

18, 19, 20, 21, 24 & 25

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

Pronounced on: 20.01.2009

+ W.P. (C) 7309/2007, W.P.(C) 7310/2007, W.P.(C) 7311/2007, W.P.(C) 7312/2007, W.P.(C) 9191/2007, W.P.(C) 9192/2007

W.P. (C) 7309/2007

IRSHAD ALI

W.P.(C) 7310/2007

Faqira

W.P.(C) 7311/2007

Bhura

W.P.(C) 7312/2007

Akram

W.P.(C) 9191/2007

M/s Irshad Ahmad & Co.

W.P.(C) 9192/2007

Jahur

..... Petitioners

Through: Mr. Anil Panwar with
Mr. Arun Kumar Gupta, Advocates.

Versus

AGRCULTURE MARKETING PRODUCE
COMMITTEE, SHAHDARA
(AN UNDERTAKING OF GOVT. OF NCT OF DELHI)
THROUGH ITS ADMINISTRATOR,
GHAZI PUR, SUBZI MANDI, DELHI.

..... Respondent

Through: Mrs. Avnish Ahlawat, Advocate
Mr. Ajay Bhatnagar, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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

S.RAVINDRA BHAT, J. (ORAL)

% Rule Nisi. With consent of counsel for parties, the cases were heard finally. As the grievances of the petitioners in all the above Writ Petitions are similar, they are disposed of by this common order.

2. The petitioners here claim directions for quashing orders of the Agricultural Marketing Produce Committee, Shahdara, (hereafter "APMC") declining their applications for grant of category 'B' licenses.

3. The facts necessary to dispose of these cases are that the petitioners claim to have been working as Commission Agents in Subzi Mandi, Shahdara, paying the requisite fee and license fee as and when required. They allege that the respondents had not permitted them licenses wrongly, and not even issued forms for the purpose. They had approached the Court previously by filing Writ Petitions. Those Writ Petitions were disposed of on 28.7.2004 with a direction that the petitioners should first pay

the requisite fee and complete their forms after which their applications would be considered, for the grant of license. Subsequently, the petitioners were aggrieved by alleged non compliance of the order and approached this Court in contempt proceedings. The Court by its order dated 7.2.2006 disposed of the contempt proceedings requiring the Secretary, APMC to grant a hearing on 20.2.2006.

4. Concededly all the petitioners had applied and furnished certain documents in support of their claim for licenses. On 20.2.2006, in the course of the proceedings, the Secretary required that several documents should be furnished in addition to those given by the petitioners. The documents were:

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- (a) *Proof of legal possession of the shop showing he had premises to carry on business, in agricultural produce prior to shifting of Shahdara Subji Mandi to Gazipur.*
- (b) *Income Tax Returns of the above period as at Sl. No. (i)*
- (c) *Electricity Bills of the shop as at Sl. No.1.*
- (d) *NOC of landlord, if shop was on rent.*
- (e) *Rent receipts of the above period if shop was on rent basis.*
- (f) *Bank statement of his firm M/s Iftkhar Intizar & Company of the above period.*
- (g) *Registration of the shop under Delhi Shops and Establishment Act & Rules.*
- (h) *Ration Card.*
- (i) *Pan Number Card*
- (j) *Election Voter Card."*

5. Thereafter on 3.8.2006, the APMC issued a rejection order principally on the ground that the 10 documents required of had not been furnished. The petitioners admittedly did not produce all the 10 documents called for but had furnished some of them.

6. The petitioners contend that the requirement of having to furnish 10 categories of documents is illegal. Learned counsel contended that whatever is required under the Act is prescribed in the Rules and the Regulations. In the absence of any Rule, Regulation or Notification clearly spelling out that other class of documents also had to accompany the application, the APMC could not have applied fresh criteria and singled out the petitioners for rejection of their applications.

7. Mr. Bhatnagar, learned counsel for the respondents submitted that each document sought for on 20.2.2006 were relevant. Learned counsel contended that the APMC in terms of Section 80 of the Delhi Agricultural Produce Marketing Act, 1998 and rules framed under it has an obligation to satisfy itself that the applicant is indeed qualified and fulfills the relevant considerations. Requiring the applicants/petitioners to satisfy the authority by producing such documents cannot be characterized as arbitrary or illegal.

8. Before discussing the merits of the contentions, it would be necessary to notice the relevant provisions of the Act and the Rules. Section 80 of the Act enables the Marketing Committee to issue licenses; it is in the

following terms: -

“80. Grant of licence. – (1) Subject to rules made in this behalf, a marketing committee may, after making such inquiries as it deems fit, grant or renew a licence for the use of any place in the market yard/area for the marketing of agricultural produce or for operating therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of agricultural produce or may, after recording reasons in writing, refuse to grant or renew any such licence:

Provided that where a marketing committee has not started functioning, the Director, subject to any rules that may be made in this behalf, may grant or renew a licence for the marketing of agricultural produce or for operating in the market yard/area as a trader, commission agent, broker, processor, weighman, measure, surveyor, warehouseman or any other capacity.

(2) A licence granted under sub-section (1),

(a) shall be in such Form, valid for such period, and subject to such terms, conditions, restrictions and limitations as may be prescribed;

(b) places at which weighment and delivery of agricultural produce shall be made in any market or market area and on payment of such fees as may be prescribed.

(3) If the marketing committee or the Director, as the case may be, fails to grant or renew a licence within a period of sixty days from the date of receipt of an application in that behalf, it shall be deemed that the licence has been granted or renewed, as the case may be, if such grant or renewal has not been refused by marketing committee or the Director, as the case may be, within the said period of sixty days.”

Rule 17 empowers the Committee or the Director as the case may be to refuse, grant or removal of licenses. It reads as follows: -

“Rule 17. Refusal to grant or renew a license

The committee or where the committee has not been constituted or started functioning, the Director may, as the case may be, refuse the grant or renewal of a license, inter alia, if--

- (a) *A person applying for license has been declared insolvent;*
 - (b) *The committee is satisfied that the purpose of applying for license is none other than to obtain a license for becoming voter for the purposes of elections of the committee;*
 - (c) *The license has not been functioning during the preceding year without any reasonable cause;*
 - (d) *The person applying is a benamidar or partner with any person to whom a licence has been refused, or whose licence is cancelled or suspended for the period of such cancellation or suspension;*
 - (e) *The person applying for a licence is convicted of an offence involving the said persons' integrity as a man of business, within five years of such conviction;*
 - (f) *the person applying for license has no premises to carry on business or marketing of agricultural produce;*
 - (g) *any of the information stated by the applicant in his application form is materially incorrect.*
- (2) *No such order of refusal to grant or renew a licence shall be passed without giving a reasonable opportunity of being heard to the affected person.*
- (3) *If a grant or renewal of a licence is refused to a person the licence fee and security deposited by him shall be refunded."*

9. The relevant format for an application for a license including the license under category 'B' is spelled out in Form 'A'. It has 13 columns; requiring the applicant to furnish various details including name, residential and business address; place of business for which license is applied for; details if the applicant is a firm including the names of the other persons constituting the firm and also their particulars; trade assistance; the trade name and style to which the applicant would have to work; the category of

license etc. Other information as to whether the applicant and his partner is declared insolvent or is convicted for any offence or is a proprietor or partner in any other firm with details is also elicited. Column 13 seeks information as to what commodity the firm would deal in.

10. In these cases, the APMC appears to have formed an opinion that the requisite particulars necessary to consider the petitioners' application for license had not been furnished. The APMC does not dispute having received the applications pursuant to the directions of the Court. The petitioners also did not deny that they were granted the hearing. What, therefore, is to be decided by the Court is whether the approach of the APMC in declining the applications is sustainable in law.

11. A joint reading of Section 80 and Rule 17 would reveal that the criteria for grant of renewal of licenses and refusal has been clearly spelled out. More specifically the refusal is to be recorded for the reasons mentioned in Rule 17. This has to be based on the information supplied and reasonably gathered by the APMC in the course of its deliberations.

12. There can be no manner of doubt that all power is to be used with circumspection and after due application of mind. In that sense, the stand of the APMC that it was bound to take into consideration the relevant factors cannot be faulted. However, one cannot be unmindful of the fact that in the present case a specific form has been prescribed as a part of the statute and part of the Rules. This form, No.15 sets forth all the relevant

particulars which the APMC or the Director, as the case may be, is to consider. A comparison of the requirements in the form with the documents sought for particularly such as Electricity Bills, No Objection Certificate of the landlord, Rent Receipts, Ration Card, Election Voter Card etc, appear to be superfluous. While the anxiety of the APMC to ensure that party applying for license is a genuine one, is understandable, the insistence that applications would be processed on furnishing information and documents which are not directly relevant such as Electricity Bills, NOC of Landlord etc would amount to undue fettering of discretion. In order to insist that such documents as necessary pre-requisite, APMC should at least have put the petitioners on notice. Besides APMC has nowhere spelt out in its communication that these requirements have been set forth as essential documents, (for considering applications for licenses) through Circulars or Notifications.

13. In the circumstances, the Court is of the opinion that the APMC, New Delhi felt unjustifiably inhibited in not issuing the license for the reasons recorded in its orders dated 3.8.2006. The said orders are, therefore, not sustainable. In the circumstances, the APMC is directed to take into consideration all the relevant circumstances and after calling the petitioners, consider their cases for issuance of licenses on the basis of the criteria existing on the record and duly notified; the APMC shall ensure that the criteria which were applied while granting licenses in other cases at the same time for the same market i.e. Ghazi Pur Subji Mandi are applied in

these cases also. The entire process shall be completed within two months.
The impugned orders are, for these reasons quashed.

The Writ Petitions are allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

JANUARY 20, 2009
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