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Okhla Mandi Whole-sale Traders Welfare Association and ors. Vs. Agricultural Produce Marketing Committee and anr.

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Court : Delhi

Decided On : Jul-13-1999

Reported in : AIR1999Delhi374; 81(1999)DLT3

Judge : C.M. Nayar, J.

Acts : [Constitution of India](#) - Article 226; Delhi Agricultural Produce Marketing (Regulation) Act, 1976 - Sections 35 and 36; Delhi Agricultural Produce Marketing (Regulation) (General) Rules, 1978 - Regulation 18

Appeal No. : C.W.P. No. 2830 of 1995

Appellant : Okhla Mandi Whole-sale Traders Welfare Association and ors.

Respondent : Agricultural Produce Marketing Committee and anr.

Advocate for Def. : Pinki Anand, Adv. for Respondent No. 1, ; Mukul Rohtagi, Sr. Adv. and ;

Advocate for Pet/Ap. : B.K. Sood, Adv

Judgement :

C.M. Nayar, J.

1. The present petition has been filed to impugn the show-cause notices dated 19th July, 1995 and 10th July, 1995 which are filed as Annexures P-7 and P-8 respectively. The said notices relate to the grant of license under the provisions of the Delhi Agricultural Produce Marketing (Regulation) Act, 1976 (hereinafter referred to as 'the Act') and Rules framed there under known as Delhi Agricultural Produce Marketing (Regulation) (General) Rules, 1978 (hereinafter referred to as 'the Rules'). The reading of the show-cause notices will indicate that the same were issued in pursuance to the directions as contained in the judgment rendered in C.W.P. No. 72/94 (Fruit & Vegetable Commission Agents Wholesale Traders Association (Regd.) and Anr. v. Agricultural Produce Marketing Committee and Anr.) decided on March 16, 1995. Copy of the judgment has been placed on record as Annexure-P4 to the writ petition. The dispute arises between the parties with the issuance of license under the relevant provisions of the Act for doing business in the market by the wholesalers as well as by the commission agents and such categories as permitted by law. The main contention which has been raised in this petition is that the impugned show-cause notice dated 19th July, 1995 does not comply with the directions as contained in the judgment of the Division Bench in C.W.P. No. 72/1994 as well as in terms of the provisions of the Act and the Rules. Rule was issued on 4th January, 1996 by the Division Bench and interim directions were granted in the miscellaneous application, C.M. No. 4707/1995 which reads as follows:

'CM. 4707/1995

Petitioners seek stay of proceedings pursuant to show-cause notice dated 4th July, 1995. Having regard to the facts and circumstances of the case we feel that respondent No. 1 shall be left free to adjudicate the matter on the basis of the show-cause notice. Respondent No. 1' may thus decide the matter but the decision shall not be implemented without leave of the Court. We grant liberty to respondent No. 1 to move appropriate application seeking directions after taking a decision pursuant to the show-cause notice. Pending further orders the parties are directed to maintain status quo. CM is disposed of accordingly.'

2. Respondent No. 1, Agricultural Produce Marketing Committee acted in pursuance to the directions of this Court as referred to above and filed application under Section 151, CPC, C.M. No. 4888/1996, wherein it is stated that compliance has been made and the matter has been decided in accordance with the orders of this Court made on 4th January, 1996. The relevant portion of this application which will give full particulars of the decision now taken by the Committee is stated in paragraph 6 which may be reproduced as follows:

'6. That respondent No. 1 is statutory body created under the Delhi Agricultural Produce Marketing (Regulation) Act, 1976 and 'B' Category licences are issued to the commission agents for carrying on business of commission agents and the same have to be renewed in accordance with the Act and the Rules and it is essential for the smooth administration of the market yard that the decision of the APMC may be implemented forthwith. That for smooth and efficient discharge of the work of commission agents and taking into account the limited facilities and the volume of trade picked up so far by the licences in the sub-yard Okhla space available on the auction platforms, it has been decided that:

(i) The small shop holders, who are having 'B' Category licences but who had not made applications for renewal, their licences shall not be renewed.

(ii) Office of the APMC, Azadpur had issued show cause notices to all small shop holders having 'B' Category licences. Some of them had not made replies to the show- cause notices issued by this office. The party who had not submitted the replies, their licences of 'B' Category shall not be renewed.

(ii) 'B' Category license is meant for a commission agent and if the 'B' Category license holder (on small shops) had not worked as commission agent and has deposited NIL market fee during the years 1992-93, 1993-94 and 1994-95, their licences shall not be renewed.

(iv) Even if the 'B' Category license holder has paid some market fee during the aforesaid 3 years, but had discontinued to work in 1995-96 and has paid no market fee w.e.f. 1.4.1995 to 31.3.1996, their licences shall not be renewed.

It may further be mentioned that in respect of those small shop owners who had picked-up business as commission agents as they were earlier granted 'B' agents, the Committee does not intend to disturb their livelihood at this juncture and accordingly the defendant committee has decided to renew 'B' Category licences of only 55 small shop owners (highest market fee payers) on the basis of market fee paid by them keeping in view the limited space available for marketing operations in the Mandi. The remaining 'B' Category licences issued on small shops are also not to be renewed and no fresh license of 'B' Category on small shops is to be issued as per policy.

Auction sites may be made available to the 'B' Category license holders depending upon the volume of trade conducted by them during the last 2-3 financial years.

In view of the above, it is respectfully prayed that this Hon'ble Court may be pleased to permit answering respondent to implement the above noted decision regarding renewal/refusal to renewal of 'B' Category licences issued on small shops in Okhla sub-yard.'

3. Respondent No. 2 has filed reply to the aforesaid application wherein averments are made that the orders passed by this Court on 4th January, 1996 have not been fully complied with as will be indicated from para 6 of the reply which reads as under :

'6. In reply it is not denied that Category 'B' licences are issued to the commission agents for carrying on the business of commission agents in the Mandi. These licences are further entitled to be renewed year-to-year in accordance with the Rules and the A.P.M.C. Act. The answering respondent humbly submits that vide this process, the respondent No. 1 is issuing and granting the Category 'B' licences in favor of Mashakhors also who are in fact not entitled for the licences of the commission agents. They are not even permitted to act as agents in the Mandi since Mashakhors are the 'petty vendors'. There is a clear demarcation in between the Mashakhors and the commission agents/wholesalers. For example the size of the shops of the two categories are different and distinct, and the auction platform is also for the benefit and business of commission agents/Wholesalers only. Said Mashakhors are not entitled for the same. In other words it can be said that the

persons who are carrying on their business in the Mandi from the bigger shops i.e. 21/2 storied structures are entitled for the auction platform while the other persons carrying on their business from the small 4 mtr. x 4 mtr. shop/Thalas are not entitled for the same. A copy of the plan is annexed hereto and marked as Annexure: I.

In view of the detailed facts, it is humbly submitted that the decision as taken by the respondent No. 1 and mentioned in the application under reply is neither valid nor legal. It is stated that the small and petty vendors are not to be granted category B license irrespective of the market fee deposited by them. Payment of the market fee does not determine the status of the person sitting and carrying on the business from the said Mandi. Small shop keepers are not entitled for the Category B licences at all. The respondent No. 1 has further wrongly decided to make the auction site available to Category B license holders on the basis of the volume of trade for the last 2 to 3 financial years. This decision on the part of the respondent No. 1 is absolutely illegal, mala fide, arbitrary and ultra virus the Act and the Rules framed thereunder. As per the Rules and the policy of the DDA the auction platforms are for the benefit and to be used by the 50 shop keepers running their business from bearing Nos. 1 to 50. These auction platforms are to be used by the commission agents/wholesalers for the purposes of running of their business. Petty vendors/Mashakhors are to run their business from the small shops allotted to them. Even a perusal of the show-cause notice issued by the respondent No. 1 clearly provides that a Mashakhors is a functionary in the market who makes purchases from the commission agents and makes further sale to the retailers. The small shops (measuring 4 mtrs. x 4 mtrs.) are also to be utilised by them and they are called Mashakhors shops.

In terms of the aforesaid it is stated that the Mashakhors/small shop owners are not at all entitled for the Category B license and any decision taken by the respondent No. 1 to renew their licences or grant them any license of Category B is absolutely illegal and ultra virus the Act. In view of the facts as stated hereinabove, the decision alleged to have been taken by the respondent No. 1 is liable to be set aside and not given any effect to. As a matter of fact, the decision alleged to have been taken by the respondent is just an eye-wash. Pertinently, it

has specifically been admitted by them that the issuance of category B licences to Mashakhors/ small shop owners was a mistake on their part. On the basis of their own admission this Hon'ble Court was pleased to direct them to rectify their mistake. Vide the impugned decision they have raised a Policy and are alleging that the directions of this Hon'ble Court have been complied with. The respondent No. 1 has not cared to consider the case of the applicants on the basis of the rules and the Act as to whether they are entitled for the Category B licences or not, instead they are deciding the show-cause notices on the basis of the deposit of the market fee which is no ground for the grant of any license in the Mandi.'

4. The learned Counsel for the petitioner has referred me to portions of the judgment of the Division Bench to reiterate the proposition that the directions contained therein have not been complied with and particular reference is made to the following paragraphs which read as follows :

'..... It is specifically stated in paragraph (7) of the counter-affidavit that some Mashakhors having 'A' Category license are also holding 'B' Category license and that the said 'B' Category licences had been issued under a mistake of law/fact in certain circumstances. It is also stated in paragraph (9) of the counter-affidavit that the auction platforms were meant for auction work for commission agents. The auction platforms were meant only for 50 commission agent shops for auction purposes and that the Mashakhors are entitled to function from their shops measuring area 4x4 metres on a 4 feet high raised platform .The earlier mentioned judgment dated 7th February, 1992 of the Division Bench in Civil Writ Petition No. 4107/1991 is also relevant in this context. However, individual Mashakhors who are holding Category 'B' license are not before us and, therefore, we don't propose to decide in this writ petition whether those persons are entitled to hold Category 'B' license and to function as commission agents. Since the first respondent has Categorically admitted that Category 'B' licences were issued by mistake, the first respondent has a duty to correct such mistakes in accordance with law either by cancelling the licences wrongly issued or by refusing to renew such licences.

The second limb of the argument of the petitioners is that Rule 16 of the Rules prohibits a person from holding licences for more than one category at the same time. But it has to be noted that as per the proviso to Rule 16 a licensee falling in Category 'A' may have another license of Category 'B' or 'D' and vice-versa. Since the Mashakhors are holding Category 'A' license there is no statutory prohibition against their holding Category 'B' license also. Whether they are entitled to Category 'B' license will depend on whether they are commission agents carrying on business in the principal market or subsidiary market. This is a matter to be considered by the first respondent while issuing/renewing licences.

In the light of the above discussions the writ petition is disposed of directing the first respondent to take necessary action in accordance with law for rectifying the admitted mistake in granting Category 'B' licences to some of the Mashakhors. Such action should be taken expeditiously and at any rate before taking a decision on the application for renewal of such licences. There will be no order as to costs.'

9. Further it is contended that there is clear violation of the directions of Section 35 of the Act and Regulation 18 of the Rules and respondent No. 1 has not followed these provisions and have arrived at conclusions which cannot be sustained in law. This argument is even highlighted by learned Counsel for respondent No. 2. However, it has not been pointed out the impact of the findings of respondent No. 1 and how each individual party will be affected by the same. There is a possibility, as is not denied by learned Counsels for both the parties, that some of the petitioners may benefit by the order which has been passed in pursuance to the issuance of show-cause notice dated 19th July, 1995 and directions of the Court as made on 4th January, 1996. therefore, it will be appropriate that the individuals or persons aggrieved by the order of the Committee, respondent No. 1, challenge the same in an appropriate proceeding such as taking recourse to the right of appeal as provided under Section 36 of the Act or any other remedy as may be permitted in law. It is ordered accordingly. The present petition is, therefore, disposed of in the above terms. The respondent Committee shall be at liberty to pursue further course of action in terms of the findings which have been recorded and are stated in the application C.M. No. 4888/1996. There will be no order as to costs.

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