

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.16788 of 2000
Date of decision: 29.01.2016

Ramesh Kumar

... Petitioner

Versus

Union Territory Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Kirpal Singh, Advocate for the petitioner.
Mr. Vishal Sodhi, Advocate for the respondents.

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

ARUN PALLI J.

A writ in the nature of certiorari is prayed for to quash the decision of the Screening Committee, constituted by the Chandigarh Administration, dated 07.07.1997 (Annexure P10), vide which it declined to recommend the claim of the petitioner for allotment of a booth; memo dated 17.06.1997 (Annexure P11) conveying the said decision; order dated 28.12.1998 (Annexure P13), whereby, even on a re-consideration, the claim of the petitioner was rejected by the Estate Officer; as also the order of the Chief Administrator, UT, Chandigarh, dated 07.01.2000 (Annexure P14), vide which even the appeal preferred by the

petitioner against the rejection of his claim was dismissed being not maintainable.

In brief, the case set out by the petitioner is that on 11.03.1987 (Annexure P1), he was issued a licence for a hand cart (Rehri), by the Licensing Officer, UT, Chandigarh. Consequently, the petitioner was also allotted a site No.42 in Rehri Market, Sector 20D, Chandigarh. Petitioner set up a tea stall at the allotted site and continued to run the same. He has regularly been depositing the registration and licence fee with the Administration. The Chandigarh Administration, for allotment/transfer of built up booths to a valid hand cart licence holder, enacted a set of rules known as “**Allotment/Transfer of Built up Booths in any Sector on Lease/Hire Purchase basis in Chandigarh Rules, 1991**” (for short, ‘1991 Rules’), which were notified on 07.03.1991. Petitioner was even issued a provisional identity card by the Chandigarh Administration on 04.03.1991 (Annexure P2) for allotment of booth. And vide letter dated 14.03.1991 (Annexure P7), issued by the Licensing Officer, under Hand Cart Bye Laws, petitioner was asked to deposit a sum of Rs.3,000/- as earnest money for allotment of booth, which he deposited. With a purpose to ascertain the genuineness of the claim of the applicants and to verify whether they indeed were operating from the allotted sites in the Rehri Market, a survey was conducted by the Administration on 08.08.1991. The case being set up by the petitioner is that owing to his ill-health he could not be present during the spot inspection on 08.08.1991. Resultantly, his name was not included in the list of

eligible applicants. However, vide application dated 13.04.1994 (Annexure P9), petitioner represented to the Licensing Authority to include his name for allotment. And, during a subsequent survey that was carried out on 13.12.1995, petitioner was found present at site and he even signed the survey register. Though, his name was reflected at serial No.33 in the record of the survey staff, but still he was termed as ineligible for allotment. Vide memo dated 19.12.1995, a Screening Committee was constituted by the Administration for scrutiny of claims and determining the eligibility of the applicants. And, vide its recommendations dated 07.07.1997 (Annexure P10), even the Screening Committee declined to recommend the claim of the petitioner for allotment. Petitioner was conveyed the said decision by the Estate Officer, UT, Chandigarh (respondent No.3), vide memo dated 17.06.1997 (Annexure P11). Appeal preferred by the petitioner, assailing the decision of the Screening Committee, was dismissed by the Chief Administrator (respondent No.2), vide order dated 10.10.1997 (Annexure P12), being not maintainable. However, drawing a sympathetic view, respondent No.2 still directed the Estate Officer to re-examine the claim of the petitioner to avert any injustice. But, even on a re-consideration, the petitioner was not found eligible for allotment. And claim of the petitioner was again rejected vide order dated 28.12.1998 (Annexure P13). The conclusion arrived at reads as thus:

“I have gone through the record file of this case as well as findings of the Screening Committee and above noted documents now furnished by the applicant. After

going through the record, it has been revealed that above noted documents had not been submitted before the Screening Committee by the present applicant. The documents now furnished afresh do not strengthen his claim to determine his eligibility for the allotment of a booth. He has further been asked to produce any other evidence or documentary proof if any, in support of his claim which may prove him being genuine claimant, but he has failed to produce anything on record in order to substantiate his claim. Therefore, I do not find any merit and reason to differ with the findings already given by the Screening Committee constituted for the purpose earlier. Accordingly, the claim of the present claimant Shri Ramesh Kumar son of Sh. Girdhari Lal is hereby rejected.”

Once again, the petitioner preferred an appeal before respondent No.2, which was dismissed being not maintainable, one more time, vide order dated 07.01.2000 (Annexure P14). This is how, as indicated above, the petitioner is before this court.

Learned senior counsel, for the petitioner, contends that concededly a hand cart/driving licence No.1230 was issued by the Licensing Officer (under the Hand Cart Bye Laws) to the petitioner on 11.03.1987, which was renewed from time to time. Petitioner was allotted a site No.42 in the Rehri Market, Sector 20D, Chandigarh, from where he operated a tea stall since 1987. He has been regularly paying the registration/licence fee to the Administration. And, that being so, he was issued a provisional identity card for allotment of booth on 04.03.1991. In terms of the letter dated 14.03.1991 (Annexure P7), issued by the Licensing Officer, petitioner deposited a sum of Rs.3,000/- by way of earnest

money. Thus, he was fully eligible, under the rules, for allotment. Further, he contends that even though the petitioner was not present on 08.08.1991, during the survey conducted by the Administration, but his presence, during the subsequent survey conducted on 13.12.1995, was duly acknowledged by the respondents. So much so, he submits that this position is not disputed by the respondents in paragraph 14 of their written statement.

Per contra, learned counsel for the respondents submit that the petitioner was not eligible for allotment in terms of Rule 5(a) of the 1991 Rules, as not only he was not found operating at the allotted site in the Rehri Market in the year 1991, but he even ceased to have a valid hand cart licence. Therefore, his claim was rightly rejected.

We have heard learned counsel for the parties and perused the records.

Undoubtedly, the petitioner was issued a hand cart/driving licence No.1230 by the Licensing Officer on 11.03.1987. And, he was allotted a site No.42 in the Rehri Market, Sector 20D, Chandigarh. However, licence allotted to the petitioner was last renewed, by the Administration, upto 31.03.1991. Neither did the petitioner renew his licence thereafter nor submitted any registration/licence fee to the Administration. Almost, during the same time a survey was conducted by the Administration on 08.08.1991, to verify whether those who had applied for allotment were indeed operating from the allotted sites. Concededly, the

petitioner was not found present at site No.42 or being engaged in any avocation on the spot. He concedes knowledge, w.e.f. 08.08.1991 itself, of the survey carried out by the Administration. But, yet he remained quiet for a period of almost three years. And, it was only vide letter dated 13.04.1994 (Annexure P9), to the Licensing Authority, he sought to revive his claim and prayed for inclusion of his name for allotment. That being so, the only and the inevitable inference one could reach is that the petitioner had shifted/moved from the allotted site No.42, to explore better options and avenues, in the year 1991 itself. Which is why, neither did he choose to renew his hand cart licence post March 1991 nor was found conducting any business at site on 08.08.1991, during the survey. Thus, an application dated 13.04.1994 (Annexure P9), moved by the petitioner was just an attempt to re-join the queue. Something, which, ex facie, was speculative and an afterthought. Therefore, even though the petitioner was found present during the subsequent survey on 13.12.1995, but that would hardly advance his claim. Likewise, letters (Annexure P15 & 16), that are purport to have been issued by the members of the Rehri Market, are of no consequence and are even undated. The Screening Committee comprehensively examined the claim of the petitioner and recorded as thus:

“Thereafter, the Screening Committee heard all the claims and objections in respect of each individual claimant/objector irrespective to the figuring of their names either in the lists of tentatively eligible or tentatively ineligible claimants in Panchayat Bhawan Sector 18, Chandigarh from 14.9.96 to 17.9.96, in the

presence of all the rehri/phariwalas, their representatives and general public. The Screening Committee besides hearing each and every person whosoever appeared before it including all the claimants, also examined claims/documents, survey reports, licences and all other relevant bye-laws/rules pertaining to each individual claim and thereafter, decided each individual case on its merits.

Claimant appeared before the Committee and was heard at length. He was confronted with the following facts:-

He was not found in the survey of 1991.

The claimant was also asked to adduce evidence if any, in support of his claim but he failed to give any satisfactory explanation. Also the other rehriwalas of rehri market Sector 20-D, who were present there, were consulted but they hotly refused to recognise the present claimant as being genuine claimant of the said rehri market for the allotment of booth.

Keeping in view of the above facts, his case is not recommended for the allotment of booth.”

It would be apposite, at this juncture, to refer to Rule 5(a) of the 1991 Rules that postulates the eligibility condition for allotment:

**“5. Eligibility: The Competent Authority may allot a built up booth in the market in any sector to a person if:
(a) he holds a valid hand cart licence as well as driving licence and owns a hand cart on the date of issue of the Notification or the date as may be prescribed for the purpose.”**

Concededly, the petitioner ceased to have a valid hand cart licence post 31.03.1991, as he failed to renew the same any further. That being so, his claim for allotment of built up booth, under the rules, could never be acceded to.

No interference is warranted in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

29.01.2016
Rajan