

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 5634 of 2015 (O&M)

Date of Decision: 4th December, 2015

M/s R.D.Traders through its Proprietor and others

..Petitioners

Versus

Haryana State Agricultural Marketing Board and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

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

Present : Mr. C.B.Goel, Advocate, for the petitioners.
Mr. J.S.Bedi, Advocate, for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Respondent No.2 is the Chief Administrator, Haryana State Agricultural Marketing Board. Respondent No.3 is the Market Committee through its Secretary and Executive Officer who passed the impugned orders.

2. The six petitioners have challenged the notices dated 07.03.2015 (Annexures P-13 to P-18) issued to each of them by the Secretary-cum-Executive Officer, Market Committee, Barwala. Each of the impugned orders states that the petitioners concerned had taken licences under Section 10(1) of the Haryana Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the Act') of the first category. As per the orders of the Head Office of the Marketing Board, a person holding a first category licence cannot be issued a second category licence in the same name and that after 31.03.2013 the second category licence would not be renewed.

3. The question that falls for consideration is, therefore, whether the respondents are entitled to reject an application for more than one licence under the provisions of the said Act.

4. The circumstances leading to the impugned order are as follows:-

A meeting was held between the officers of the Marketing Board and the officers of the Sales Tax/Excise & Taxation Department on 04.09.2013. The minutes of the meeting record that the information pertaining to the sale and purchase transactions of cotton/agricultural produce made by the traders/commission agents was not given to the Sales Tax/Excise & Taxation Department; that the licences of categories (i) & (ii) were issued in the name of the same firm leading to misuse. It was decided that the Secretary of the Market Committee in the State be directed to ask the commission agents of the Market Committee to send the intimation of the transactions made and copies of J-form and L-form to the concerned officers and the Sales Tax Department of their area/district. It was also decided that the Secretary, Market Committee may be directed that the licences of categories (i) and (ii) for the processing units and the commission agents should not be issued on the same name of the same firm and that one of them should be issued in a different name.

5. The decisions taken at an informal meeting of the members of the Board and of the Sales Tax Department cannot overrule the statutory provisions. Nor are they entitled to impose conditions contrary to the provisions of law and without authority or power to do so under such laws. As we will demonstrate these members did not have the power to impose the condition regarding the refusal to issue a second license.

6. Pursuant to the meeting a circular No.63 dated 04.03.2015

Haryana State Agricultural Marketing Board to all the Secretaries-cum-Executive Officers of the Market Committees in the State of Haryana. The circular alleges that the Market Committees especially in the Cotton Zone had issued licences under both categories in the same name and that the same was against the rules/provisions of the Act and against the interest of the farmers. The Secretaries were directed to ensure that two licences should not be issued in the same name. The circular stated that similar instructions were issued by a letter dated 10.09.2013. The circular also directed that where a party has been issued two licences one of them ought not to be renewed after 31.03.2015. The question, therefore, is whether the provisions of law entitled the respondents to refuse an applicant two licences under categories (i) and (ii) respectively.

7. Sections 2(m), 8(1), 10(1) and (2) and Section 43(i) (ii) & (viii) of the Haryana Agricultural Produce Markets Act, 1961 read as under:-

“Section-2: Definitions- In this Act, unless the context otherwise requires,-

(a) to (l).....

(m) “Prescribed” means prescribed by Rules made under this Act;

Section-8: Control of sale and purchase of agricultural produces- From the date of issue of notification under Section 6 or from such later date as may be specified therein, no person, unless exempted by rules made under this Act, shall, either for himself or on behalf of another person or the State Government, within the notified market area set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made thereunder and the conditions specified in the licence.

[Provided that a licensee may apply for licence to be operative in one or more Market Committee or for the

entire State, on payment of such fee, as may be prescribed;

Provided further that the licensee shall have to comply with the provisions of other Central and State Acts and obtain permission or licence etc. from the competent authority for carrying out national or international trade by way of import or export of any agricultural or horticultural produce or product.]

.....

Section 10. Applications for licenses, fees to be paid and cancellation or suspension of licences- (1) Any person may apply to authority specified in Section 9 for a licence which may be granted for such period, in such form, on such conditions and on payment of such fees (not exceeding five hundred rupees) and such security not exceeding five hundred rupees, as may be prescribed:-

Provided that if any person carrying on any business of the nature specified in sub-section (1) of Section 8 in a notified market area on the date of issue of notification under sub-section(1) of Section 6 fails to apply for a licence on or before the date specified therein for obtaining licence, the proper authority may, before a licence is issued, impose on him such penalty not exceeding one hundred rupees as may be prescribed.]

(2) [The Chief Administrator or any other officer, authorized by him in writing in this behalf] may, on being satisfied that [the licence has been obtained through willful misrepresentation or fraud or] there has been a breach of any of the conditions specified in a licence, by an order in writing, cancel or suspend such licence and may also direct that such licence shall not be renewed for such period not exceeding five months for the first breach and not exceeding nine months for the second breach and not exceeding one year for ever subsequent breach, as may be specified in that order:

Provided that the Chairman of a Committee of the area concerned may under intimation to the [The Chief Administrator or any other officer, authorized by him in writing in this behalf] suspend a licence for a period not exceeding fifteen days;

Provided further that no such order shall be made without giving the licensee an opportunity to show cause why such an order should not be made.”

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Section 43. Power to make rules.-(1) The State Government may by notification make rules for carrying out the purposes of this Act.

(2) In Particular and without prejudice to the generality of the foregoing power, such rules may provide for-

xx xx xx xx

(viii) the issue by a Committee of licences of brokers, weighmen, measures, surveyors, godown keepers or other functionaries, the form in which, and the conditions under which, such licences shall be issued or renewed and the fees, if any, to be charged therefor;.....”

8. Rules 17, 24(10), 24(12) and 24(14) of the Punjab Agricultural Produce Markets (General) Rules, 1962 read as under:-

“Rule 17. Licence to dealers. Section 10 & 43(3)

(ix)- A person desirous of obtaining a licence under section 10 of the Act shall apply in Form ‘A’ in duplicate to the [Chief Administrator of the Board or any other person authorised by him, in writing, in this behalf] through the Secretary of the Committee in whose jurisdiction he wishes to carry on his business and shall also deposit with the committee, the requisite licence fee in cash and the security in the form of post office saving bank account duly pledged in favour of the Chief Administrator of the Board or any other person authorised by him, in writing, in his behalf

(2) The licence fee and the security for licences issued under this rule shall be as under:-

Category of licences	Licence per annum	Fee per quarter of the year or part thereof.	Security
i) Factory including ginning factory sheller, huller, flour mill, oil expeller, Dal Mill or cold storage for sale, purchase, storage or processing of agricultural produce.	Rs. 100.00	Rs. 25.00	Rs.500.00
ii) Commission agent, Kacha Arhtiya or other wholesale dealer for sale,	Rs.60.00	Rs. 15.00	Rs.300.00

purchase or storage of agricultural produce.			
iii) [other dealers whose annual turn over of agricultural produce exceeds rupees **[sixty thousand] but does not exceeds rupees one lakh]	Rs.20.00	Rs. 5.00	Rs.100.00
*Substituted for the word “Retailer” by Haryana Notification dated 26.3.1982. ** Substituted by Haryana Notification dated 13.8.1987. #Word “huller” deleted by Haryana Notification dated 26.03.1982.			

Provided that in case of licences issued, before coming into force of the Punjab Agricultural Produce Markets (General) Haryana Second Amendment Rules, 1975, the above rates of licence fee and security shall be applicable with effect from the 1st April, 1976.

(3) Unless otherwise provided in the licence, each licence issued under the Act and these rules shall expire on the 31st day of March following the date of issue.

(4) A separate licence shall be required by a person for setting up, establishing or continuing or allowing to be continued more than one place for the purchase, sale, storage and processing of agricultural produce in the same notified market area.

(5) The Secretary of the Committee, or such other official as may be authorised by him to receive such application, shall on receipt of the application and the pass book in respect of security, ensure that the necessary licence fee and security have been deposited and shall, after verifying the correctness of the acts stated therein, forward the same to the [Chief Administrator of the Board or any other person authorised by him, in writing, in this behalf] under registered post with acknowledgement due within three days of their receipt in the office of the Committee.

(6) On receipt of the application, the [Chief Administrator of the Board or any other person authorised by him, in writing, in this behalf] may grant a licence to the applicant in form B. The licence shall be subject to the conditions mentioned therein.

(7) A record of the licences issued under this rule shall be maintained by the Board as well as by the Committee in form C.

(8) The security will be released three months after the date of the closure of the business, on production of the clearance certificate issued by the Secretary of the concerned committee.

(9) A licensee may apply for the change of the category of the licence at any time by paying the respective licence fee and security for the licence of the changed category.”

xx xx xx xx

Rule 24. Sale of Agricultural produce-

24(1) to (9) xx xx xx xx

24(10) A person engaged by a producer to sell agricultural produce on his behalf shall not act as a buyer either for himself or on behalf of another person in respect of such produce without the prior consent of the producer:

[Provided that this sub-rule shall not apply to a Co-operative Society];

(11) xx xx xx xx

(12) Every Kachcha Arhitya shall, on delivery of agricultural produce to a buyer, execute a Memorandum in Form 1, and deliver the same to the buyer on the same day or the following day, mentioning sale proceeds plus market charges admissible under rules and bye-laws. The counterfoil shall be retained by the Kachcha Arhitya;

Provided that nothing in this sub-rule shall apply where agricultural produce, being vegetable or fruit, not exceeding one quintal in weight is delivered.

(13) xx xx xx xx

(14) Delivery of agricultural produce after sale, shall not be made or taken unless and until the Katcha Arhitya or, if the seller does not employ a Kachcha Arhitya, the buyer has given to the seller a sale voucher in Form-J the counterfoil whereof shall be retained by the Kachcha Arhitya or the buyer, as the case may be.”

9. Section 8(1) entitles a person to set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce or to purchase, sell, store or process such agricultural produce under a licence granted in accordance with the

licence. Section 8 does not prohibit a party for applying of more than one licence. The petitioners admittedly hold licences under both the categories, namely, (i) and (ii). Neither of the licences issued to the petitioners contain a condition prohibiting them from applying for another licence.

10. Section 2(m) defines the word ‘prescribed’ to mean prescribed by the rules made under this Act. Section 43(2)(viii) confers power upon the State Government to make rules *inter-alia* for the issue by a Committee of licences in the form in which and the conditions under which, such licences shall be issued or renewed. Admittedly, this rule making power has not been exercised by the State Government to restrict issue of licences to only one licence per person or to insist upon the licence being issued in different names. Our attention has not been invited to any statutory provision that prohibits the issuance of two licences or which insists upon two licences being issued in different names.

11. Infact, Rule 17 clearly contemplates the issuance of more than one licence. For instance, sub rule (4) of Rule 17 refers to a person requiring “a separate license for setting up, establishing or continuing or allowing to be continued more than one place *inter-alia* for the purchase, sale, storage and processing of agricultural produce in the same notified market area. It is clear beyond doubt, therefore, that a person is entitled to separate licences for a variety of activities including for the sale of agricultural produce.

12. Rule 24(10) of the Rules, 1962 which was relied upon by the respondents infact recognizes the issuance of two licences. A person who is engaged by a producer to sell agricultural produce on his behalf is not entitled to act as a buyer either for himself or on behalf of another person without the prior consent of the producer. The issuance of prior consent of the producer would arise only where a person is entitled to act as an agent

for sale of the agricultural produce by the producer and for the purchase thereof either for himself or on behalf of another person.

13. Thus far from prohibiting the issuance of more than one licence, the Act contemplates the issuance of more than one licence to an applicant. Further, although the rule making power prima-facie entitles the respondents to impose conditions including restricting the number of licences that an applicant may be issued, it has not been exercised. Thus, under the provisions of the Act and the Rules, an applicant is entitled to apply for more than one licence.

14. Mr. Bedi submitted that as a matter of fact some persons holding two licences are defrauding the revenue as well as not striking the best bargain for the farmers.

15. If a licensee indulges in evading VAT on account of holding two licences, the authorities concerned are always at liberty to take appropriate action against the licensee. Mr. Bedi attempted to establish that the petitioners in the present case have failed and neglected to make appropriate declarations and to furnish the requisite information as required by Rule 24(12) and (14) of the Rules. If the licensees have failed to do so and thereby committed breaches of the conditions of the licences, the respondents have the power under Section 10(2) of the Act to cancel the licence or even to refuse to renew the same. The conduct of a party is not relevant in the interpretation of the statutory provisions.

16. Mr. Bedi submitted with considerable force that when the licences are issued under categories (i) and (ii) there is likely to be a conflict of interests. That is possible. A party who intends purchasing the goods may not strike the best bargain for the agriculturist from whom he purchases the

authorities are always entitled to either cancel the licence or to refuse to renew the same under section 10(2) of the Act. However, once it is found that the relevant statute permits a party to apply for more than one licence, the officers of the department concerned cannot issue general directions preventing them from applying for and obtaining two licences. It is for the authorities then to ensure adherence to the law.

17. Further, there is nothing which prevents the respondents from introducing necessary amendments, even with retrospective effect, prohibiting the grant of licences under both the categories. Mr. Bedi stated that the State of Haryana intends doing so. We obviously cannot at this stage express any opinion about the validity of a provision to which our attention has not been invited and which has not as yet come into force.

18. The writ petition is, therefore, disposed of by directing the respondents to consider the petitioners' applications for renewal of licences. The same shall not be refused only on the ground that the petitioners already hold a licence under one of the categories. It is clarified, however, that it would be open to the respondents to refuse to renew the licences on any other grounds in accordance with law.

This order is stayed upto and including 31.01.2016 to enable the respondents to challenge the same.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

4th December, 2015
'ravinder'

(TEJINDER SINGH DHINDSA)
JUDGE

To be referred to the Reporter or not.	√ Yes	No.
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