

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

+ **Date of Decision: 10.04.2012**

% **W.P.(C) 13279/2009**

KRISHNA FRUIT AND VEGETABLE COMPANY Petitioner
Through: Mr. M. Mohsin Israili, Adv.

Versus

SECRETARY, APMC GHAZIPUR SUBZI MANDI DELHI
..... Respondent
Through: Ms. Latika Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. The petitioner has preferred this writ petition to seek a writ of certiorari, quashing the orders dated 29.06.2005 and 05.06.2006 passed by the respondent. Vide the order dated 29.06.2005, the respondent Agricultural Produce Marketing Committee (APMC), Shahdara had informed the petitioner that the petitioner's application to seek renewal of his licence could not be entertained as per Rule 18(5) of the Delhi Agricultural Produce Marketing (Regulation) General Rules, 2000 (in short 'Rules') on account of the lapse of the date of renewal. The petitioner was informed that he could apply for a fresh

licence. By the impugned order dated 05.06.2006 the petitioner's application to seek issuance of a fresh licence has been turned down by placing reliance upon Rule 17(1)(c) of the Rules by observing that the petitioner had not deposited any market fee during the preceding year 2004-05, and earlier also during the year 2002-03, and by observing that on five inspections being conducted during the period March, 2004 and April, 2004, the petitioner was not found to be carrying on the business.

2. The petitioner is the proprietor of M/s Krishna Fruit & Vegetable Company. The case of the petitioner is that the petitioner obtained licence under the aforesaid Rules in the year 2000. The said licence was renewed year after year. The said licence expired on 31.03.2005. The petitioner applied for renewal of the said licence. However there was delay in making the said application. As aforesaid by the impugned memorandum dated 29.06.2005 he was informed that his application for renewal could not be entertained. Reliance was placed on Rule 18(5).

3. The relevant extract of Rule 18 reads as follows:

“(3) An application for the renewal of licence shall be made at least thirty days before the date on which the licence is due to expire.

Provided further that the authority competent to renew a licence may, on the applicant's paying a penalty equal to the amount of annual licence fee, grant an application for

renewal made within thirty days after the date of expiry of the due date. The authority competent to renew a licence may remit the penalty in whole or in part, if it is satisfied, by recording in writing that the delay was for reasons beyond the control of the applicant.

Provided further that no licence shall be renewed for a part of the year.

(4) Every renewal of a licence granted under this rule shall be deemed to take effect from the date following that on which the licence has expired.

(5) Except as provided in sub-rule(3), every application for renewal of a licence made after the date of expiry thereof shall be treated as an application for the grant of a fresh licence."

4. A perusal of the Rules shows that an application for renewal of licence is required to be made at least 30 days before the date on which the licence is due to expire. However, the authority competent to renew the licence may, on the applicant's paying a penalty equal to the amount of annual licence fee, grant the application for renewal made within 30 days after the date of expiry of the due date. Under Rule 18(5) it is provided that except in respect of applications which are made within 30 days of the date of expiry of the licence, every application for renewal of a licence made after the date of expiry thereof, shall be treated as an application for the grant of a fresh licence.

5. Since the petitioner's licence expired on 31.03.2005, and the petitioner applied for the renewal of the licence only on 17.06.2005,

the stand taken by the respondent in their communication/memorandum dated 29.06.2005 cannot be said to be unjustified or illegal. The said stand taken by the respondent is in accord with Rule 18(5) of the said Rules. Consequently, the challenge to the memorandum/communication dated 29.06.2005 fails.

6. The petitioner thereafter moved an application to secure a fresh licence on 01.07.2005. By the impugned order dated 05.06.2006 that application was turned down by the respondent. I may extract the relevant portion from the impugned order which reads as follows:-

“And whereas the Director Agricultural considered the matter and observed that the firm had not deposited any market fee during 2004-2005 and earlier also during 2002-2003. Further it is also observed that five inspections were carried out during the March 2004 & April 2004 but the firm was not found carrying out his business.

And whereas as per Rule 17(1) of DAPM (R) General Rules, 2000, the Director may refuse the GRANT OF A Licence if the Licence has not been functioning during the preceding year without any reasonable cause.

And therefore, the applicant is not beyond doubt that he is not applying for the Licence only for voting purpose which is not permitted as per Rule 17(1)(b) of DAPM (R) General Rules, 2000.

Now therefore, the Director has being the competent authority considered the case and found that the case is not fit for grant of licence.”

7. The petitioner sent his response to the said communication on 26.06.2006. The petitioner informed the respondent that for the session 2002-03 the petitioner had deposited market fee of Rs. 2753/-

In respect of the year 2004-05, it was stated that the petitioner was ill and therefore the petitioner did not carry on any business and deposit any market fee for the said period.

8. The petitioner was informed vide communication dated 12.03.2007 that the petitioner could prefer an appeal before the Vice-Chairman, Delhi Agricultural Marketing Board, Janakpuri, if he was aggrieved by the order dated 05.06.2006. It appears that the petitioner preferred an appeal against the non-renewal of his licence. Vide communication dated 21.06.2007 he was informed that the appeal dated 14.04.2007 against the non-renewal of the licence does not lie before the Vice-Chairman, Delhi Agricultural Marketing Board, Janakpuri.

9. The case of the petitioner is that his application for issuance of a fresh licence was again taken up for consideration before the Licensing sub-Committee, Shahdara in its meeting held on 10.01.2008. In this meeting it was decided that the case of the petitioner be referred to the Chairman who was competent to take a decision in this regard. Further, the case of the petitioner is that his case was again considered by the entire body of the Agricultural Produce Marketing Committee, Shahdara in its meeting held on 19.03.2008. The decision taken in relation to the petitioner's case in the said meeting reads as follows:-

“The licence no. A-123 of M/s New Krishna Fruits & Vegetables Co. could not be renewed during the session 2005-2006 therefore, it is lapsed automatically. Thereafter, the firm has been repeatedly applying for renewal. The file was cancelled at the state of the Director. The committee unanimously grants the permission to renew the licence in view of the Resolution no. 27.04/28.01.2004 passed by the Board. But the Committee is also of the view that the file be checked by the Legal Advisor of the Board as well as by the Secretary of the Marketing Committee to find out if any rules are violated then the Committee be informed.”

10. The petitioner submits that even after the said meeting, the licence has not been issued on account of wholly misconceived legal opinion given by the respondent's counsel. The said legal opinion proceeded on the basis that the petitioner had been issued a show cause notice to cancel the licence, whereas, according to the petitioner, no such show cause notice was ever issued to the petitioner. The legal opinion also proceeds on the assumption that the party could have filed an appeal against the rejection of his application dated 05.06.2006, but that the same had not been preferred. The counsel had opined that the petitioner was not covered by the board resolution no. 27/04 dated 28.01.2004.

11. Since the petitioner did not receive a fresh licence, the present petition has been preferred. The petitioner has also placed on record a copy of the circular dated 20.02.2004 which makes a reference to the

board resolution no. 27/04 under agenda item No. 16 passed by the Delhi Agricultural Marketing Board in its meeting held on 28.01.2004. By this resolution it had been decided to grant fresh licenses to those who failed to apply for renewal/amendment of their licence within the prescribed time, in lieu of previous/lapsed licenses, with the condition that they will loose the seniority of previous licenses and will be allotted new number.

12. The submission of Mr.Israily, learned counsel for the petitioner is that in the light of the aforesaid resolution the respondent could not have rejected the petitioner's application for issuance of a fresh licence. Mr. Israily places reliance on orders passed in few other writ petitions which have also been placed on record. The Courts have relied upon the aforesaid resolution no. 27/04 and given effect thereto and directed issuance of fresh licenses even in cases where the earlier licence had lapsed and the fresh licence had been applied for belatedly.

13. Learned counsel for the respondent, on the other hand, places strong reliance on Rule 17(1)(c) of the Rules to submit that the petitioner is not entitled to seek issuance of a fresh licence as, admittedly, the petitioner had not carried on any business during the financial year 2004-05 and had not deposited any market fee during that period. Rule 17(1)(c) of the Rules reads as follows:-

17. Refusal to grant or renew a licence

(1) 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 licence, inter alia, if-

- (a)
- (b)
- (c) the licence has not been functioning during the preceding year without any reasonable cause.
- (d)
- (e)
- (f)
- (g)"

14. Learned counsel submits that the petitioner had not preferred any appeal against the impugned order dated 29.06.2006 or against the order dated 05.06.2006, and the only appeal preferred was against the refusal to renew the petitioner's licence. She further submits that the ground of illness was taken for the first time in the communication dated 26.06.2006. No such ground had been taken earlier either while applying for renewal of the licence on 17.06.2005, or even when the fresh licence was applied for on 01.07.2005. Learned counsel submits that since the petitioner appears to have gone out of business, he cannot be considered for grant of fresh licence as there is immense pressure on the respondent for issuance of licences after the market has been shifted to Ghazipur. She submits that there is derth of space in the said market and the petitioner could be seeking renewal/issuance of a fresh licence only for the purpose of trading his

licence.

15. Learned counsel for the petitioner submits that the petitioner was not well during the relevant period i.e., 2005-06 and therefore could not carry on his business. In support of this submission, the petitioner has placed on record a medical certificate issued by Dr. A.H.Zaidi, B.Sc., B.U.M., M.S. (Alig.) dated 08.11.2010. This medical certificate certifies that the petitioner was suffering from L.Spondylitis for a period of 82 days with effect from 15.03.2005 to 04.06.2005 and that he was absent from duty as it was absolutely necessary for the treatment/restoration of his health. The said certificate also contains a note to the effect "Not Valid for Court or medicolegal purpose".

16. Having heard learned counsels for the parties, I do not find any merit in this petition and I am inclined to dismiss the same.

17. I have already held that in the face of Rule 18(5) of the Rules, the stand taken by the respondent in its memorandum dated 29.06.2005, that the petitioner should apply for a fresh license and the application for renewal cannot be considered, is unassailable.

18. The mainstay of the petitioners submissions are the resolution passed by the APMC, Shahdara in its meeting held on 19.03.2008, and the resolution No.27/04 dated 28.01.2004 passed by the Board. So far as the minutes of the meeting of the APMC, Shahdara dated 19.03.2008 are concerned, the resolution to renew the petitioners

license, in view of resolution No.27/04, was subject to the file being checked by the legal advisor of the Board as well as by the Secretary of the Marketing Committee to find out if any rules are violated.

19. Obviously, the APMC, Shahdara could not have breached the statutory rules which were applicable in the case of the petitioner. The resolution No.27/04 dated 28.01.2004 which provides for grant of a fresh license to those who fail to apply for renewal/amendment of license within the prescribed limit, in lieu of the previous/lapsed license, also has to be read in conjunction with the rules. Rule 17(1)(c) is amply clear. In no uncertain terms, it provides that the committee or the director, as the case may be, may refuse to grant or renew the license, inter alia, on the ground that the licensee has not been functioning during the preceding year, without any reasonable cause. The APMC, Shahdara was cautious, while passing the resolution dated 19.03.2008 by providing that the petitioners case be checked for violation of any rule.

20. The purport of the resolution No.27/04 dated 28.01.2004 cannot be that a fresh license would be granted even in such cases, where the grant of the license is barred by the statutory rules. In the present case, admittedly, the petitioner did not function during the preceding year, i.e. 2004-05. The legal opinion dated 26.04.2008, no doubt, appears to be inaccurate on various factual aspects. However, it

makes reference to the rejection of the petitioners application for grant of a fresh license vide order dated 05.06.2006 on the basis of Rule 17(1)(c) of the Rules. Therefore, the legal opinion that the petitioner case will not be covered by the board resolution No.27/04 appears to be correct.

21. The submission of Mr. Israilly that the petitioner has been able to disclose a reasonable cause for not functioning during the preceding year 2004-05 is wholly unsubstantiated and not convincing. As submitted by the respondent, no ground of illness was set up by the petitioner, when the petitioner applied for renewal of the license on 17.06.2005 belatedly. No such ground was raised when the petitioner applied for issuance of a fresh license on 01.07.2005. Only after issuance of the impugned communication dated 05.06.2006, the petitioner for the first time stated in his communication received on 26.06.2006, that he could not deposit any market fee during the year 2004-05, as he was ill. Neither any further details were given about the illness, nor any medical certificate or documents in support thereof were produced.

22. Even with this petition, the petitioner did not produce any documents in support of his plea that he and his wife were ill. Only with the rejoinder, the aforesaid medical certificate has been produced. This medical certificate is highly unreliable. It has been

issued on 08.11.2010 in relation to an illness allegedly suffered during the period 15.03.2005 to 04.06.2005. This certificate does not even state that Dr. A.H. Zaidi, B.Sc, B.U.M., M.S. (Alig) had treated the petitioner Ramesh Pandit. It is startling to see that the author of the said certificate claims to remember the nature of the petitioners suffering and the exact period of the alleged sufferance of the petitioner, i.e. between 15.03.2005 to 04.06.2005 even after more than five years thereof.

23. I was inclined to initiate an enquiry into the authenticity of the said certificate. However, Mr. Israilly has requested that the same be not done. This certificate, in any event, pertains only to 15 days of the financial year 2004-05. It is not explained as to why the petitioner did not carry on any business during the entire financial year 2004-05, and did not deposit any market fee during that period. Therefore, it cannot be said that the petitioner has been able to disclose any reasonable cause for not functioning in the preceding year, i.e. 2004-05.

24. I may also note that during the course of hearing, it was submitted by learned counsel for the petitioner that he had been carrying on business at Gazipur Sabzi Mandi, and even now he was being challaned. To enable the petitioner to place on record the documents in support of this submission, the matter was adjourned on 09.04.2012 and taken up today.

25. The petitioner has only produced a one page affidavit dated 10.04.2012, which is taken on record, stating that the petitioner deals in the business of food and vegetables in the Gazipur Sabzi Mandi. However, not a single challan has been issued to the petitioner. Consequently, the claim of the petitioner that he is still carrying on his business remains unsubstantiated.

26. For the aforesaid reasons, I find no merit in this petition and the same is dismissed, leaving the parties to bear their respective costs.

APRIL 10, 2012
mb/sr

VIPIN SANGHI, J