

Sr.No.102

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

CWP No.26978 of 2017(O&M)
Reserved on:11.08.2023
Pronounced on:06.09.2023

M/s Rakesh Trading Company
.....Petitioner

versus

State of Haryana and others
.....Respondents

2. **CWP No.26986 of 2017(O&M)**

M/s Saini Trading Company
.....Appellant

Versus

State of Haryana and others
.....Respondents

3. **CWP No.27129 of 2017(O&M)**

M/s Naresh Kumar Parveen Kumar
.....Appellant

Versus

State of Haryana and others
.....Respondents

CORAM: Hon’ble Mr. Justice G.S.Sandhawalia
Hon’ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Nischal Chetanya Manchanda, Advocate
for the petitioner.

Harpreet Kaur Jeewan, J.

1. Present Civil Writ Petitions had been filed assailing
separate order dated 19.07.2017 passed by respondent No.3

(Annexure P-12) whereby the petitioner firms were held ineligible for allotment of the plot on reserve price in New Grain Market, Pipli. Since a common question is involved in all the aforesaid writ petitions bearing Registration Numbers **CWP Nos.26978, 26986 & 27129 of 2017**, therefore, these petitions are taken up together for discussion and disposal by way of this order.

Facts of CWP No.26978 of 2017:-

2. The brief facts as per CWP No.26978 of 2017 titled as M/s Rakesh Trading Company versus State of Haryana and others are that petitioner firm is engaged in business of Commission Agent in Pipli, dealing with sale, purchase and storage of agricultural products and holding a license under Section 10 of the Punjab Agriculture Produce Markets Act, 1961 (hereinafter referred to as 'the Act') issued by Haryana Agriculture Marketing Board-respondent No.2 on 20.12.1988 (Annexure P-1). The said license was ultimately renewed upto 31.03.1999.

2.1. Due to the shortage of place, new grain market was carved out in Pipli. Guidelines were framed by the State of Haryana for allotment of plots of shops and booths in the new grain market. The said guidelines were framed on the basis of the directions issued by the Hon'ble Supreme Court of India vide order dated 27.11.1986 (Annexure P-3). Amended Reservation Policy dated 23.10.1990 (Annexure P-4) was issued for reservation of the plots for old licensees in the new markets which were developed by the Market

Committees in Haryana. As per the amended policy, all the old licensees Category II were eligible to participate in the draw. The application submitted by the petitioner for allotment of the plot/shop was not accepted by respondent No.3 without any reason. The petitioner moved another representation dated 28.01.1991(Annexure P-5) and thereafter, various representations were moved but the request of the petitioner was not accepted. The respondents No.2 and 3 issued an advertisement for putting the vacant shops/plots for sale by way of auction scheduled for 08.10.2001. As such the petitioner filed Civil Writ Petition No.8110 of 2001 challenging the said advertisement (Annexure P-9) and the said writ petition was disposed of vide order dated 02.03.2017 (Annexure P-11), whereby a direction was issued to respondents No.2 and 3 to ascertain and determine the claim of the petitioner by way of passing self-speaking order. However, the claim of the petitioner was declined by passing the impugned order dated 19.07.2017 (Annexure P-12).

Reasons recorded in impugned Order in CWP No.26978 of 2017:-

2.2 Respondent No.3 declined the representation of the petitioner on the ground that the petitioner has never applied for allotment; sister concern M/s Ram Parsad Faquir Chand who was having the same premises and same telephone numbers as that of the petitioner was allotted plot No.23 in the draw; and the petitioner firm never raised any objection verbally or in writing before the year 1995

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against non-inclusion of the name of the firm in the list of 51 licensees which were considered at the time to draw of lots.

Reasons recorded in impugned Order in CWP No.26986 of 2017:-

2.3 Representation of the petitioner was declined on the ground that the Market Committee prepared a list of 79 licensees on 06.11.1990 but the petitioner firm never applied for getting a plot on reserved price during the said process. After scrutiny, 51 eligible licensees were included in the list of draw, out of which 31 licensees were allotted the plots in the draw of lots held on 29.12.1990 and remaining 20 licensees were allotted the plots in the second draw of lots which was held on 21.05.1991. The petitioner firm never raised any objection verbally or in writing before the year 1995 against non-inclusion of the name of the firm in the list of 51 licensees which were considered at the time to draw of lots:

Reasons recorded in impugned Order in CWP No.27129 of 2017:-

2.4 Representation of the petitioner was declined on the ground that the Market Committee prepared a list of 79 licensees on 06.11.1990 but the petitioner firm never applied for getting a plot on reserved price during the said process. After scrutiny 51 eligible licensees were included in the list of draw out of which 31 were allotted the plots in the draw of lots held on 29.12.1990 and remaining 20 licensees were allotted the plots in the second draw of

lots which was held on 21.05.1991. The petitioner firm never raised any objection verbally or in writing before the year 1995 against non-inclusion of the name of the firm in the list of 51 licensees which were considered at the time to draw of lots.

Submissions:

3. Learned counsel for the petitioner has submitted that as per the amended Reservation Policy dated 23.10.1990(Annexure P-4) all the old licensees Category II were eligible to participate in the draw of lots as per the criteria approved by the Board on 01.06.1987. The number of shop/plots equivalent to the premises in the old mandies was to be kept reserved for old licensees and the remaining shops were to be auctioned. The petitioner had filed a representation dated 28.01.1991 (Annexure P-5), despite that the petitioner was not allotted the plot/shop in the new mandi. Representation was wrongly dismissed by passing the impugned order on the ground that firm has never raised any objection verbally and in writing before the year 1995 against non-inclusion of the name of the firm in the list of 51 licensees. The reasons recorded by the authorities are contrary to record, as such, the impugned order is liable to be set aside.

4. It is not disputed that petitioner is holding a license under Section 10 of the Act since 20.12.1988 (Annexure P-1) which was renewed upto 31.03.1999. It is also not disputed that consolidated Policy instructions (Annexure P-3) were issued by the State regarding auction/allotment of the plots. As per clause 4 of the said

guidelines/policy, 45% of the shops/plots were to be kept reserved for old licensees. Such old licensees were eligible to participate in the draw of lots, who were holding a valid license for the past two years continuously proceeding the date of auction/draw of lots. This reservation was for the license holders of such mandies which were to be denotified.

5. It is the case of the petitioner that he had submitted a representation dated 28.01.1991(Annexure P-5) raising his claim that plots were wrongly distributed and the plots were not allotted to the old licensees. Annexure P-5 is an undated application and there is no proof on record that it was actually submitted to respondent No.2. As per interim order dated 28.11.2017, Mr. Jagdish Manchanda, Advocate appearing on behalf of the petitioner sought time to produce evidence that Annexure P-5 was relied upon by the petitioner before the authority that has passed the impugned order. Despite the said order being passed and many opportunities being afforded no such evidence was produced. As such, keeping in view the nature of the document (Annexure P-5), that is neither dated nor receipt of such an application is received by the office of respondent No.3, the filing of the same is not established. Therefore, the aforesaid observations recorded in the impugned order regarding delay and laches till 1995 is not shattered.

6. As per the impugned order passed by respondent No.3 the program was announced on 06.11.1990 for inviting applications

for allotment of the plots in the new Mandi as per the policy made by the Board in the year 1987. As per the said program, the last date for submission of the application was 20.11.1990. The last date for submission of objection against the displayed list was 29.11.1990 and the observer was required to decide the objections till 01.12.1990. Respondent No.3 had observed that the petitioner has never applied for getting a plot on reserved price. Apart from this it was also observed that petitioner company and its sister concern firm M/s Ram Parsad Faquir Chand was having the same premises and same telephone number and even program was signed by the same person on behalf of both the firms, which was found evident from the stamps and signatures put on circular notice dated 06.11.1990. The sister concern firm M/s Ram Parsad Faquir Chand got plot No.23 size 20'x 85' in the draw of lots which was held on 29.12.1990. A list of 79 licensees were prepared on 06.11.1990 who applied for the plots and the name of the petitioner firm was not included in the said list as the firm never applied for getting a plot.

7. We have considered the reasons recorded by respondent No.2 in the impugned order for declining the request of the petitioner and we are of the considered opinion that the present petition has been filed as an after-thought and suffers from huge delay and laches. The petitioner has not placed on record any evidence that he has ever applied through alleged representation dated 28.01.1991(Annexure P-5). This fact is not disputed that sister

concern M/s Ram Parsad Faquir Chand of the petitioner firm was allotted a plot in the draw of lots in question. The petitioner firm was though holding a license but the address of the premises was the same and even the telephone numbers were same. The petitioner never filed any objections for a period of five years as the draw of lots was held on 29.12.1990. Neither the petitioner has filed any proof that the representation dated 12.05.1995 was presented to respondent No.2 nor did he refer about the said representation to respondent No.3 at the time of passing of the impugned order.

8. It is also observed that the petitioner has not referred about the said representation dated 28.01.1991 in the earlier CWP No.8110 of 2001 as the order dated 02.03.2017 (Annexure P-11) passed in the said writ petition indicate that only a reference of the representation dated 12.05.1995 was made in para No.4 and there is no reference of any representation dated 28.01.1991 even in the said order.

9. In view of such circumstances, we are of the considered opinion that there is huge unexplained delay which leads to the only inference that raising the claim for the first time in the year 1995 regarding allotment made in December, 1990 and 21.05.1991, is merely an afterthought. There is categorical finding in the impugned order that entire record of the proceedings of the two draw of lots was examined by respondent No.3 and it was found that petitioner firm never raised any objection verbally and in writing before the

year 1995 against non-inclusion of the firm in the list of 51 licensees. These circumstances clearly indicate that the petitioner firm being satisfied regarding allotment of the premises to the sister concern as both were having the same work place did not apply for the allotment on or before the date fixed by the authorities. The petitioner firm did not raise any objection to the list of the licensees whose names were considered for draw of lots.

10. Keeping in view the delay in filing the present writ petition we are not inclined to interfere in the findings recorded by respondent No.3 in the impugned order by way of invoking extraordinary writ jurisdiction. Consequently, the present writ petition is liable to be dismissed.

11. The remaining two civil writ petitions i.e. CWP No.26989 & 27129 of 2017 are also liable to be dismissed for the above reasons as no objections were raised for 5 years after the holding of draw of lots.

12. In view of the above, all the aforesaid Civil Writ Petitions bearing Registration No. **CWP Nos.26978, 26986 & 27129 of 2017** are hereby dismissed.

13. Pending miscellaneous application(s), if any, also stand disposed of.

(G.S.Sandhawalia)
Judge
6th September, 2023
Shivani Kaushik

(Harpreet Kaur Jeewan)
Judge

 Yes/No
 Yes/No

Whether speaking/reasoned:
 Whether reportable: