IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Writ Petition No.3210 of 2015
Date of Decision:18.05.2016

M/s Nohar Chand Subhash Chand ....petitioner

Versus

State of Punjab and others .....respondents

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

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

Present: Mr.Sherry K.Singla, Advocate
for the petitioner

Mr.Rajinder Goyal, Addl.AG Punjab

Mr.Nitin Kaushal, Advocate
for respondents No.2 and 3

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

This petition raises an important question as 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 (for short 'the 1999 Rules').

2. We find ourselves bound by a judgement dated 06.01.2015 passed by a Division Bench of this Court in the case of

"M/s Narang Fruit Agency versus State of Punjab and others" in CWP No.13287 of 2014.

It is necessary, however, to set out the rules that have been relied upon on behalf of the respondents, who contend that the attention of the Division Bench had not been invited to the same.

3. The petitioner has sought a writ of certiorari to quash the orders rejecting his application for allotment of a plot in the New Grain Market, Mansa. The facts are as follows.

4. The petitioner was issued a license in the year 1999 under Section 10 of the Punjab Agricultural Produce Market Act, 1961 (for short 'the Act'). The license was valid till 31.03.2002. It was renewed from 02.05.2002 to 31.03.2005. Unfortunately, the petitioner did not seek renewal of the license as required by the provisions of law which we will shortly refer to. He applied for the same only on 15.12.2005. The license was issued on 20.12.2005. It is the gap between 31.03.2005 and 15.12.2005 that the respondents rely upon in support of the impugned orders rejecting the petitioner's application for the allotment of premises in the New Grain Market.

5. The allotment was sought pursuant to an advertisement issued by the respondents on 10.01.2008. The respondents contend that Rule 3(iii-a) dis-entitles the petitioner to the allotment of a plot in the New Grain Market. It is, however, necessary also to read Rule 3 (iii). Rule 3 insofar as it is relevant reads 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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(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 Form '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;

6. Upon the expiry of the earlier license on 31.03.2005, the petitioner ceased to be a licensee. This continued till 15.12.2005, when he made an application for a license. Thus, according to the respondents between the period 31.12.2005 and 15.12.2005, the petitioner was not a licensee. Even if he continued to operate in the de-notified market, he did not do so as a licensee. In that view of

the matter, according to them, the petitioner would not be entitled to the allotment of a premises in the New Grain Market, for, only persons who held a license during the relevant period would be entitled to such premises. The requirement of Rule 3(iii) stipulates that only those licensees shall be eligible for allotment of plots who had been granted license in the old de-notified market "for a minimum period of three years from the date of allotment." The last sentence in the opening part of Rule 3 (iii) provides that the period of three years shall be counted from the date of the notice inviting applications for allotment namely 10th January, 2008 i.e. the date of the advertisement. Thus, under Rule 3(iii) an applicant to be eligible, must have had a license for the said three years and also transacted business of the stipulated amount during those three years.

7. Mr.Kaushal, learned counsel appearing on behalf of respondents No.2 and 3 i.e.Secretary and Estate Officer, Punjab Mandi Board, also relied upon Section 2 (hh) of the Act, which defines a licensee as under:

> *"licensee" means a person to whom a licence is granted under section 10 and the rules made under this Act and includes any person who buys or sells agricultural produce and to whom a licence is granted as Kacha Arhtia or Commission agent or otherwise but does not include a person licenced under section 13.*

Based on this, Mr.Kaushal, contends that even if a person carries on business in a de-notified market, he does not do so as a licensee.

8. Mr. Kaushal also relies upon Rule 21 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short 'the 1962 Rules'), which, insofar as it is relevant, reads as under:

> **21.*Renewal of licence and issue of duplicate thereof***
> *(1) A licence granted under section 10 or 13 of the Act shall be valid for the period for which it is issued and shall, subject to any order passed under section 10(2) of the Act or rule 19(5) be renewable by the authority granting it, on payment of the annual fee prescribed for the issue of such licence. Renewal application shall be made in Form F for licences under section 10 and in Form G for those under section 13.*
> *(2) If any area is excluded from any notified market area and included in another, the licences issued section 10 and 13 for the area so excluded shall be deemed to have been issued by the committee of the notified market area in which the area is included and shall be renewable by the committee of that area.*
> *(3) An application for the renewal of licence shall be made at least thirty days before the date on which the licence is due to expire :*
>
> *Provided that 30 days period of grace will be allowed for getting an annual license renewal.*
>
> *Provided further that the authority competent to renew a licence may, on the applicant's paying a penalty equal to the amount or annual licence fee,grant an application for renewal made within thirty days after the date of expiry of the licence or in the case of an*

annual licence with in thirty days of the expiry of the period of grace. The authority competent to renew a licence may remit the penalty in whole or in part if it is satisfied that the delay was for the reasons beyond the control of the applicant.

Provided further that no licence shall be renewed for a part of the year.

(3-A)Notwithstanding anything contained in sub-rule (3), the period of six months, commencing with effect from the 1st day of April, 2007 to the 30th day of September, 2007, shall be deemed to be allowed as a grace period for getting the licences renewed for the year 2007-08 as a special case.

(4) Every renewal of a licence granted under this rule shall be deemed to take effect from the date following that on which the licence expired.

(5) Except as provided in sub-rule (3), every application for renewal of a licence made after the date of expiry thereof shall be treated as an application for the grant of a fresh licences.

(6) to (7) xxx xxx xxx xx xxx

9. Relying upon Rule 21 of the 1962 Rules and in particular sub Rules (3) and (5) thereof, he contended that what was granted to the petitioner on 15.12.2005/20.12.2005 was a fresh license. A fresh license is not a continuation of the earlier license. It does not have the effect of bridging the gap between the expiry of the earlier license on 31.03.2005 and the issuance of the fresh license on 21.12.2005. In that event, the petitioner would not be eligible, for, he did not hold a license during the three year period prior to 10.01.2008.

10. Mr.Kaushal also pointed out that another party and the

petitioner shared the premises. He submitted that where there is more than one licensee, each of the licensees may be entitled to separate premises but smaller than the one that a sole occupant is entitled to. He submitted that in view of the petitioner having been considered to be ineligible, the other licensee was possibly granted a larger premises.

11. In our view, however, once the petitioner is found to be eligible, he cannot be denied the benefit of the allotment. It will, however, be open to the respondents to take such remedial steps as may be open to them in law in respect of the other licensees.

12. We do not suggest that Mr.Kaushal's submissions have no force. It is also true that some of the provisions of law set out above, were not noticed in the judgement of the Division Bench in M/s Narang Fruit Agency's case (Supra). He has indeed raised important issues. However, the very rule that falls for consideration was construed by the Division Bench in a case where the material facts were similar to the facts before us. In that case, on 11.05.2012, an advertisement was issued inviting applications for allotment of shops on concessional basis under the 1999 Rules. The petitioner's claim for allotment was rejected on the ground that the firm did not possess the eligibility conditions prescribed in Rule 3(c) and 3(a) of the 1999 Rules as there was a gap in the license from 01.04.2009 to 04.08.2009. After setting out these rules, the Division Bench held as follows:

> " *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. <u>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.</u> 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." (emphasis applied)*

13. The judgement is clearly in favour of the petitioner. We are bound by the same. As we find ourselves bound by the judgement, we do not express any opinion about the effect of the provisions of law that Mr.Kaushal has relied upon. We are unable to hold the judgment to be *per incuriam* on account of the Division Bench not having considered some of the provisions of law to which our attention was invited by Mr. Kaushal and which we have set out above. The respondents' remedy would be to challenge the same.

We are informed that a Special Leave Petition is also pending before Hon'ble the Supreme Court against the judgement of the Division Bench.

14. In the circumstances, the petition is allowed in terms of prayer 'B' and 'C'. The impugned orders are set aside and quashed. However, this order is stayed up to including 31.08.2016 to enable the respondents to challenge the same.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

May 18, 2016
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