

**Ramesh Industries and ors. Vs. the Govt. of N.C.T. of Delhi**

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**Court :** Delhi

**Decided On :** Aug-04-2005

**Reported in :** 122(2005)DLT699; 2005(83)DRJ617

**Judge :** Vikramajit Sen, J.

**Acts :** Delhi Agricultural Produce Marketing (Regulation) Act, 1976; Delhi Agricultural Produce Marketing (Regulation) (Amendment) Act, 1998 - Sections 5, 6, 16 and 124; [Constitution of India](#) - Article 226

**Appeal No. :** W.P.(C) 5642, 11917, 11918, 11919, 11920, 11921, 11922, 11923, 11925, 11926, 11927, 11928, 11929, 11

**Appellant :** Ramesh Industries and ors.;ram Gopal Traders and ors.

**Respondent :** The Govt. of N.C.T. of Delhi;lt. Governor N.C.T. of Delhi

**Advocate for Def. :** Avnish Ahlawat, Adv. for Respondent No. 1 and ; C.S. Parashar, Adv. for Respondents Nos. 2 and 3

**Advocate for Pet/Ap. :** S.K. Sinha, Adv

**Disposition :** Petition allowed

**Judgement :**

**Vikramajit Sen, J.**

1. The Petitioners are holders of Category `A' [Traders/Wholesalers] licenses issued by the Narela Agricultural Produce Marketing Committee, having been carrying out their trade from the Narela Mandi for several decades. A decision was taken by Board for the shifting of the Narela Anaj Mandi to New Narela Anaj Mandi and Anaj Mandi at Najafgarh to the New Grain Market at Haibatpur. It is not in dispute that so far as the Najafgarh Market is concerned Category `A' as well as Category `B' (Commission Agent) licenses have been allotted plots in that market. 33 acres of land was acquired in respect of the Narela New Anaj Mandi and 174 plots were carved out for allotment to licensees in both categories. On 24.5.2000 the Board allegedly took a decision that allotment in Narela would be made only to Category `B' licenses. It is this decision which has been assailed in these writ petitions.

2. The Delhi Agricultural Produce Marketing (Regulation) Act, 1976 was enacted by Parliament in order to 'provide for the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of market for agricultural produce in the Union Territory of Delhi and for matters connected therewith or incidental thereto.' Under the provisions of this Act of 1976, a Board was constituted and continued to function for several years. The 1976 Act stands repealed on the coming into effect of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 on 2nd June, 1999. As is found in most statutes there is a Repeal and Saving Section in the 1998 Act, the relevant portion of which reads as follows :

124. Repeal and Saving- (1) The Delhi Agricultural Marketing (Regulation) Act, 1976 (87 of 1976) (hereinafter referred to as the said Act) is hereby repealed.

Provided that such repeal shall not affect the previous operation of the enactment aforesaid and anything done or any action taken (including any appointment, delegation or declaration made, notification, order, rule, regulation, direction or notice issued, bye-law framed, marketing committee established, licenses granted, fees levied and collected, instruments, executed, any fund established or constituted by or under the provisions of the said Act shall in so far it is not inconsistent with the provisions of this Act, be deemed to have been done or taken

under the corresponding provisions of this Act, and shall continue in force unless and until superseded by anything done or any action taken under this Act.

3. In these petitions, a challenge has been laid to a Resolution dated 24.5.2000 purporting to be that of the Board. At this meeting a decision had been taken to allot plots only to commission agents in the 'Narela Anajmandi.' The petitioners contend that as per Resolution (3) of 1989, the Board, the legal constitution of which is unassailable, had decided that allotment would be made to Category 'A' licenses i.e. Trader as well as to Category 'B' licenses i.e. commission agents. It is, therefore, evident that so far as Resolution (3) of 1989 and the decisions taken on 24.5.2000 are concerned, there is a complete somersault in the views decision of the Board. Learned counsel for the Respondent contends that no policy had been laid down in Resolution (3) of 1989. He submits with substance that in order for the Resolution to have binding and efficacious force the subject matter should have been on the Agenda of the meeting. It is his contention that only a broad principle, in contradistinction to a policy, was adumbrated on that date. The fact that everyone concerned had understood Resolution 3/1989 to lay down the policy of the Board is evident from the minutes of the Allotment Sub-Committee held on 22.1.1990 which makes a categorical reference to Resolution 3/1989. Even in the proceedings of the Allotment Sub-Committee held on 22.1.1990 a substantial variance with the Resolution of 3/1989 had surfaced, in that it had been understood that in the first instance only Category 'B' licenses would be considered for allotment.

4. It is of significance to mention that it is the common case that a five-fold increase in the number of commission agents had occurred. As a consequence there was insufficient land for allotment to all concerned licenses in both categories. It was in this context that an affidavit had been taken from those aspiring for the issuance of licenses of commission agent that they would not claim any space in the subject 'grainmandi'. therefore, at that time the Board was not in favor of granting allotments to the Commission Agents at the expense and detriment of the Traders.

5. The central question is whether the meeting of the Board held on 24.5.2000 and the decisions taken therein are legally binding and efficacious. As has been seen, the 1998 Act came into operation on 2.6.1999. There can be no gainsaying that on that date the Board which had functioned under the 1976 Act would automatically cease to be in existence, unless a provision in the new Act provided for its continuance till a fresh Board was constituted under the 1998 Act. It is in this light that that learned counsel for the Respondent had drawn reliance on Section 124 of the 1998 Act. A reading of this Section, however, only leads to the conclusion that any action taken under the old Act would not be rendered nugatory merely because the 1998 Act had come into force. There are duties and responsibilities cast on the Government under the 1998 Act also. Section 5 deals with the establishment and composition of the Delhi Agricultural Marketing Board. It was, therefore, the statutory duty and obligation of the Government to establish the Board immediately after 2.6.1999. It is also the admitted position of the Respondent that this Board eventually came into being on 12.7.2001. Nevertheless the Respondent seek to rely on decisions taken in the interregnum between 2.6.1999 and 12.7.2001, namely, those taken at the so-called Board Meeting held on 24.5.2000, which Board has become defunct.

6. Learned counsel for the Respondent has relied on Section 6 of the 1998 Act which merely states that the Board shall be a body corporate with perpetual succession. This provision would not be attracted so as to validate any action taken by a Board not constituted under the 1998 Act or specifically directed/authorised/empowered by the Govt. to transact business under the new Act. Counsel for the Respondent has also relied on Section 16 which states that no act or proceedings of the Board shall be invalid merely by reason of the existence of any vacancy among its Board members or any defect in the Constitution thereof. Section 16 will have effect only in respect of the Board constituted on 12.7.2001 and not any Board constituted under any other statute including the 1976 Act.

7. It is evident that the present Board as well as the so-called Board which held its meeting on 25.4.2000 has drastically departed from the view of the previous Board under the 1976 Act. Under Article 226 of the Constitution , it is not for the Court to

substitute its preferred decision or views with that taken by a creature of the statute. This observation is made in the context of the petitioner's submission that the Category `A' license (traders/wholesalers) require space within the Market on a much more urgent basis than commission agents. The Board under the 1998 Act is the proper authority or body empowered to take a decision on the respective needs of the parties, after considering all relevant factors. If there are no mala fides or absurdity in the decision, and if there are no violations of the law, judicial review under article 226 of the Constitution would not be called. The difficulty, however, is that the decision which is sought to be relied upon by the Respondent has been taken at a meeting of the so-called Board which had not been constituted under the 1998 Act. All decisions taken at that meeting, would therefore be non est. It is declared accordingly.

8. The effect of these findings is that the Respondent would not be competent or justified in making any allotments based only on decisions taken at the so-called Board meeting held on 24.5.2000. The decision dated 24.5.2000 is quashed. Since counsel for the present Board contents that there is no effective resolution of the Board on the policy of allotment of plots at the Narela Mandi, the Board would have to urgently hold a meeting and take a decision on this question.

9. There is a prayer in this petitions that a writ of Mandamus be issued for allotment of plots to licensees holding either A or B category license as per the decision taken by the Delhi Agricultural Marketing Board in the year 1991 and as re-affirmed by its decision taken on 15.12.1997. It is indeed remarkable that the petitioners did not consider it necessary to file a copy of Resolution 3/1989 along with their writ petition. Counsel for the Petitioner has submitted that the contents of this Resolution have been reproduced in the body of the petition itself viz in paragraph (9) of the Petition. The date of Resolution 3/1989 is not stated to my query. In response counsel is unable to give any clarification. The contention of the learned counsel for the Respondent that there is a considerable doubt on the question of a decision on the subject by the Board which functioned under the 1976 Act, cannot be out-rightly rejected.

10. Under these circumstances, the writ petitions are allowed with a direction to the Board to carry out allotments on the lines of Resolution 3/1989 within 90 days from today unless at a Board Meeting held within this period, a clear and unambiguous policy/decision on allotment is taken.

11. Petitions are disposed of with these observations.

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