

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7249 of 2017(O&M)
Date of Decision:17.10.2019

Kapil Kumar

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Adarsh Jain, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Satish Singla, Advocate,
for respondents No.2 & 3.

RAJIV NARAIN RAINA, J.(Oral)

Commission agency in a Market Committee is not a heritable right, which can be passed on to the son by succession and inheritance. The plea of the respondent- Committee appears to be correct that in a case of partnership the commission agency will come to an end and the son cannot succeed by inheritance or by virtue of any law enabling enacted for such a descent. Hence, the petitioner may apply for commission agency which will be considered in accordance with law. In case of partnership, it is different. If the partner dies, Market Committee is prepared to pass on the commission agency to the surviving partner.

Mr. Jain depends on the letter dated 19.12.2014 recommending the application of the petitioner for becoming proprietor of M/s Hanumanji Trading Company. This recommendation has been

dealt by the Haryana State Agricultural Marketing Board, Palwal and the Board has taken the view that the recommendation cannot be accepted because there is no provision for addition or to allow another person of the family as proprietor in case of death of sole proprietor of the firm. Only in case the firm is a partnership of two or more persons addition or deletion can be made under Rule 20 of the Punjab Agricultural Produce Marketing (General) Rules, 1962. Claiming succession to his father's sole proprietorship, the petitioner feeling aggrieved had filed an appeal before the State Government, which has been rejected by the Financial Commissioner on 05.05.2016 (Annex P-2). The Financial Commissioner has held that definition of firm in the Rules is a partnership firm. Firm is not defined in the rules. Rule 20 relied upon to decline the claim is reproduced below:-

20. Change in style and membership of firm

[Sec.10 and 13]- (1) (a) Where the licensee, holding a licence under section 10, is a firm, any change occurring in the membership of such firm otherwise than through inheritance, shall mean the constitution of new firm and shall necessitate a fresh licence :

Provided that in the case of Hindu Joint Family firm, any addition on account of the birth of any male member or deletion on account of death of any male member shall not be treated as bringing about any change in the membership of the firm.

[Provided further that any change in the membership of the firm amounting to constitution of a new firm without any change in its title shall not be treated as bringing about any change in the membership of the firm where the continuing

members undertake to own the liabilities of the predecessor-firm], and

(b) where a change, not necessitating a fresh licence under section 10 takes place in the membership of a firm, or the firm changes its name without any change in membership thereof, and intimation thereof shall within two weeks from the date of such change, be given to the [Chief Administrator] through the Chairman of the Committee. The Chairman of the committee shall, after making such enquiry as he may deem necessary, forward the application to the [Chief Administrator] with his comments. The [Chief Administrator] on being satisfied about the correctness of the intimation shall order necessary corrections to be made in the licence. Intimation of such order shall also be given to the committee concerned, and necessary corrections shall be made in the Register in Form C maintained in the office of the Board and the Committee.

(c) If in a case covered by clause (b) the firm fails to give necessary intimation to the [Chief Administrator] within the specified time, the change in the membership or the name of the firm, as the case may be, shall be deemed to result in the constitution of a new firm necessitating the grant of a fresh licence.”

I have considered the arguments advanced by the respective learned counsel for the parties and I am of the view that the authorities below have not committed any error in declining the application of the petitioner for the claim based on succession and inheritance. The agency would come to an end with the death of the father of the petitioner. The petitioner is free to apply for commission agency on his own. Such a

request if made, will be decided by the competent authorities in accordance with law.

The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

17.10.2019
monika

Whether speaking/reasoned	Yes
Whether reportable	Yes/No