ready and willing to review the entire process, however, seeing the past conduct, where they have been sleeping over the matter for last about two decades without taking proper steps to bring transparency in allotment of sites for sale of old cars, I do not find that the offer made is bona fide. The effort is to delay the process.

13. Considering the aforesaid factual matrix, in my opinion, the only mode for the allotment of any site for carrying on commercial activity, is by way of auction. The same process should be followed by the Corporation. A comprehensive policy be framed and approved without any delay and the allotment of sites be completed by the end of June, 2014.

14. While framing the policy, it should be taken care of that once the allotment is being made by way of auction, the permission should be for certain specified period and not for every Sunday. Besides other things, it should also be ensured that the licence/permission is granted to the persons who have some credentials and take care of the fact that bona fide buyers are not cheated with the sale of stolen vehicles. The members of respondent No. 3-Association cannot be permitted to claim preferential right for allotment of 43 sites. As an interim

measure, till such time the allotment of all the sites is done by way of auction to be operative from 6.7.2014, being Sunday, the Corporation should invite applications from all interested persons for granting permission to carry on their business of sale and purchase of old cars for all Sundays till 29.6.2014 and in case the applications received are more than the number of sites available, the allotments be made by draw of lots. Fee should be collected in advance.

The petition stands disposed of.