HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-7243-2015
Date of Decision: March 29, 2017

M/s Bhole Shankar Trading Company and others
.....Petitioners

Versus

State of Haryana and others
......Respondents

2. CWP-7227-2015

Babu Ram Suresh Kumar and others
......Petitioners

Versus

State of Haryana and others
.....Respondents

3. CWP-14182-2015

M/s Rajesh Enterprises
......Petitioner

Versus

State of Haryana and others
......Respondents

4. CWP-9164-2015

M/s Ram Chander Bharat Singh and others
......Petitioners

Versus

State of Haryana and others
......Respondents

5. CWP-16892-2015

M/s Chand Ram Rajinder Kumar
......Petitioner

Versus

State of Haryana and others
......Respondents

6. CWP-20309-2015

M/s Sita Ram Vipul Kumar Jain and others
......Petitioners

Versus

State of Haryana and others ....Respondents

7. CWP-7237-2015
Mohan Lal Mukesh Kumar and others
......Petitioners
Versus
State of Haryana and others ....Respondents

8. CWP-7803-2015
M/s Sher Singh Inder Singh
......Petitioner
Versus
State of Haryana and others ......Respondents

9. CWP-20071-2015
M/s Sube Singh Naman Mohan
......Petitioner
Versus
State of Haryana and others
.......Respondents

10. CWP-20067-2015
M/s Chahal Commission Agent
.......Petitioner
Versus
State of Haryana and others
.......Respondents

and

11. CWP-11503-2015
M/s Jai Jawala Ji Trading Company and another
.......Petitioners
Versus
State of Haryana and others
........Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No.
3. Whether Reporters of local papers may be allowed to see the judgment? Yes/No

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Present: Mr.Sushil Jain, Advocate
for the petitioners.

Mr.Amar Vivek, Advocate
for Haryana State Agricultural Marketing Board.

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SURYA KANT, J.

This order shall dispose of the above-captioned writ petitions as the common question which falls for consideration in these cases is whether or not the petitioner-firms fall in the category of "Old Licensees" and fulfill the eligibility conditions prescribed for allotment of plots at concessional rates and on preferential basis in the New Grain Market at Safidon, District Jind?

[2] The facts may be noticed briefly:

[3] The State of Haryana/Haryana State Agricultural Marketing Board (in short, `the Board') decided to construct a New Grain Market at Safidon in place of Old Grain Market. After conducting survey in respect of the existing licensees who were operating in the Old Grain Market, applications were invited in the year 2002 from them for allotment of plots in the New Grain Market on preferential basis.

[4] It may be mentioned here that the State of Haryana has, in exercise of its powers under the Punjab Agricultural Produce Markets Act, 1961, formulated the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for brevity, `the 2000 Rules') and Rule 3 of these Rules deals with disposal of immovable property. The relevant part of Rule 3 reads as follows:-

> "3(1) All immovable properties in the Market developed by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shop plots will be allotted to the old licensees of category (ii) i.e. (*Kachcha Arhatiyas*) of old market which is to be de-notified, resulting in displacement of such licensed dealers of category (ii), on free hold basis, for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely:

(i) in the markets where some auctions have already been held, the allotment shall be made on the basis of the average price of the last auction;

(ii) in the markets where no auction has so far been held, the allotment price shall be fixed at thirty five percent above the reserve price. The reserve price shall be worked out as per the formula approved by the Board vide its resolution dated the first June, 1987 or any other formula to be approved by the Board from time to time;

(iii) only those category (ii) licensees shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auctions have so far been held, the licensee should have valid licence of category(ii) for at least five years as on 1st January, 2000. In the case of mandis to be developed in future, the licensee should have at least two years' licence of category (ii) on the date of issuance of notification under Section 4 of the Land Acquisition Act, 1894 (Act of 1984), or the date of transfer of land to the Market Committee, if the land is obtained otherwise, as the case may be.

(iv) Such licensees must have paid market fee of at least Rs.5000/- annually for the last two years:

Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turnover during the last two years should be at least rupees two lakh fifty thousand;

(v) the licence of such category(ii) licensee should not have been revoked for a period of two months at a time for violation of any of the provisions of the Act or any rules made thereunder, or non-payment of market fee etc.;

(vi) the category (ii) licensee must have an independent premises, either own or rented, in the old mandi to be denotified. In case there are more than one licensee in the same premises, the oldest firm or the one which is agreed upon in writing by all the firms occupying the same premises, shall be eligible;

(vii) to (xii) XX XX XX XX

(2) All booth plots, the balance shop plots and any other commercial site shall be disposed of through open auction. However, a site (including shop plot, booth plot or any other plot), subject to availability, may be allotted at thirty-five percent above the reserve price to the following:"

[Emphasis applied]

[5] It may be seen from the above-extracted Rule that a licensee of Old Grain Market which is to be de-notified on establishment of New Grain Market is entitled to allotment of plot in the New Grain Market on preferential basis subject to fulfilment of conditions like possession of valid licence for a period of five years as on the cut-off date.

[6] Rule 3 of the 2000 Rules *ibid* was inserted in deference to the dictum in **M/s Labha Ram and sons vs State of Punjab**, 1998(5) SCC 207.

[7] After inviting applications from the Old Licensees of Grain Market, Safidon in December, 2002, the draw of lots was held on 16.12.2002 and pursuant thereto, 151 out of 224 old licensees, who were found eligible, were allotted plots in the New Grain Market. All these old licensees were those who possessed a valid licence for a period of at least

five years, namely, such licenses was granted on or before 09.12.1997.

[8] It may be further seen that as per the provisions of the Rules applicable in the year 2002, the old licensee was required to possess a valid license for at least five years as on 01.01.2000, irrespective of the date of inviting the applications. The validity and propriety behind fixation of one static cut-off date was thus put to judicial scrutiny in **M/s Krishan Kumar Rohtas Kumar and others** vs **State of Haryana and others** 2009(3) RCR (Civil) 217 and a Division Bench of this Court held that the prescription of cut-off date was totally arbitrary and violative of Article 14 of the Constitution. The Court applied the doctrine of severability and directed the deletion of words "as on Ist January 2000", which were appearing in Clause (iii) of Rule 3(1) of 2000 rules, reproduced above.

[9] However, well before the above cited decision was rendered by this Court, the authorities themselves realised the hardship being caused by the cut-off date and vide Notification dated 01.09.2008, Rule 3(1) was substituted as follows:

> "Only those category (ii) Licensees shall be eligible for allotment of plots who had valid license of four years on the date fixed for inviting applications for draw of lots."

[10] Though Rule 3(1) was amended by the respondents on 01.09.2008 but the said amendment being prospective, it was inapplicable in the case of old licensees of Grain Market, Safidon. Nevertheless, the decision rendered by this Court in **M/s Krishan Kumar Rohtas Kumar and others**(supra) was fully attracted and consequently the eligibility was required to be determined on the assumption that the words "as on 1st January 2000" are deemed to have been deleted. In this manner the old

licensees of Grain Market, Safidon, were required to possess a valid licence for five years immediately preceding the date of inviting applications in the year 2002, namely, such license must have been granted on or before 09.12.1997.

[11] The petitioners in these cases also claim themselves to be the old licensees of Grain Market, Safidon. Their grievance is against the orders passed by Market Committee, Chief Administrator of the Board or the State Government whereby their claim for allotment of plots in the New Grain Market Safidon at concessional rates has been turned down on the ground that none of them was eligible in the year 2002 when applications were invited from the old licensees, for none of the petitioners was having a valid licence granted on or before 09.12.1997, i.e. before the date of inviting applications in the year 2002.

[12] Having heard learned counsel for the parties on this aspect of the matter, we are satisfied that none of the petitioner is entitled to claim parity with the allottees of 2002 for the simple reason that each petitioner in these cases has got the licence between 01.03.1999 to 06.01.2015. None of them had a valid licence for five years on or before 09.12.1997.

[13] The principle of `equality' can be pressed into aid only when the fact situation is totally similar. Where two similarly placed persons are dealt with differently then only it may amount to pick and choose. In the case in hand the facts are entirely different, for the old licensees to whom plots were allotted in the year 2002 possessed valid licence for a period of more than five years before December 2002, whereas none of the petitioners got the licence before 01.03.1999. In fact, majority of the petitioners have

got licences between 2008 to 2014 only. They cannot, thus, claim parity with the 2002 allottees as unequals cannot be treated equals.

[14] Faced with this, learned counsel for the petitioners refers to the Notification dated 04.03.2015 (Annexure P-9) whereby the Old Grain Market at Safidon was formally de-notified. He relies upon **M/s Labha Ram and sons** (supra) as well as a decision of this Court in **M/s. Om Parkash Arora and Co.and other** vs **State of Punjab and other**, 2014(3) R.C.R.(Civil) 213. In the later decision this Court took notice of the fact that business of Old Grain Market was shifted to the New Grain market in the year 1983 but the Old Grain Market was de-notified in the year 1995. This Court further noticed that "no applications were ever invited for allotment of plots on concessional rates in the New Grain Market". It was in that backdrop that this Court directed as follows:

> "10. We therefore dispose of this writ petition with a direction to the respondents to verify and ascertain from the records and if satisfied that the left out petitioners were working in the old Grain Market under valid licneces till the business came to be shifted in the year 1983, let their cases be considered sympathetically for allotment of plot sites on the basis of concessional rates that may be determined keeping in view the rate of allotment on which the other writ petitioners have been allotted sites in the open auction. In other words, the rate of concessional allotment, if any decided to be made, can not be less than the rate of last allotment made by way of public auction. With a view to expedite the decision, we grant liberty to the left-out petitioners to submit their individual claims by way of representation along with necessary documents and upon receipt thereof, the respondents are directed to verify

> the records, hear them in person and decide their claims within a period of six months from the date of submission of such representations......"

[15] This Court thus did not rule as a matter of legal principle that the date of de-notifying the Old Grain Market will be the singular factor to determine the eligibility of old licensees.

[16] That apart, the question as to whether the business of old Grain Market at Safidon was shifted to the New Grain Market in the year 2002 itself or it continued to operate at both the markets till the year 2015 is essential a question of fact and can be determined after verification of the records. Further, whether or not the licensees who meanwhile were granted licences are to be included amongst the `old licensees' entails a Policy decision which can be taken by the respondents only.

[17] We thus dispose of these writ petitions with a direction to the Chief Administrator of the Board to determine (i) whether the business of the old Grain Market at Safidon had been completely shifted in the year 2002 or thereafter and if so when?; (ii) whether any of the petitioners had attained eligibility before shifting of the business?; (iii) whether the licensees who have completed four years validity period before 2015 as per the amended Rules, can also be considered in the category of `old licensees' and whether any allotment can be made to them at the concessional rate?

[18] The Chief Administrator, Board shall determine these issues within a period of four months and, in case, any of the petitioners is found eligible, the Market Committee shall consider and allot a plot to such licensee at the concessional rate. However, those petitioners who are found ineligible and not entitled to allotment, shall be at liberty to avail their

remedy in accordance with law against the orders to be passed by the Chief Administrator.

[19] The Chief Administrator shall ensure that not more than one plot is allotted to one family in accordance with Rules.

(SURYA KANT)
JUDGE

March 29, 2017 **(SUDIP AHLUWALIA)**
meenuss **JUDGE**

1. **Whether speaking/reasoned ? Yes/No**
2. **Whether reportable ? Yes/No**