

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

%

Date of decision: 9th September, 2015

+ W.P.(C) No. 1414/2012 & CMs No.16291/2014 (for directions) & No.9347/2012 (for stay)

**FAL AVAM SUBZI MANDI MASHAKHOR
ASSOCIATION**

..... Petitioner

Versus

GOVERNMENT OF NCT OF DELHI AND ORS Respondents

+ W.P.(C) No.5773/2013

OM PRAKASH & ORS

..... Petitioners

Versus

STATE OF NCT OF DELHI & ORS Respondents

+ W.P.(C) No.2903/2014

RAJIV KUMAR TOMAR AND ORS

..... Petitioners

Versus

GOVERNMENT OF NCT OF DELHI AND ORS Respondents

+ W.P.(C) 3518/2014 & CM No.18986/2015 (of R-1 to R-5 for condonation of ten days delay in filing counter affidavit)

SHRI RAM DARAS AND ORS

..... Petitioners

Versus

GOVERNMENT OF NCT OF DELHI AND ORS Respondents

+ W.P.(C) No.4945/2014

RAM KUMAR & ORS

..... Petitioners

Versus

GOVERNMENT OF NCT OF DELHI AND ORS..... Respondents

- + **W.P.(C) No.6591/2014**
- HARI OM GUPTA & ORS** Petitioners
- Versus
- GOVERNMENT OF NCT OF DELHI & ORS** Respondents
- + **W.P.(C) No.138/2015**
- RAKESH KUMAR & ANR** Petitioners
- Versus
- GOVERNMENT OF NCT OF DELHI & ORS** Respondents
- + **W.P.(C) No.893/2015**
- SHRI JAGAN NATH SHARMA & ANR** Petitioners
- Versus
- GOVERNMENT OF NCT OF DELHI & ORS** Respondents
- + **W.P.(C) No.4088/2015**
- DALBIR SINGH & ORS.** Petitioners
- Versus
- GOVERNMENT OF NCT OF DELHI & ORS.** Respondents
- + **W.P.(C) No.6693/2015 & CM No.12201/2015 (for stay)**
- M/S PARMESH GOYAL & SONS AND ORS** Petitioners
- Versus
- GOVERNMENT OF NCT OF DELHI & ORS** Respondents
- Counsels for the petitioners:-** Ms. Rani Chhabra, Adv.
Mr. Ratish Kumar, Adv.

Mr. Sarat Chandra and Mr. Sachin Chandra, Adv.

Mr. Arun K. Sharma, Adv.

Mr. Vinod Sehrawat, Adv.

Mr. Arun K. Sharma, Adv.

Counsels for the respondents: Ms. Latika Choudhary for Ms. Avnish Ahlawat, Adv.

Ms. Aayushi Gupta, Adv. for Mr. Raman Duggal, Adv. for GNCTD.

Mr. Naushad Ahmad Khan, Adv. for GNCTD.

Mr. Satyakam, Adv. for GNCTD.

Mr. Devendra Dedha, Adv. for GNCTD.

Mr. Sanjeev Sabharwal, Adv. for DDA.

Mr. Dhanesh Relan, Adv. for DDA.

Mr. Aman Nandrajog, Adv. for DDA.

Mr. Kunal Manav, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. All these petitions pertain to the rights under the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (DAPM Act) and are being listed together and have today also been taken up together for hearing. Though the counsels have argued the matters in two tranches, with W.P.(C) No.1414/2012 constituting one tranche and W.P.(C) No.3518/2014, W.P.(C) No.4945/2014, W.P.(C) No.5773/2013, W.P.(C) No.4088/2015, W.P.(C) No.2903/2014, W.P.(C) No.6591/2014, W.P.(C) No.138/2015,

W.P.(C) No.893/2015 and W.P.(C) No.6693/2015 constituting the second tranche but it is deemed expedient to dispose of both tranches with a single judgment.

W.P.(C) No.1414/2012.

2. The petitioner in this petition claims to be an Association of *Mashakhores* carrying on business of buying agricultural produce from Commission Agents (who in turn purchase from the growers) for onward sale to retailers.

3. The petition has been filed seeking, (i) a direction for grant of Category-A licence within the meaning of The Delhi Agricultural Produce Marketing (Regulation) General Rules, 2000, meant for traders of agricultural produce to the members of the petitioner; and, (ii) a direction to provide reasonable space of 6' x 6' platforms to the members of the petitioner, for sale of agricultural produce, in the boundary of the Ghazipur Subzi Mandi.

4. Though the petitioner nowhere in the petition has disclosed how many and who all are its members but the counsel for the petitioner on enquiry

states that the petitioner has approximately 80 members. However the particulars of the members are not available even today.

5. The counsel for the petitioner has argued, (i) that the members of the petitioner were earlier carrying on their business as traders as aforesaid in Shahdara Mandi; (ii) at that time there was no provision for any licence for carrying on the said business; (iii) that the Shahdara Mandi, in or about the year 2000 was shifted to Ghazipur, and since then the members of the petitioner have been carrying on their business outside the Market Yard of the Ghazipur Mandi.

6. The right and / or entitlement of the members of the petitioner to the licence and to space / platform in the boundary of Ghazipur Subzi Mandi has been enquired.

7. The counsel for the petitioner has drawn attention to Sections 79 and 80 of the DAPM Act which provide for “Regulation of marketing of agricultural produce” and “Grant of Licence” respectively. Attention is next invited to Rule 17 of the Rules supra which lists the grounds on which licence will be refused. On the basis thereof it is contended that since the members of the petitioner are carrying on business as traders of agricultural

produce and since none of the grounds on which grant of licence is to be refused are attracted to any of the members of the petitioner, they have a right under the Act and Rules supra to a licence and to a space / platform within the boundary of Ghazipur Subzi Mandi to carry on their business.

8. On enquiry, whether the members of the petitioner had applied for licence and whether licence has been refused to them, it is stated that though the members of the petitioner applied for licence but no decision has been taken on their said application and hence this petition.

9. Per contra, the counsel for the respondents no.2&3 Delhi Agricultural Marketing Board (DAMB) and Agricultural Produce Marketing Committee (APMC) has contended that,

- (i) earlier a licence was required for carrying on business in agricultural produce from anywhere in Delhi, whether in the Market Yard or at any other place;
- (ii) vide Notification dated 2nd September, 2014 issued in exercise of powers under sub-sections (1) and (4) of Section 4 of the DAPM Act and in supersession of the earlier Notifications, it

has been declared that regulation of marketing of fruits and vegetables shall cease beyond the markets / market yards / sub-yards of the respective Marketing Committees namely APMC MNI Azadpur, APMC Keshopur and APMC Shahdara (since relocated to Ghazipur) and henceforth market areas of these Committees with respect to fruits and vegetables shall have the boundaries mentioned therein;

- (iii) though prior to the said Notification, anyone vending fruits and vegetables in Delhi, whether within the boundaries of the Market Yards of the Mandies aforesaid or anywhere else in the city required a licence for the said purpose, after the said Notification, licence is required only for dealing in fruits and vegetables within the precincts of the Market Yard.
- (iv) Ghazipur Subzi Mandi is one of the Market Yards in Delhi;
- (v) that only a limited number of licences can be given / granted for the Market Yards, depending upon the space available therein and since the year 2000 no licences are being issued as there is no space available / remaining in any of the Market Yards; and,

(vi) that only those having valid licences in Shahdara Mandi, which was re-located to Ghazipur, were allotted spaces in the Ghazipur Mandi and their licences are taken up for renewal periodically.

10. The counsel for the petitioner, on enquiry, admits that none of the members of the petitioner had licence for the Shahdara Mandi.

11. On enquiry from the counsel for the petitioner as to how unlimited number of licences can be directed to be given when there is no space available in the Market Yard, the counsel for the petitioner states that the respondents no.2&3 DAMB and APMC are in the process of expanding the Ghazipur Mandi and the members of the petitioner be allotted space therein.

12. The counsel for the respondents no.2&3 DAMB and APMC, on enquiry as to the criteria to be followed for allotting fresh space if any created in the Ghazipur Mandi, states that as and when the space is available, a criteria therefor will be formed / formulated.

13. Faced therewith, the counsel for the petitioner states that since the members of the petitioner are carrying on the business of trading in

agricultural produce, they in any case are entitled to a licence under the Act and the Rules aforesaid.

14. I have considered the aspect of issuance of a licence to the members of the petitioner without their having any space / platform within the boundaries of Ghazipur Subzi Mandi to carry on business therefrom.

15. The petitioner claims, its members to be having a right to such licence since they are engaged in the said business and since the only grounds prescribed, on which licence can be denied are not attracted to them. Rule 17 on which reliance is placed is as under:-

“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) a person applying for licence has been declared insolvent;*
- (b) the committee is satisfied that the purpose of applying for licence is none other than to obtain a licence for becoming voter for the purposes of elections to the committee;*

- (c) *the licence has not been functioning during the preceding year without any reasonable cause;*
- (d) *the person applying is a benamidar or partner with any person to whom a licence has been refused, or whose licence is cancelled or suspended for the period of such cancellation or suspension;*
- (e) *the person applying for a licence is convicted of any offence involving the said persons' integrity as a man of business, within five years of such conviction;*
- (f) *the person applying for licence has no premises to carry on business or marketing of agricultural produce;*
- (g) *any of the information stated by the applicant in his application form is materially incorrect.*

(2) *No such order of refusal to grant or renew a licence shall be passed without giving a reasonable opportunity of being heard to the affected person.*

(3) *If a grant or renewal of a licence is refused to a person the licence fee and security deposited by him shall be refunded."*

16. I have wondered whether every person who wants to carry on business of trading in agricultural produce, unless suffers from the

disabilities prescribed, is, as a matter of right, entitled to a licence. Of course such licence now is required only for carrying on such business from within the boundaries of the designated market yards and not from anywhere else as it was earlier required; there may be restrictions under other laws on carrying on said business from other places but none can be said to be violating DAPM Act by carrying on business of trading in agricultural produce from outside the market yards without a licence from the APMC or under the DAMP Act.

17. The DAPM Act as per its preamble was enacted for the better regulation of marketing of agricultural produce and for establishment of markets for agricultural produce in the National Capital Territory of Delhi and for matters connected therewith. Section 3 thereof empowers the government to by notification declare its intention of regulating the marketing of agricultural produce in such area as may be specified in the notification and Section 4 provides for declaration of an area to be a market area wherein marketing of agricultural produce shall be regulated in accordance with the provisions of the Act. Section 4(3) provides that on such declaration being made, no local authority shall establish or authorize or allow to be established

or continued any place in the market area for the marketing of agricultural produce. Section 5 provides for establishment of the DAMB with the power (as prescribed in Section 17) *inter alia* to exercise superintendence and control over the marketing Committees and to consider proposals for selection of new sites for establishment of markets and to construct markets. Section 35 provides for constitution of marketing Committees with power (as prescribed in Section 55) *inter alia* to control and regulate the market including by regulating the entry of persons and of vehicular traffic into the market by supervising the conduct of those who enter the market for transacting business and by grant, renewal, refusal, suspension and cancellation of licenses.

18. Section 79 of the DAPM Act to which attention was drawn is titled “Regulation of Marketing of Agricultural Produce” and prohibits carrying on marketing of agricultural produce in a market area / yard otherwise than in conformity with the terms and conditions of a licence in that regard issued by the authorities mentioned thereunder. Section 80 provides for grant of licence and Section 81 provides for cancellation / suspension of licence. Undoubtedly, there does not appear to be any express provision in the Act

empowering the DAMB or the marketing Committee i.e. the APMC to limit the number of licenses to be issued for a market area / market yard.

19. The question which arises for consideration is whether in the absence of any power in the DAMB and / or APMC to limit the licenses to be issued for a market area / yard, all those desirous of carrying on business therefrom and not suffering from any of the disabilities for grant of license are entitled to the license.

20. In this regard, notice may also be taken of Rule 15 of the Rules supra which provides for a person desirous of obtaining a licence for use of any place in the market yard/area for the marketing of agricultural produce or for trading therein as a trader, commission agent, broker etc. in relation to the marketing of agricultural produce to apply for a licence as provided thereunder.

21. Notwithstanding there being no provision limiting the number of licenses, I am of the view that the provision for grant of licence having been made [as is evident from Rule 15(5)] for the purpose of regulating the entry of person and of vehicular traffic into the market and a limit on the number of licences which can be granted, is implicit in the Rule. The whole purpose

of regulating the entry to the Market Yard and of grant of licence would be defeated, if it were to be held that all who apply therefor, unless are barred / disentitled from grant of a licence on any of the grounds mentioned in Rule 17, would be entitled to a licence; the same would lead to an unlimited number of licences being issued and entry into the Market Yard becoming absolutely free from regulation; the same cannot be the purport of the Act and the Rules framed thereunder.

22. Supreme court as far back as in *M.C.V.S. Arunachala Nadar Vs. State of Madras* AIR 1959 SC 300 while dealing with the validity of the provisions of the Madras Commercial Crops Act, 1933 and the Rules thereunder, enacted for better regulation of the buying and selling of commercial crops in the State of Madras and for that purpose to establish market etc. negatived the contention that the same, by requiring a license to be taken, constituted a unreasonable restriction on the fundamental right to do business and held that under Article 19(1)(g) of the Constitution of India all persons have the right to practice any profession or to carry on any occupation, trade or business but clause (6) of Article 19 enables the State to make any law imposing in the interest of general public reasonable restrictions on the exercise of the said

right; that the provisions of the Act and the Rules intended to regulate the buying and selling of commercial produce by providing suitable and regulated markets cannot be said to create unreasonable restrictions on the citizens right to do business unless it is clearly established that the provisions are too drastic, unnecessary, harsh and overreach the scope of the object to achieve which it is enacted.

23. The Supreme Court again in ***Jan Mohammad Noor Mohammad Bagban Vs. State of Gujarat*** AIR 1966 SC 385, in relation to Gujarat Agricultural Produce Markets Act, 1964 held that it had been enacted to lay down the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce and no challenge to the provisions thereof requiring such trade to be carried out only with a licence could be made on the ground of infringement of fundamental right under Articles 14,19 and 31 of the Constitution of India.

24. Similarly, ***Vishnu Dayal Mahendra Pal Vs. State of Uttar Pradesh*** (1974) 2 SCC 306 was concerned with a challenge to the validity of the Uttar Pradesh Krishi Utpadhan Mandi Adhiniyam, 1964 and the Rules made thereunder, also on the ground of violation of Articles 14 and 19(1)(g) of the

Constitution. After noticing the provisions of the Adhiniyam which were *pari materia* to the provisions of the DAPM Act, the contention that there was no guidance therein in the matter of grant of license was rejected by observing that the same failed to take note of the fact that the Committee (Marketing Committee) which had been entrusted with the duty of granting licenses consisted of people from different sources vitally interested in the marketing of agricultural produce and was thus well represented Committee which was expected to know the object and purpose of the Act of which it was a creature. It was held that there existed sufficient guidance from the preamble and the other provisions of the Act for deciding whether to grant or not to grant licence and there was no basis for apprehending that licenses would be refused arbitrarily.

25. Again in ***Bhagwan Dass Sood Vs. State of Himachal Pradesh*** (1997) 1 SCC 227, in the context of the Himachal Pradesh Agricultural Produce Market Act, 1970 it was held that the same is a beneficial legislation aimed to prevent exploitation of growers of agricultural produce in the hands of dealers, traders and middlemen and containing provisions for establishing organised market and market yards to ensure sale and purchase of

agricultural produce at a fair price and to ensure correct weighment of such produce, storage of agricultural produce, roads, pathways for transport of agricultural produce to organized market yards etc. and for all of which purpose licences have been prescribed for monitoring and controlling the said activities.

26. However none of the judgments supra or any other judgments were found dealing with the aspect of limit on the number of licences in the context of such legislation. I am however of the view that the area / size of the market yard for which alone licenses are to be granted being limited and the number of persons to whom spaces / platforms have been allotted in the market yard being also limited, the decision of the respondent not to grant any further licenses cannot be said to be arbitrary, drastic, harsh or overreaching the purpose for which DAPM Act has been enacted. The market yard cannot be permitted to be overcrowded and which will not allow any business to be carried on therefrom and which will also be an impediment to the respondents regulating the business therein.

27. I find a Single Judge of this Court in *Anuj Johri Vs. Union of India* 118 (2005) DLT 418 while dealing with a challenge to the provisions of

Ancient Monuments and Archaeological Sites and Remains Act, 1958 providing for licensing of the tourist guides to have held that there is substantial justification in limiting the number of licensed guides as the same is imperative to have sustained development of tourism. It was further held that if there are too many licensed guides to show people around the monuments it could lead to overcrowding, chaos and unhealthy competition and all of which would be detrimental for the industry and the profession itself. It was further held that a dissatisfied guide far from permitting promoting tourism could adversely affect the tourism scenario and the image of the country. It was yet further held that the number of licenses to be issued had to be assessed on the basis of flow of tourists, number of monuments, available licensed guides, growth potential and other relevant factors. Appeal being LPA No.1087/2005 preferred against the said judgment is found to have been dismissed on 16th May, 2005.

28. Similarly, in the present case, the number of licenses which could be issued by the respondents have to necessarily depend *inter alia* upon the space / platforms available in the market yard / mandi. The very purpose of issuing licenses is to enable the respondents to supervise, regulate and monitor the

activities in the market yard and to secure proper enforcement of the DAPM Act and the Rules and if it were to be held that license has to be issued to all who may be qualified therefor, the same will be in negation of the very purpose of licensing.

29. I have in fact enquired from the counsel for the petitioner, as to what prejudice will be caused to the members of the petitioner from non-grant of licence, inasmuch as it is not as if, owing to not having licence, they are being prohibited from carrying on their business as traders in agricultural produce.

30. No proper answer has been forthcoming therefor.

31. Now, after lunch, the counsel for the petitioner states that on receiving instructions through lunch hour, she has found that the members of the petitioner are in fact sitting within the said Ghazipur Market Yard, though without licence.

32. The counsel for the respondents No.2&3 DAMB and APMC rightly points out that if the members of the petitioner, without licence are illegally sitting and carrying on trading in agricultural produce inside the Market Yard, the same would not entitle them to a licence, inasmuch as only those

many licences can be given / issued for which space is available in the Market Yard and the members of the petitioner did not have the licences for Shahdara Mandi also, from where they have claimed to have relocated to Ghazipur Mandi.

33. There is thus no merit in the petition. The only direction which can be issued in this petition is, that the members of the petitioner may make their applications for licence to the respondent No.2 and the respondent No.2, as and when any space for allotment is available in the Market Yard existing, or to be constructed in future shall, after laying down the eligibility criteria, consider the applications of the members of the petitioner and take a decision thereon.

34. With the aforesaid direction, the petition is disposed of.

No costs.

W.P.(C) No.3518/2014, W.P.(C) No.4945/2014, W.P.(C) No. 5773/2013, W.P.(C) No.4088/2015, W.P.(C) No.2903/2014, W.P.(C) No.6591/2014, W.P.(C) No.138/2015, W.P.(C) No.893/2015 and W.P.(C) No.6693/2015.

35. These petitions have been filed to restrain the respondents, (i) Government of National Capital Territory of Delhi (GNCTD), (ii) Director

(Panchayat), GNCTD, (iii) BDO (South Division), GNCTD, (iv) APMC and (v) DAMB, from harassing the petitioners, holding valid licences to carry on their business of vending vegetables, from Nasirpur Mandi, Palam, New Delhi and from Bhim Nagar Subzi Mandi, Nangloi, Delhi. Though Delhi Development Authority (DDA) and Subzi Mandi Thoke Vikreta Nasirpur (Palam) Association were also impleaded as respondents No.6&7 but no relief against them is claimed in the petitions.

36. The counsel for the APMC states that prior to 2nd September, 2014, a licence was required for carrying on business in agricultural produce not only within the Market Yards of the Marketing Board but from anywhere in Delhi. However, vide Notification dated 2nd September, 2014 issued in exercise of powers under sub-sections (1) and (4) of Section 4 of the DAPM Act and in supersession of the earlier Notifications, it has been declared that regulation of marketing of fruits and vegetables shall cease beyond the markets / market yards / sub-yards of the respective Marketing Committees namely APMC MNI Azadpur, APMC Keshopur and APMC Shahdara. On the basis thereof, it is contended that thus with effect from 2nd September, 2014, a licence is required only for carrying on business in agricultural

produce from the Market Yards of the Marketing Committees mentioned in the said Notification and not from anywhere else in the city. The counsel for APMC further states that Nasirpur Mandi, Palam is not a designated Market Yard of the Marketing Committee; however the petitioners may have been given a licence under the position as prevalent prior to the Notification dated 2nd September, 2014 but now since no licence is required for carrying on business in agricultural produce from Nasirpur Mandi, Palam, APMC, would have no occasion to disturb the petitioners from their said activities / business at the said place. It is however clarified that if the activities of the petitioners are violative of any other law, the other authorities would be taking action under their respective policies / laws.

37. Upon the reason of filing of the present petition being enquired into, it is informed that the place from where the petitioners claim to be carrying on their business is the land of GNCTD and GNCTD was evicting the encroachers therefrom. On enquiry as to the title of the petitioners to the land from which they claim to be carrying on the said business, the counsel for the petitioner states that the petitioners do not claim on the basis of any title to the land but only on the basis of the licence earlier issued by the

APMC.

38. Merely because the petitioners may be having a licence from the APMC to carry on business of marketing in agricultural produce and without which licence, prior to 2nd September, 2014, the said business could not be carried on, would not confer a title on the petitioners to the land from which they may be carrying on business, unless the petitioners are able to make out a right to continue in possession of the said land. Therefore, no restraint order against the GNCTD from evicting the petitioners therefrom can be issued.

39. These petitions are thus dismissed insofar as against the respondents GNCTD is concerned and disposed of recording the statement aforesaid of the counsel for APMC vis-à-vis respondent APMC.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 9, 2015

‘pp’ / gsr

(corrected and released on 1st October, 2015).