

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)

Description of case

Writ Petition No. 1097 of 2004 (M/B)

Date of decision: 30th of November, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)
- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1097 of 2004 (M/B)

The Arathi Association Niranjampur
Sabzi Mandi, Distt. Dehradun,
Through its Secretary Jitender Anand,
R/o 192, Engineers Enclave,
Phase I, GMS Road,
Disttt. Dehradun and others Petitioners

Vs.

Krishi Utpadan Mandi Samiti
Through its Secretary,
Dehradun, Uttaranchal and others..... Respondents.

Mr. L.P.Naithani, Senior Advocate i/b Mr. Sharad Sharma, learned counsel for the petitioners.
Mr. J.C.Belwal, Mr. R.K.Shah and Mr. M.S.Pal, Advocates, learned counsel for the respondents.

Coram: Hon. V.S.Sirpurkar, C.J.
Hon. Rajesh Tandon, J.

Dated: 30.11.2004.

[Per Hon. the Chief Justice]

1. Heard learned counsel for the parties.
2. An Association called Arathi Association Niranjanpur Sabzi Mandi, Distt. Dehradun alongwith ten others, who appear to be licensees of Krishi Utpadan Mandi Samiti, have come up before us in this writ petition. The petitioners assail an order dated 19.06.2004 passed by the second respondent- State of Uttaranchal through its Director (Mandi), Uttaranchal Krishi Utpadan Mandi Parishad, Dehradun, by which the allotment of the shops allotted to these petitioners and some others, has been cancelled. A further prayer is for a direction to execute the deed of allotment in pursuance to the allotment order dted 24.07.2004 and to provide all the facilities to which the said allottees would be entitled.
3. Shortly stated, the case of the petitioners is that they had field a writ petition no. 477 of 2004 with a prayer of mandamus commanding the respondents to pass an order of allotment of shops and to handover

possession, and this Court virtue of direction dted 19.07.2004 had directed the respondents to pass an order of allotment, in case if the other allottees, in pursuance to the decision of the allotment committee had already been granted possession. It is further pointed out that in pursuance of that order, an order of allotment came to be passed on 27.04.2004. Their case is that they were even handed over possession of the respective shops and the rent was also accepted from them for those allotted shops. Through, this was done when the writ petition no. 477 of 2004 was taken up for hearing. The said writ petition was disposed of as infructuous because of the allotment made, but at that time, it was pointed out to the Court that there was a fresh order of cancellation of allotment, dated 19.06.2004, whereupon it was pointed out that the challenge to that order would be entirely on independent cause of action, and as such the petitioners field this fresh petition challenging the order dated 19.06.2004.

4. Amongst the other contentions raised in the writ petition, the main challenge is that the order dated 19.06.2004 has been passed without any opportunity to the petitioners and also that the said order was actuated with political malice. It is also the further case of the petitioners that the authority, which passed the order, had no powers to do so and, therefore, the impugned order of the concerned authority is non est. The petition more or less, gives history of the controversy, which relates to the construction of 52 shops (30 shops and 22 sheds), for which 80 applicants were staking their claims. It is then pointed out that after the construction of these shops, they remained unallotted by the allotment committee, which allotment committee was formulated by the Board. There are a number of issues raised and the petitioners claimed that since right has been created in their favour, the cancellation is wholly illegal. It is pointed out that the allotment was made to two persons and perhaps because of that this Court was persuaded to pass an order to make allotment to the others also. The petitioners also suggested that though the Secretary passed order on 24.07.2004 and possession was given and rent was also accepted, yet the cancellation exercise was on and had not been terminated. It is also the case of the petitioners that there were some

political motives involved, firstly of not allotting the shops at all and then continuing in the cancellation of the allotment.

5. As against this respondents and more particularly, Secretary Mandi Samiti, Niranjanpur, Dehradun, has emphatically denied the allegation. The secretary points out that it is necessary that the prior approval of Director, Mandi Parishad is obtained before handing over the possession of the shops, and more particularly with regard to petitioners nos. 2 to 10, no such permission was taken by the then Secretary, Nandi Samiti before delivery of the possession. It is pointed out and reiterated that the allotment order was cancelled on 19.06.2004, but the then Secretary did not bring this fact to the notice of the counsel at that time of preparation of the counter affidavit to the earlier writ petition no. 477 of 2004 and, therefore, this fact could not be mentioned in the counter affidavit, which ultimately resulted in a direction being issued by the Court to make the allotment and to put respective petitioners in possession. It is then pointed out that the cancellation was a foregone conclusion. It is also pointed out that the petitioner no.11 M/s Bhawani Fruits had already filed another petition, which petition was registered as writ petition no. 521 of 2002 (M.B.) and in that petition, shop no. 24 was reserved for petitioner no. 11. It is also pointed out that a suit was filed for permanent injunction against the respondent no.1 in the Court of Civil Judge (Junior Division), Dehradun on the ground that there was no need of construction of new shops, which suit was registered as civil suit no. 520 of 2001 filed by Aarthi Association, Dehradun. That suit was dismissed. Ultimately, the Mandi Samiti went ahead with the construction and completed the construction of the shops.

6. In short, the contention of the respondents was that the existing licence holders, who were doing business, some how or other, wanted to stop any other persons coming to Mandi Samiti, to monopolise the business in the Mandi area. It is further contended that since there were complaints against the decision of allotment committee and since some of the aggrieved persons approached the State Government, the State

Government had directed Additional Secretary (Agriculture) to inquire into the whole matter, who by his letter dated 27.09.2003 had directed the Secretary, Mandi Samiti to submit the report and had stayed further proceedings of allotment. The said report was submitted on 07.10.2003, and it was recommended that in the public interest, the allotment order dated 26.05.2003 should be canceled. A copy of the report is also filed alongwith the counter affidavit.

7. It is then pleaded that the Additional Secretary submitted his inquire report and found that except the allotment in respect of shop nos. B-33 and B-34, which have been purchased under the hire purchase agreement by M/s Girsih Kuamr Sparsh Kumar and Vidya Sagar and sons, all the rest of the allotments were improper and recommended cancellation of all the allotment in favour of the petitioners nos. 2 to 11. It was then pointed out that petitioner nos. 2 to 11 already has shops in the Mandi area in the name of their family members and, therefore, it was categorically denied that any right was created in favour of the petitioners and particularly in view of the fact that the said allotment was not approved and finalized by the Director, Mandi Samiti. In para 17 of the counter affidavit, it is specifically denied that the possession of the shop was not delivered on account of any political interference or at the behest of the politicians. It was reiterated that the inquiry was pending before the Secretary (Agriculture), who had stayed the delivery of possession, therefore, the possession was not given. It was pointed out that mention made by the petitioners that one Mr. Harish Rawat, Hon'ble Minister of Agriculture was responsible for cancellation of allotment, was completely out of place sine Mr. Harish Rawat, was not and had never been Minister of Agriculture. In para 22, it is again reiterated that the inquiry was conducted by an officer of the rank of Additional Secretary, who after through inquiry came to the conclusion that there were irregularities in the allotment order dated 26.05.2003 and that the order dated 19.06.2003 was passed by the Director Mandi Parishad on the basis of the inquiry report dated 31.10.2004.

8. From these rival pleadings, one thing is certain that the very basis of the claim of the petitioners is the initial allotment order dated 26.05.2003. We will not go on that controversy at all in view of the terrible confusion caused on account of the pleadings of both the parties. We are surprised that the order dated 19.06.2004 was not brought to the notice of the Court when the Court passed its direction in writ petition no. 477 of 2004. Be that as it may, now the question is whether the order dated 19.06.2004 cancelling the allotment dated 26.05.2003 is correct or not.

9. In the debate before us, it became apparent that though the initial allotment was made in favour of the petitioners, and though ultimately as per the stand of the respondent Mandi Samiti, the said allotment order stood cancelled on account of the inquiry report, which was made by the Additional Secretary, at no point of time, the allottees were ever heard and were afforded opportunity to represent their case. We say nothing against the inquiry report or whether that inquiry was conducted under the provisions of U.P. Krishi Utpadan Mandi Adhiniyam, 1964. We are particularly concerned with the powers of the Board, which Board has almost complete supervision over the Mandi Samiti. Therefore, if in the matter of allotment, an inquiry was made, there as no question of finding any fault with the authority of the Additional Secretary, who held the inquiry. It could be in the nature of an internal inquiry also. Further, if there was an order dated 26.05.2003 making the allotment in favour of the petitioners, they were certainly entitled to be heard before the allotment in their favour was decided to be cancelled on factual grounds. We have seen the whole inquiry report. It is reiterated therein that the persons, who were also carrying on business there, had only managed to get the shops allotted in favour of their relations alone. In short, some fictitious firms were floated in by these persons so as to monopolise the business in the market area. It is precisely on this issue, it was found that the allotments in favour of the 21 shops were liable to be cancelled and some other allotments were liable to be suspended. So far so good, however, before cancelling the allotments, the principles of natural justice

required that the allottees or the proposed allottees as the case may be, were bound to be heard and were bound to be given an opportunity to show cause as to why their allotments should not be cancelled. This would be the basic requirement. This is apart from the provisions of section 17 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, which provides that before cancellation of licence, there has to be an opportunity given to the affected person. By these allotments, the *Mandi Samiti* would be creating licences in favour of these allottees to do their business from these shops. Therefore, in our opinion, it was incumbent that some hearing should have been given or at least an opportunity was given to these allottees before entering into the exercise of cancellation of the allotment order dated 26.05.2003.

10. Fortunately, during the debate, Mr. Belwal, the learned counsel for the Mandi Parishad, very fairly agreed to hold an inquiry by giving an opportunity to the petitioners to be heard and then to pass the orders. Though the inquiry report is the joint inquiry report, each case has been dealt with individually. Therefore, we also did not want to entertain the joint petition on behalf of the petitioners. After all the facts in case of each of the petitioners could have been different. However, instead of dismissing the petition on technical ground, we entertained the petition so as to take care of the basic contention of the petitioners that they were bound to be afforded with an opportunity to be heard before any adverse action was taken against them by Mandi Samiti, such as cancelling of the allotments in their favour. Now, since the Mandi Samiti has agreed to afford them hearing, we set aside the order dated 19.06.2004 on this basis, but with an observation that the Mandi Samiti would be free to pass any such individual order against individual allottee as it deems fit, in case it comes to the conclusion that the allotment was unfair or the allotment was bad. So also the petitioners would be entitled to raise all the questions regarding the political *mala fide*, absence of power and incorrect procedure to cancel the allotment, before the concerned authority. It will be better that this exercise of hearing is done by Director, Mandi Samiti. The petitioners have also no objection to his course being taken. The

Director, Mandi Samiti, shall give opportunity to the petitions and to such other allottees in whose favour they have propose to cancel the allotment. They should be given full opportunity to be heard, if they so wish. The whole exercise shall be competed within six weeks from today. The learned counsel for the respondents assured us that the time schedule directed by us would be very strictly adhered to.

11. Status quo as it prevails today shall continue till the passing of the order. With this, the writ petition is disposed of.

(V.S.Sirpurkar, C.J.)

(Rajesh Tandon, J.)

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