

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Civil Writ Petition No. 1006 of 2021 (O&M)

Reserved On: 12.02.2021

Pronounced On: 19.04.2021

M/s. Gaurav Fruit Company through
its Prop. Sh. Hans Raj, Hisar, Haryana

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Vikram Singh, Advocate
for the petitioner.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.
CM No. 1286-CWP of 2021

This is an application under Section 151 of CPC for placing on
record **Annexure P-5**, which is an order dated 15.12.2020 passed by Chief
Administrator, Haryana State Agricultural Marketing Board, Panchkula.

For the reasons stated in the application, which is duly
supported by affidavit of petitioner, the application is **allowed** and the order
dated 15.12.2020 is taken on record as **Annexure P-5**.

Registry is directed to place the same at appropriate place in the
paperbook and paginate the same.

MAIN CASE

Petitioner- M/s Gaurav Fruit Company has filed the instant writ
petition, being aggrieved against the order dated 30.04.2019 (**Annexure
P-3**) passed by Additional Chief Secretary to Government of Haryana,
Agricultural and Farmers Welfare Department, whereby revision petition

filed by Market Committee Hissar was allowed and the allotment made in favor of petitioner for a shop in New Vegetable Market, Hissar on preferential basis was cancelled in view of Rule 3(1)(vi) of Sale of Immovable Property Rules, 2000 (for short “The Rules, 2000”).

[2] Learned counsel for the petitioner has argued that respondent No. 1 has wrongly overturned the well reasoned findings given by the authorities below who had categorically held that the petitioner firm was holding a Category II Licence and operating for the last more than 14 years and therefore is entitled for allotment. It is further submitted that Rule 3(1)(vi) has wrongly been applied in the instant case as the firm of petitioner is operating since 1996 whereas the Rules have come into existence in the year 2000. To support his arguments, the counsel has relied upon judgment passed by Division Bench of this Court in ***CWP No. 8345 of 2010***, titled ***“M/s Kishori Lal Suresh Kumar Versus Chief Administrator Haryana State Agricultural Marketing Board and others”*** decided on 19.01.2012; Division Bench judgment of this Court in ***“Haryana State Agriculture Marketing Board, Panchkula Versus Bharat Bhushan Aggarwal”*** 1998(2) PLR 824; and a Single Bench judgment of this Court in ***CWP No. 7494 of 1997***, titled ***“M/s Singla Trading Company Versus Haryana State Agricultural Marketing Board and another”*** decided on 20.03.2009. Hence, prayer has been made for allowing the writ petition.

[3] We have heard learned counsel for the petitioner at length and have scrutinized the paper book.

[4] A perusal of the impugned order dated 30.04.2019 (P-3) as well

as record reveals that entire issue revolves around the interpretation of Section 3(1) (vi) of the Rules, 2000, therefore it would be gainful to reproduce the said rule, which reads as under:-

“ 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.”

A plain and simple reading of the said provision makes it clear that: **(i)** a category-II licence holder must have an independent premises either rented or owned for being eligible; and **(ii)** in case there are more than one licensee in same premises, then the oldest firm or the one agreed upon in writing by all firms occupying the same premises, shall be eligible.

[4.1] Admittedly, the petitioner firm is a category-II licence holder but is not having an independent premises, as same is running from shop No. 84-B (which is a part of shop No. 84). Simultaneously, another shop was running its business from shop No. 84-A, which again is part of shop No. 84. It is further not disputed by petitioner that the oldest firm of the premises i.e shop No. 84-A has already been allotted a shop in New Vegetable Market, Hissar on preferential basis. Once that is so, we have no hesitation to hold that the petitioner-Firm is not entitled to allotment of any preferential shop and the impugned order dated 30.04.2019 **(P-3)** does not suffer from any infirmity, as Rule 3(1)(vi) was correctly applied by respondent No. 1.

[4.2] The argument that Rule in question will not be applicable as the formation of petitioner-Firm predates the Rules is misconceived as the Rules

regulate allotment in a Market Committee, and therefore are to be applied with full vigor *vis-à-vis* allotment of booths is concerned.

[4.3] As far as the judgments relied upon by the counsel for the petitioner are concerned, we find that same are not at all applicable to the facts of the case. The judgments of ***Bharat Bhushan Aggarwal (supra)*** and ***M/s Singla Trading Company (supra)*** were passed prior to coming into force of the Rules 2000; whereas the judgment passed in ***M/s Kishori Lal's case (supra)*** would show that the Market Committee had itself discriminated amongst the licence holders as some of firms similarly situated as petitioner therein were allotted shops/flat and there was a resolution dated 25.02.2009 passed by the Committee relaxing the conditions of allotment. It was in these facts and other attending circumstances that the writ was allowed. At this stage we are reminded of the judgment passed by Hon'ble Supreme Court in case "***Padmausundra Rao and another Versus State of Tamil Nadu and others***", 2002 (3) SCC 533, whereby it has been authoritatively held that peculiar facts and circumstances of each case are to be examined, considered and appreciated first, before applying any codified or judge-made law thereto. Each case is to be decided as per its own peculiar fact situation. Sometimes, difference of even one additional fact or circumstance can make the world of difference. Thus, we uphold the impugned order dated 30.04.2019 (P-3) in view of categorical wording of Rule 3(1)(vi) and reject all the arguments raised by learned counsel challenging the impugned order.

[5] At this stage, it would be apposite to deal with another argument raised by learned counsel for the petitioner whereby he states that

same authority has discriminated amongst the licence holders as persons similarly placed as petitioner have been given preferential allotment in New Vegetable Market, Hisar. To substantiate his argument, petitioner has placed on record order dated 15.12.2020 (P-5). However, on careful scrutiny of the order we find that the argument is factually incorrect. The order dated 15.12.2020 (P-5) relied upon by the petitioner has been passed by Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula, while adjudicating an appeal, whereas the impugned order dated 30.04.2019 (P-3) has been passed by Additional Chief Secretary to Government of Haryana, while exercising the powers of review. Interestingly, the Additional Chief Secretary had reversed a similar decision given by Chief Administrator while allowing the review of Market Committee, Hissar in the present case. Therefore, this argument is also rejected being contrary to record.

No other argument has been raised before us.

[6] In view of the above, finding no merit, the present writ **petition** is hereby ordered to be **dismissed** with no order as to costs.

(JASWANT SINGH)
JUDGE

April 19th, 2021

'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes