

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.10531 of 2014 (O&M)
Date of decision: 7.4.2015**

M/s Om Parkash Gupta and Company

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Sherry K.Singla, Advocate for the petitioner.
Ms. Manisha Gandhi, Addl.A.G.Punjab.
Mr. Akshay Kumar Goel, Advocate for respondents No.2 and 3.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.10531 and 10371 of 2014 as the issue involved in both the petitions is identical. However, the facts are being extracted from CWP No.10531 of 2014.

2. Prayer in CWP No.10531 of 2014 filed under Articles 226/227 of the Constitution of India is for quashing the orders dated 2.5.2008, 4.5.2011 and 25.10.2013 passed by respondents No.3, 2 and 1, Annexures P.3, P.7 and P.8 respectively being contrary to the provisions and Rule 3 of Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 2008 (in short," the Rules"). Further prayer has been made for

directing the respondents to allot the plot in New Grain Market, Maur Mandi to the petitioner in pursuance to the advertisement published on 10.1.2008.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner firm is doing the business of purchase of Agricultural produce in the Old Grain Market at Maur which is part of the notified market area of Market Committee, Maur Mandi since the year 2000. Earlier the licence was got issued on 26.7.2000 in the name of M/s Om Parkash Gupta and Company. It was a partnership firm consisting of partners namely Parvesh Kumar son of Om Parkash and Surinder Kumar son of Shri Hans Raj. In 2006, the firm was reconstituted and the partner namely Surinder Kumar son of Hans Raj was removed from the partnership and Parvesh Kumar son of Om Parkash became the sole proprietor of the firm. As the petitioner firm was changed from the partnership firm to the proprietorship firm, new licence was issued to the firm under the previous name M/s Om Parkash Gupta and Company having its sole proprietor Shri Parvesh Kumar on 3.4.2006. The said licence was got renewed from time to time. The petitioner firm claimed allotment of a plot in lieu of its shop in the Old Mandi, Maur at New Grain Market, Maur under the allotment Rules and in pursuance to the advertisement published on 10.1.2008 by respondent No.3. The Committee did not recommend the case of the petitioner firm and rejected its claim vide order dated 2.5.2008, Annexure P.3. It was inter alia stated in the impugned order that the firm had applied for plot/shop in the New Grain market and it was found to be licensee w.e.f 3.4.2006 onwards. It had not done the

minimum business transaction of ₹ 5 lac per annum during the last three years and had not submitted sufficient documentary proof of tenancy to substantiate the claim. Aggrieved by the order, the petitioner firm filed appeal under Rule 12 of the Rules. It was pleaded that as per Rule 3 Clause (iii-A), in case previous licence was issued to a firm and that firm had split up due to any reason resulting in cancellation of that licence, the tenure of licence shall be reckoned from the date of previous licence where fresh licence had been issued within three months from the date of cancellation of previous licence. In the present case, the previous licence of the petitioner had expired on 31.3.2006. The new licence was issued to the petitioner firm on 3.4.2006 i.e. immediately after the expiry of the previous licence and the tenure of the said licence had to be reckoned from the date of issue of previous licence. Vide order dated 4.5.2011, Annexure P.7, respondent No.2 dismissed the appeal on the ground that the petitioner was not having valid licence from the last three years and had no business transaction of ₹ 5 lacs or more for the last three years. Aggrieved by the order, the petitioner filed revision petition under Section 42 of the Punjab Agriculture Produce Markets Act, 1961 (in short, “the Act”) which was also dismissed vide order dated 25.10.2013, Annexure P.8. Hence the instant writ petition.

4. Written statement has been filed on behalf of respondent Nos. 2 and 3 by Estate Officer, Punjab Mandi Board, Mohali inter alia stating that the petitioner firm did not supply the necessary documents as explained in para 4 of the order dated 2.5.2008, Annexure P.3 passed by respondent No.3. The petitioner did not submit the certificate regarding continuation of the firm in case of split as required under clause (vi) as shown in para 4 of the

order dated 2.5.2008. On these premises, prayer for dismissal of the petition has been made.

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner submitted that the order dated 2.5.2008, Annexure P.3 was passed without affording an opportunity of hearing to the petitioner. The relevant documents were not taken into consideration. Consequently, the appeal and revision were also dismissed vide Annexures P.7 and P.8 respectively. It was further submitted that the impugned orders be set aside and the matter be remitted to respondent No.3 to pass a fresh order after hearing counsel for the respective parties.

7. On the other hand, learned State counsel supported the impugned orders and prayed for dismissal of the writ petitions.

8. The Hon'ble Apex Court in **Canara Bank v. V.K. Awasthy AIR 2005 SC 2090** while dealing with the doctrine of principles of natural justice had noticed as under:-

“8.Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions “natural justice” and “legal justice” do not present a water-tight classification. It is the substance of

justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works*, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam,

before he was called upon to make his defence.

“Adam” says God, “where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat”.

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.”

9. In view of the above, the impugned order dated 2.5.2008, Annexure P.3 and appellate as well as revisional orders in both the writ petitions passed in violation of the principles of natural justice as per law laid down by the Hon'ble Supreme Court in **V.K. Awasthy's cases (supra)** are hereby quashed. Accordingly, the matter is remitted to respondent No.3 to pass a fresh order after affording an opportunity of hearing to the respective parties, in accordance with law within a period of three months from the date of receipt of a certified copy of this order.

10. Writ petitions stand disposed of accordingly.

(Ajay Kumar Mittal)
Judge

April 07, 2015
'gs'

(Rekha Mittal)
Judge

