

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.2848 of 2015

Date of Decision: 19.02.2015

Sham Lal

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Jagdish Manchanda, Advocate, for the petitioner.

HEMANT GUPTA, J. (ORAL)

Challenge in the present writ petition is to the communication dated 09.01.2015 issued by the Commissioner, Municipal Corporation (Trust Cell), Karnal to the effect that the petitioner is not entitled to allotment of a booth/plot in terms of the directions of this Court dated 24.09.2014 since his father namely Shri Manohar Lal was allotted booth/plot No.50 on 30.06.1997.

The petitioner earlier filed a writ petition bearing CWP No.4532 of 1998 before this Court claiming booth/plot. The said writ petition alongwith other writ petition i.e. CWP No.10089 of 1998 was decided by a Division Bench of this Court on 24.09.2014, when it was observed as under:

“After hearing learned counsel for the parties, we find that though there are 286 writ petitioners who have not been found doing the business of selling vegetables but 219 persons were found running the business of selling vegetables. It has been also pointed out that most of the persons who were doing business of selling vegetables are in fact members of the same

family i.e. spouse, sons or daughters and such like close relationships etc.

Since large number of writ petitioners in the earlier writ petitions were not found doing the business of selling vegetables but equally large number of persons were found doing the business of selling vegetables, it would be appropriate to dispose of both writ petitions with a direction to the Improvement Trust to conduct a fresh survey to determine as to which of the persons were in the business of selling vegetables in the year 1998.

All those persons who have been found eligible shall be given a liberty to submit an application form along with requisite application money.

The eligibility of the applicants will be decided by keeping in view the family members who are already running business in the area in question in the category (i) and (ii) as well, after passing a speaking order. The Improvement Trust shall prepare a list of eligible applicants by including all the members of the family in one group within three months for allotment of one site to all the members of one family. The available sites shall be allotted within next three months. If the eligible persons or group of persons, if they are more than the sites available, the sites shall be allotted by draw of lots.

All the other street hawkers who remain unsuccessful will not be permitted to carry on the business of selling vegetables on street.”

Admittedly, the father of the petitioner has been allotted booth/plot in the year 1997. The grievance of the petitioner is that he is 51 years of age and doing the business for the last 31 years. Therefore, he is entitled for booth/plot in his own right and that his claim cannot be declined for the reason that his father has been allotted booth/plot. Learned counsel for the petitioner refers to Annexure P-6 i.e. a list of allottees’, prepared by the petitioner, as members of the same family, but have been allotted booth/plots.

We do not find any merit in the contentions raised. The petitioner was a party in the earlier writ petition, wherein directions were issued by this Court that the members of the same family shall not be allotted multiple sites. If the petitioner is aggrieved against such condition, he should have approached the Hon'ble Supreme Court to dispute the order passed by this Court. Having not done so, the decision of the Municipal Corporation consequent to the directions of this Court cannot be said to be illegal in any manner.

It may be stated that any illegality in the process of allotment by itself that is allotment of plots or booths to the members of the same family shall not confer any right on the petitioner to seek allotment of booth/plot. Reference may be made to the judgment reported as Chandigarh Administration Vs. Jagjit Singh, (1995) 1 SCC 745, wherein the Court held as under:

“8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again.

The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.....”

In view of the above, we do not find any merit in the present writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

19.02.2015
Vimal

(HARI PAL VERMA)
JUDGE