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

Date of decision: 06.01.2015

**C.W.P. No.13287 of 2014**

M/s Narang Fruit Agency ----Petitioner

V/s

State of Punjab & others ----Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA**
**HON'BLE MR. JUSTICE HARI PAL VERMA**

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

Present:- Mr. Anand Chhibbar, Senior Advocate, with
Mr. Naresh Jain, Advocate, for the petitioner.

Mr. P.S.Bajwa, Addl. AG, Punjab,
for respondent No.1.

Mr. Sanjeev Sharma, Advocate,
for respondent Nos.2 to 4.

Mr. L.S.Sidhu, Advocate,
for respondent Nos.5 to 44.

**HEMANT GUPTA, J.**

This order shall dispose of the aforementioned writ petition as well as the writ petitions, mentioned at the foot of the order, raising identical questions relating to the interpretation of Rule 3(iii) and Rule 3(iii-a) of the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999. However, for the facility of reference, the facts are taken from the aforementioned writ petition.

Sabji Mandi, Patiala, known as Partap Market, situated at Ganda Nala, was declared as a notified area vide notification dated 16.08.1963. In the said notified area, 25 vegetable and fruit vendors including the petitioner is carrying on its business, whereas some other licensees were carrying on their business outside the notified area. A new Sabji Mandi was carved out by the respondents at Sanaur Road, Patiala approximately 5 kms away from the old notified area. Subsequently, two draw of lots were held for the licensees, who were carrying out their business activities outside the old notified area and for the licensees, who were carrying out their business activities within the old notified area on 18.04.2012 and 22.04.2012 respectively.

On 11.05.2012, an advertisement was issued inviting applications for allotment of shops on concessional basis under the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (for short 'the Rules'). In pursuance of such advertisement, the petitioner applied for allotment of a plot being a licensee in the old notified area. However, the claim of the petitioner for allotment was declined vide order dated 22.10.2012 for the reason that the petitioner-firm does not fulfill the eligibility condition as prescribed under Rule 3(iii) and (iii-a) of the Rules, as there is a gap in the license from 01.04.2009 to 04.08.2009. An appeal preferred by the petitioner against the said order was dismissed on 14.10.2013. Revision petition filed by the petitioner was also dismissed by the Secretary to Government of Punjab, Department of Agriculture, Chandigarh on 31.03.2014. It is, thereafter, the petitioner has filed the present writ petition.

The assertion of the petitioner-firm is that it has submitted returns in Forms M, H, J & F not only for the last three years, but for more than 13 years, therefore, it satisfies the condition of eligibility of allotment of a plot meant for the old licensees in terms of Rules 3(iii) and 3(iii-a) of the Rules.

On the other hand, the stand of the respondents is that Rules 3(iii) and 3(iii-a) of the Rules are independent Rules. The validity of Rule 3(iii) of the Rules has been upheld by a Division Bench of this Court vide judgment dated 20.05.2009 rendered in CWP No.3542 of 2008 titled 'Nohar Chand Vs. State of Punjab & others'. Thus, the petitioner-firm is ineligible in terms of the conditions of eligibility contained under Rule 3(iii-a) of the Rules.

At this stage, the relevant extract from Rule 3 of the Rules would be advantageous for the decision of the present set of writ petitions. The same is as under:

> "**3. Sale of plots** – All plots in the markets developed by the Board or Committees shall be disposed of by way of open auction or allotment in accordance with the provisions of these rules:
>
> Provided that not more than fifty per cent of the available plots shall be disposed of by way of allotment and the process of allotment shall be completed before conducting the sale by auction.
>
> Provided further that the plots will be allowed to the licenced dealers of old market which are denotified resulting in displacement of such licenced dealers on free-hold basis for conducting business of purchase of sale of agricultural produce in the new markets on the following terms and conditions namely:-
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> xx xx

(iii) only those licensees shall be eligible for allotment of plots on the price, specified in clauses (i) and (ii), who have been granted licences in the old denotified markets for a minimum period of three years before the date of allotment. Such licensees must have submitted returns in Form M appended to the Punjab Agricultural Produce Markets (General) Rules, 1962 for all three years or such licensees shall have to furnish adequate proof of working in the denotified old markets. In accordance with the provisions of Form 'H' and From 'J', as specified in the Punjab Agricultural Produce Markets (General) Rules, 1962 read with the provisions of Form 'F', as specified in the bye-laws of the Market Committee for the aforesaid period of three years. The period of three years referred to above shall be counted with effect from the date of notice inviting applications for allotment.

Provided that only those licensees shall be eligible for allotment of plots, who have transacted the business of sale and purchase of agricultural produce for an amount, not less than five lacs rupees per annum during the last three years.

(iii-a) In case, a fresh licence has been issued during the last three years for the reason that prescribed period for renewal of previous licence has expired, the tenure of the period of licence shall be reckoned from the date of issue of previous licence. However, the fresh licence must have been issued within a period of three months after the expiry of the prescribed period for renewal of previous licence;

Provided that in case, the previous licence was issued to a firm and that firm had split up due to any

> reason, resulting the cancellation of the previous licence, in such a case, the tenure of period of licence shall be reckoned from the date of previous licence, only if the subsequent fresh licence has been issued in the name for the same firm and such fresh licence has been issued within a period of three months from the date of the cancellation of the previous licence;
>
> Provided further that the period, during which a licence remained cancelled during its non-renewal or due to the split up of a firm, then such a period shall be deducted while calculating the period, specified for a licence;
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> xx xx"

The argument raised by the learned counsel for the petitioner-firm is that the petitioner has been granted a new licence on payment of penalty and other charges and that the petitioner has carried out its business activities even for the period, the petitioner had no licence. The petitioner had furnished proof of working in the de-notified old market area from the day of expiry of the old licence till the grant of new licence as well, therefore, in terms of Rule 3(iii) and Rule 3(iii-a) of the Rules, the petitioner is eligible for allotment of a plot on concessional basis, as a part of rehabilitation process.

Having heard learned counsel for the parties, we find that the decision of the Estate Officer – respondent No.3 dated 22.10.2012, as affirmed in appeal and revision is not sustainable in law.

Rule 3(iii-a) of the Rules on which reliance was placed for declining the claim of the petitioner-firm is not an independent provision for considering the eligibility of a licensee. It is a Rule, which has its genesis in Rule 3(iii) of the Rules reproduced above. In terms of Rule 3(iii) of the Rules, not only a licensee, who has furnished returns in Form 'M', is eligible for allotment of a plot, but also a licensee, who furnished adequate proof of working in the de-notified old market is also eligible for allotment of plot. Therefore, Form 'F' is not the only document required for determination of eligibility of an old licensee for allotment of a plot, but the independent adequate proof of working in the de-notified market yard is required to be considered to determine the eligibility of the old licensees for allotment of plots.

Rule 3(iii-a) of the Rules deals with a situation where after the expiry of the licence, a fresh licence is issued in the name of the same firm or even after the splitting of firm, but when the licence is issued in the name of same firm, as an entity eligible for allotment of a plot on concessional basis. Such provision provides the period prior to issuance of new licensee to be taken into consideration for allotment of plot.

Though Mr. Sharma has vehemently argued that the eligibility is based upon issuance of fresh license and by clubbing the period of old licence, but the fact remains that under Rule 3(iii) of the Rules, liberty has been given to the licensee to furnish adequate proof of working in the de-notified market yard, which makes him eligible for consideration for allotment. Rule 3(iii-a) is a provision in continuation of Rule 3(iii) dealing with the eligibility of old licensees for allotment of plots. Such provision cannot be read in isolation. If Rule 3(iii-

a) is read in conjunction with Rule 3(iii) of the Rules, it is apparent that the gap period between the expiry of old licence and issuance of fresh licence can be taken into consideration to determine the eligibility of the firm provided the licensee furnish adequate proof of working in the de-notified old market yard. Whether the proof furnished by an old licensee is adequate or not i.e. merit acceptance or not, is to be determined by the Market Committee. Therefore, simply because there was gap between the expiry of old licence and issuance of fresh licence, cannot be a ground to treat the petitioner ineligible for consideration of allotment of a plot.

If the old licensee is able to furnish adequate proof to the satisfaction of the Market Committee that it was working in the old de-notified market yard, the firm can be considered as eligible for allotment of a plot under Rule 3 of the Rules.

The petitioner has been found to be ineligible only for the reason that it had not carried out work for a period of three years after the grant of licence. Such reasoning cannot be a ground not to treat the petitioner eligible for allotment of plot, as the proof of its working in the old de-notified market yard has not been examined.

Consequently, while setting aside the order dated 22.10.2012 (Annexure P-7); 14.10.2013 (Annexure P-8) & 31.03.2014 (Annexure P-9), we direct that the petitioner may furnish proof of its working in the de-notified old market yard to the Market Committee. The Estate Officer of the Market Committee shall consider the authenticity of such proof, so as to declare the petitioner eligible or ineligible for allotment of a plot as a licensee of the de-notified old market yard.

At this stage, we may notice another argument raised by Mr. Sharma that the present petitioner and some other old licensees have participated in an open auction and were declared successful for allotment of a plot. If that be so, a successful bidder of a plot in an open auction cannot be considered as an eligible candidate for allotment of a plot on concessional basis.

With these directions and liberty, the present writ petition as well as other connected writ petitions stand disposed of.

**( HEMANT GUPTA )**
**JUDGE**

**06.01.2015** **( HARI PAL VERMA )**
Vimal **JUDGE**

| **Sr.No.** | **Case No.** | **Title** |
|---|---|---|
| 1. | CWP No.11432 of 2014 | M/s Balwant Singh Karam Singh Vs. State of Punjab & others |
| 2. | CWP No.13288 of 2014 | M/s Gurcharan Singh Jagjit Singh Vs. State of Punjab & others |
| 3. | CWP No.13301 of 2014 | M/s New Bhatia Fruit Company Vs. State of Punjab & others |
| 4. | CWP No.13302 of 2014 | M/s Seth Nikka Mal Jaggi & sons Vs. State of Punjab & others |
| 5. | CWP No.13306 of 2014 | M/s Jamnu Fruit Company Vs. State of Punjab & others |
| 6. | CWP No.13307 of 2014 | M/s Bhatia Fruit Company Vs. |

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| | | State of Punjab & others |
| 7. | CWP No.13308 of 2014 | M/s Singh Fruit Company Vs. State of Punjab & others |
| 8. | CWP No.13309 of 2014 | M/s Guru Gobind Singh Fruit Company Vs. State of Punjab & others |
| 9. | CWP No.17565 of 2014 | M/s Salwant Singh & sons Vs. State of Punjab & others |