

28.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8924/2009

Date of decision: 16th September, 2009

M/S TARAN SINGH MANOHAR SINGH & ORS. Petitioners
Through Mr. M. Mohsin Israili, Advocate.

versus

GOVT. OF NCT DELHI & ORS. Respondents
Through Ms. Jyoti Singh, Advocate for respondent
No. 1.
Mr. Ajay Bhatnagar, Advocate for respondent
Nos. 2 to 4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

ORDER

%

1. By resolution dated 17th November, 2004, Agricultural Produce Marketing Committee, Shahdara had accepted the request of the petitioner-M/s Taran Singh Manohar Singh and Sons for grant of category B licence. Before according the approval, Agricultural Produce Marketing Committee noticed the following facts:-

" Smt. Gurdeep Kaur W/o Late Sh. Taran Singh R/o 197/4, Telewara, Shahdara, Delhi has submitted a representation stating that her husband had a shop in the name of M/s Taran

Singh manohar Singh & Sons at 1024/5, New Subzi Mandi, Shahdara in the year 1981. He applied for licence in the year 1982 and deposited licence fee and security amount in the sub yard of APMC Azadpur. However he expired in the year 1983 and thereafter his sons were looking after the business and deposited market fee in the sub yard of APMC Azadpur & APMC Shahdara till the year 2000 except the years 1984, 1985, 1987, 1992 and 1996 as no business was done due to riots and family problems. Renewal of licence fee for the year 1984-85 and 1985-86 was also deposited in the sub yard of APMC Azadpur.

2. The matter was got examined by APMC Shahdara and it is observed that the sub yard of Shahdara was under APMC Azadpur till 1992 and thereafter it came under the jurisdiction of APMC Shahdara. The business carried out and market fee deposited till the year 2000 were confirmed by the Committee. The said shop was removed by DMRC in the year 2000, therefore no business was carried out after the year 2000. A copy each of the letter dated 29.8.03 and subsequent clarification vide letter dt. 16.6.04 of APMC Shahdara is enclosed herewith for perusal. In this regard it is submitted that the Board in its meeting held on 24.5.2000 resolved vide its Resol. No. 34/2000 that no fresh licence shall be granted by the Market Committee from 24.5.00 where new markets have been developed and the existing commission agents/traders are proposed to be shifted at new locations. A provision for such cases who may be granted licences after outcome of the result of the appeal may also be kept. The Board in its further meeting held on 28.1.04 had also resolved that new licence number without any claim of previous seniority be given as per rules to those licensees who failed to apply for renewal/amendment within prescribed period. In view of this, the matter may be considered by APMC Shahdara for grant of licence if permitted by the Board in relaxation to ban imposed."

2. By letter dated 22nd January, 2005, the respondent-APMC informed the petitioner that it had been accepted to issue a category B licence and auction place/shop will be allotted on his turn.

3. The grievance of the petitioner is that in spite of approval and letter dated 22nd January, 2005, category B licence has not been issued and the respondent-APMC later on decided not to allot the licence to the petitioner in view of legal opinion obtained. The said legal opinion finds mention in the memorandum dated 31st October, 2008 issued to the petitioner. The legal opinion/memorandum states that for grant of a category B licence, a person must have a business premises within the notified principal market or subsidiary market and not in a residential area.

4. The admitted position in the present case is that the petitioner or their predecessor in interest had a shop in the market area as is noted in the meeting held on 17th November, 2004. Predecessor of the petitioner had applied for B category licence way back in 1982 and the matter had remained pending with the APMC, Shahdara till 2004. Sometimes in the year 2001, the shop of the petitioner within the market area was demolished and acquired for the Metro project in Delhi. Noticing these facts in the letter dated 22nd January, 2005, the petitioner was informed that auction place/shop would be allotted to the petitioner on their own turn. The respondent-APMC, Shahdara are right in contending that the petitioner cannot be given category B licence to operate from residence as

this will be illegal, but the petitioner's name should not be deleted from the list of persons eligible for category B licence and the said licence should be issued to the petitioner when auction place/shop is allotted to the petitioner on his turn.

5. With the aforesaid directions, the writ petition is accordingly allowed to the extent indicated above. The petitioner will be considered for issue of a category B licence as and when auction place/shop is available for allotment on the turn of the petitioner, as per the waiting list. In case the respondent-APMC, Shahdara is not maintaining any waiting list, then the petitioner will be allotted a shop/auction place as and when shop/auction place is available at the first instance. In the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

**SEPTEMBER 16, 2009
VKR**