

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

C.W.P. No. 18176 of 2007

Date of Decision: April 30, 2009

M/s Krishan Kumar Rohtas Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE H.S. BHALLA

Present: Mr. Rakesh Nehra, Advocate,
for the petitioners.

Ms. Ritu Bahri, DAG, Haryana,
for respondent No. 1.

Mr. C.B. Goel, Advocate,
for respondent Nos. 2 to 4.

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporters or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

M.M. KUMAR, J.

The petitioners have approached this Court by filing the instant petition under Article 226 of the Constitution for quashing Survey Report in respect of Subzi Mandi, Charkhi Dadri, dated 20.11.2007 (P-13) and declaring them in-eligible for allotment of shop plots being old licencees of Category (ii) (*katcha arhtiya*) under the provisions of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for brevity, 'the 2000 Rules'). A further prayer has also been made for directing the

respondents to allot shop plots to the petitioners on preferential basis on reserve price in the New Vegetable Market, Charkhi Dadri treating them eligible. The basic issue raised is 'whether the petitioners are required to have licence as *katcha arhtiya* for five years on the last date fixed for submitting application, which was 14.11.2007, or it is completion of five years as on 1.1.2000, which would expand the original period of five years to 12 years'.

2. Facts lie in a narrow compass. The petitioner firms are engaged in the business of Commission Agent (*katcha arhtiya*) in Charkhi Dadri Town for different period. The petitioners have claimed that they are Category (ii) licence holder for doing the business of *katcha arhtiya* under Section 10 of the Punjab Agricultural Produce Market Act, 1961. They have been issued licences from time to time on payment of requisite fee as per provisions of Rule 17(6) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (P-1 to P-11). Some of the petitioner firms are stated to be doing their business for more than 10 years regularly.

3. On 8.10.2007, the Chief Administrator, Haryana State Agricultural Marketing Board-respondent No. 3 sent a communication to the Estate Officer-cum-Secretary, Market Committee, Charkhi Dadri-respondent No. 4 in relation to allotment of shop plots on preferential basis on reserve price to the eligible old licencees of category (ii) (*katcha arhtiya*) in the New Vegetable Market, Charkhi Dadri under the provisions of the 2000 Rules (P-12). The eligibility of old licencees was to be determined by the Allotment Committee. Accordingly, respondent No. 4 was asked to inform all the old licencees of category (ii) (*katcha arhtiyas*) working in the old

notified market yard and to invite applications on Proforma-‘A’ appended with the 2000 Rules and to determine their eligibility as per the provisions of Rule 3(1) of the 2000 Rules. After ascertaining eligibility, the list of eligible licencees was to be sent to respondent No. 3. In the letter dated 8.10.2007, detailed programme for conducting the draw of lots was also given, which shows that 14.11.2007 was the date by which the old licencees of category (ii) were required to submit their applications in Form-‘A’. Their eligibility was to be determined by 19.11.2007 and the list of eligible old licencees was to be displayed by 23.11.2007. The applicant could file objections upto 28.11.2007 and speaking orders by the Allotment Committee after considering objections, were to be passed upto 3.12.2007. The draw of lots was to be held on 7.12.2007.

4. The petitioners submitted their applications to respondent No. 4, who after conducting a survey on 16.11.2007 and 17.11.2007 in the Subzi Mandi, Charkhi Dadri, prepared a Survey Report alongwith list of eligible and in-eligible firms (P-13). All the petitioners were considered as in-eligible and against their names, in the column of ‘Description’ it has been mentioned that ‘Ineligible Licence after 1.1.95’.

5. The allotment of plots is regulated by the 2000 Rules and the basic reason for declaring them ineligible is that they do not fulfil the requirements of clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules (P-14), which postulates that only those category (ii) licencees would be eligible for allotment of plots who had valid licence of two years on the date of first auction in the case of mandis where some auctions have already been held, whereas in the case of already

developed mandis where no auction have been held the licencees are required to have valid licence of category (ii) for at least five years as on 1st January, 2000. The said clause further prescribes that in the case of mandis to be developed in future, the licensee should have at least two years licence of category (ii) on the date of issuance of notification under section 4 of the Land Acquisition Act, 1894 (Act of 1894) or on the date of transfer of land to the Market Committee, if the land is obtained otherwise as the case may be. Clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules was further amended on 1.9.2008. However, the amendment would not govern the issue of allotment of plots as the last date for submission of application in the instant case was 14.11.2007.

6. The grievance of the petitioners is that they have been rendered ineligible for allotment of the sites in the New Vegetable Market under Rule 3 of the 2000 Rules, on the ground that their licences were not five years old on 1.1.2000 i.e. the date prescribed in the 2000 Rules although they fulfilled the eligibility condition of five years on the last date of submission of applications. They have submitted that fixation of date 1.1.2000 is wholly superfluous having no rationale with the object sought to be achieved.

7. In the written statement filed on behalf of respondent Nos. 2 to 4 the factual position as noticed above has not been denied. However, the respondents have justified rejection of the eligibility of the petitioners asserting that they do not fulfill the requirements of Clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules.

8. It is apposite to notice that while issuing notice of motion, this Court, vide order dated 30.11.2007, directed that the

draw of plots to be held will be subject to further orders of this Court. On 11.2.2009, respondent Nos. 3 and 4 were directed to file an affidavit explaining as to how many sites have been reserved/earmarked in the New Vegetable Market, Charkhi Dadri for the old licencees and as to how many out of them have already been allotted. In compliance to the said order, the Executive Officer-cum-Secretary, Market Committee, Charkhi Dadri-respondent No. 4 filed an affidavit dated 17.3.2009. In para 2 and 3 of the affidavit it has been pointed out that in the new vegetable market 47 shop plots were carved out. There were 34 licencees in the old vegetable market, who all have applied for allotment of plots in the new vegetable market and out of them only 20 were found eligible under the 2000 Rules. They have already been allotted the shop plots in the New Vegetable Market. Out of remaining 14 applicants whose applications were rejected, 13 approached this Court by filing instant petition and two other writ petitions, namely, C.W.P. No. 18891 of 2007 and 138 of 2008. It has been further mentioned that the remaining 27 plots were to be disposed of by open auction. In para 4 of the affidavit it has been mentioned that no plot was reserved/earmarked for the old licencees in the New Vegetable Market. Keeping in view the aforesaid position, this Court directed the respondents to reserve eleven plots for the petitioners of instant petition, vide order dated 17.3.2009. At the hearing, Mr. C.B. Goel, learned counsel for respondent Nos. 2 to 4 has stated that no draw of lot for the remaining 27 plots was held because the result of the instant petition was being awaited.

9. The colossal development and manifold increase in food

grains has necessitated construction and development of new market areas. In their endeavour to develop new market areas, the old established traders are required to be rehabilitated. Hon'ble the Supreme Court in the case of **Labha Ram and Sons v. State of Punjab**, (1998) 5 SCC 207, while interpreting the provisions of Punjab New Mandi Townships (Development and Regulation) Act, 1960, has laid down that the Government has inherent obligation to provide sufficient accommodation to all the existing licenced dealers having regard to the handicaps they suffered due to creation of the new market area. The aforesaid obligation could not be deemed to be discharged merely by allowing them to compete with the new entrant to the trade of food grains. It has been held that the Government may fixed a reasonable rate above the reserved price for such old licenced dealers.

10. By keeping in view the aforesaid object, it appears that the 2000 Rules have been framed by exercising powers under Section 43(1)(2)(iv) read with Section 18 of the Punjab Agricultural Produce Markets Act, 1961. The 2000 Rules provides rehabilitation of displaced old licensee and certain conditions to make them eligible for allotment of shops have been laid down. In the instant petition we are concerned with category (ii) licensee. Apart from other conditions, clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules has created a peculiar situation which has resulted in filing of the instant petition. In order to appreciate the controversy, it would be necessary to extract Rule 3(1)(iii) of the 2000 Rules, which reads thus:-

“3(1) All immovable properties in the markets developed

by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shops category (ii) of old market which is to be denotified, resulting in displacement of such licenced dealers of category (ii) on free hold basis for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) & ii) xxx xxx xxx

(iii) only those category (ii) licencees shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auction have so far been held the licencees should have valid licence of category (ii) for at least five years as on 1st January, 2000. In the case of mandis to be developed in future, the licence (licencees?) should have at least two years licence of category (ii) on the date of issuance of notification under section 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise as the case may be.”

11. A perusal of the aforesaid Rule shows that only those

category (ii) licencees are to be eligible for allotment of shops in case of already developed mandis that they should have valid licence of category (ii) for at least five years. The Rule further requires that the condition of five year licence must be fulfilled on or before 1.1.2000. In other words the petitioners who have applied in response to the circular issued to the old licencees must have licence on or before 1.1.1995. The communication has been sent to the petitioner in the year 2007 and the last date of receipt of applications was fixed as 14.11.2007. In other words, the period of five years provided in the Rules has been blown up upto 12 years merely because the date of 1.1.2000 has been fixed. The Rule makers cannot be imputed the intention that they wanted a static date of eligibility by which an applicant should fulfil a particular period of time. If such an intention is imputed to the framers of the Rules then every time applications are invited on the establishment of any new mandi then to become eligible a category (ii) licensee has to have licence on or before 1.1.1995 irrespective of the fact in which year the applications are being invited. The fixation of such a static date for determining the eligibility of a person would result into unjust and unfair consequences. A number of persons who have otherwise fulfilled the necessary requirement of completion of five years of holding licence of category (ii) would be rendered ineligible merely because they had obtained licence after 1.1.1995. It is true that some cut of date is required to be fixed but the same has to answer the basic requirements of Article 14 of the Constitution that it is not arbitrary. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. Such a classification must satisfy the twin

tests, namely, (a) that the classification has been founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (b) that differentia must have a rational nexus to the object sought to be achieved by the statute in question. When we examine clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules, it becomes evident that the object of the aforesaid condition of eligibility is to ensure that only authentic old and established *Katcha Arhtiyas* are granted the benefit of allotment of shops who have remained in business for sufficiently long time. It is with the aforesaid object that the Rule provide for five years old licence. The period of five years cannot be determined by fixing a date of 1.1.2000 when the applications themselves are invited in the year 2007. In order to answer the twin test of Article 14 of the Constitution it has to be shown that those like the petitioners, who are left out of the group of eligible persons, constitute a distinct class from those who are grouped together by making them eligible. Such a classification is required to be founded on an intelligible differentia. The petitioners fulfilled the condition of five years like those who also fulfilled the condition of five years having licence on or before 1.1.1995. There is no intelligible differentia to create the classification between two categories by providing a superfluous date for determining the eligibility. There can be no rational nexus with the object of this legislation which aims at rehabilitating the 5 years' old licencees. If we take the instance that 1.1.2000 has been fixed and a licensee in order to become eligible must have five years old licence of category (ii), in such a case, in the year 2007 he would, in fact, have to require licence of 12 years.

12. It is well settled that if the fixing of a cut of date is arbitrary and violative of Article 14 of the Constitution then such a provision cannot be sustained. In that regard we may place reliance on a judgment of Hon'ble the Supreme Court in the case of **D.R. Nim v. Union of India**, AIR 1967 SC 1301. A 5-Judge Constitution Bench did not approve fixing of 19.5.1951 for the purposes of granting benefit of their continuous officiation in senior post. As a consequence, Superintendents of Police who were officiating earlier to that date were deprived of reckoning the earlier officiating period. Finding no justification for fixing the aforesaid date, the Constitution Bench in para 9 held that it was an artificial and arbitrary date having nothing to do with the application of the statutory rules. Hon'ble the Supreme Court further laid down that the Central Government could not *'pick out a date from a hat - and that is what it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government'* for the purposes of reckoning the earlier service. Therefore, we are of the view that fixing of date in the present case is wholly artificial in the context of allotment of shops in the year 2007. Such a date could not be sacrosanct for all times to come because it would become capricious and whimsical. Moreover, we find that the rule makers after realising the situation created by clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules, has amended the said rule on 1.9.2008 and substituted the same, which reads thus:-

Amended Clause (iii) of sub-rule (1) of Rule 3:

“(iii) Only those category (ii) Licencees shall be eligible for allotment of plots who had valid license of four years

on the date fixed for inviting applications for draw of lots”.

13. A perusal of the aforesaid amended rule would show that a plain period of four years of holding of valid licence has been provided which is to be determined with reference to the date fixed for inviting the applications for draw of lots. Therefore, the rule makers have themselves rectified the situation by incorporating the amendment. The date to determine the eligibility has been deleted.

14. The question then is how to resolve the controversy in hand. It appears to us that the substantive part of the rule can be saved which would answer the subscription of Article 14 of the Constitution. The doctrine of '*severability*' has to be applied in order to chop off the offending portion. The aforesaid doctrine was laid down by the Constitution Bench of Hon'ble the Supreme Court in the case of **State of Bombay v. F.N. Balsara**, AIR 1951 SC 318. Hon'ble the Supreme Court has also laid down that the doctrine of '*severability*' can be safely applied when it is not possible to read down the provision. The aforesaid observations have been made by Hon'ble the Supreme Court in the case of **Punjab Dairy Development Board v. Cepham Milk specialities Ltd.**, (2004) 8 SCC 621. Keeping in view the object of the 2000 Rules, background fact which has resulted in framing of the Rules and the observations of Hon'ble the Supreme Court in the case of **Labha Ram and Sons (supra)**, we feel that the date of 1.1.2000 has to be severed from the rules more so when the rule makers themselves have dropped the date and year for determination of eligibility of a licensee for allotment of a shop in a new market area. Accordingly, we declare that the words

‘as on 1st January, 2000’, appearing in clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules, are arbitrary and offend Article 14 of the Constitution and, therefore, they are severed from the rest of the Rule and the ‘.’ (full stop) has to be put after the words ‘five years’. Having held in the aforesaid manner, the general principle of law would apply and a licensee of category (ii) is required to have a valid licence for at least five years on the last date of submission of application. The aforesaid policy has also been followed by the rule makers when they amended the rule on 1.9.2008.

15. When the principle as laid down in the preceding para are applied to the facts of the present case then it becomes evident that petitioners Nos. 1 to 7 and 11 are found to be eligible as they had five years old licence of category (ii) preceding the last date of submission of applications i.e. 14.11.2007, as is evident from the survey list (P-13). However, petitioner Nos. 8, 9 and 10 are not eligible because they were issued licences on 7.12.2002, 13.12.2002 and 20.12.2002 respectively. Accordingly, the cases of the aforesaid petitioners would deserve consideration at the hands of the respondents for allotment of shops in the new mandi area. It may be clarified that we have determined the eligibility only in terms of clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules and the eligibility of these persons shall be subject to fulfillment of other conditions as per law.

16. As a sequel to the above observations, the writ petition is allowed. Petitioner Nos. 1 to 7 and 11 are declared eligible in terms of clause (iii) of sub-Rule (1) of Rule 3 of the 2000 Rules. If they are found eligible in all other respects as per Rules, their cases be

considered for allotment of shops alongwith others. As the respondents have been awaiting the result of this petition, we deem it just and appropriate to direct that the needful shall be done within a period of two months from the date of receipt of a copy of this order.

17. The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

April 30, 2009

(H.S. BHALLA)
JUDGE

Pkapoor