

Walaiti Ram Charan Dass vs State Of Punjab . on 16 October, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5447, 2019 (9) SCC 779, AIRONLINE 2019 SC 1245, (2019) 13 SCALE 721, (2020) 1 RECCIVR 65

Author: Deepak Gupta

Bench: Aniruddha Bose, Deepak Gupta

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8015–8016 OF 2019
(Arising out of SLP (C) Nos.24397–24398 of 2010)

WALAITI RAM CHARAN DASS
& ORS. ETC.

...APPELLANT(S)

Versus

STATE OF PUNJAB & ORS. ETC.

...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 8017–8026 OF 2019
(Arising out of SLP (C) Nos. 28275–28284 of 2015)

CIVIL APPEAL NOS.8028 OF 2019
(Arising out of SLP (C) No.2034 of 2017)

CIVIL APPEAL NOS.8027 OF 2019
(Arising out of SLP (C) No.33899 of 2016)

CIVIL APPEAL NOS.8029 OF 2019
(Arising out of SLP (C) No.15310 of 2017)

JUDGMENT

Deepak Gupta, J.

Leave granted.

2. Civil Appeal Nos.8015/8016/2019 @ SLP (C) Nos.24397/24398 of 2010, arise out of judgment dated 20.05.2009 whereas Civil Appeal No.8017/8026/2019 @ out of SLP(C) Nos. 28275/28284 of 2015, arise out of judgment dated 06.01.2015, Civil Appeal No.8028 of 2019 @ out of SLP (C) No.2034 of 2017, arise out of judgment dated 18.05.2016, Civil Appeal No.8027 OF 2019 @ out of SLP (C) No.33899 of 2016, arise out of judgment dated 24.05.2016 and Civil Appeal No.8029 OF 2019 @ out of SLP (C) No.15310 of 2017, arise out judgment dated 18.05.2016, delivered by the Punjab and Haryana High Court.

3. The aforesaid appeals are being disposed of by a common judgment since they involve common questions of law.

4. In the first case, challenge was laid to various provisions of The Punjab State Agricultural Marketing Board (Sale and transfer of Plots) (First Amendment) Rules, 2008 (hereinafter referred to as the 2008 Rules), and Rule 3(iii) and (iv) of The Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (hereinafter referred to as the 1999 Rules). The High Court held these Rules to be valid.

5. In the second group of appeals, the High Court vide judgments dated 06.01.2015 and 18.05.2016 interpreted the Rules, holding that a person can furnish adequate proof of his working in the de-notified market yard even if he did not hold a licence on the cut-off date.

6. To appreciate the issues in hand it will be pertinent to mention that the original writ petitioners before the High Court are licenced traders of agricultural produce and doing their business of sale and purchase of agricultural produce in different Mandis in the State of Punjab. In terms of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act of 1961), this work can only be carried out in Mandis or Markets set up for this purpose. Most of the petitioners were licenced dealers working in the old markets.

7. As a town or city grows the grain market has to be shifted. The old market is de-notified and a new market is set up. The dealers who were doing this work in the old market applied for allotment of plots/shops in the new grain market. Their applications having been rejected, hence the writ petitions. The High Court did not grant any relief in the writ petitions decided in 2010, and the dealers have filed appeals before this Court. In the second group of petitions which were decided in 2015 & 2016 the High Court granted some relief to the dealers. Hence, the market boards are in appeal before us.

8. We are concerned with two sets of Rules, viz., the 1999 Rules and the 2008 Rules. The case of the appellants is that the Rules are against the judgment of this Court in Labha Ram and Sons and Others vs. State of Punjab and Others¹ wherein while interpreting the provisions of the Punjab New Mandi Townships (Development and Regulation) Act, 1960 (hereinafter referred to as the Act of 1960), it was held that the Government has an obligation to provide sufficient accommodation to all the existing licence dealers with regard to the handicaps they suffered due to the creation of new

market area. This Court also held that the dealers who were already functioning in the de-notified markets should not be made to compete with new entrants. This Court, further directed that the Government should fix a reasonable rate above the reserve price for such old licenced dealers. It would be pertinent to mention that when 1(1998) 5 SCC 207 Labha Ram's case (*supra*) was decided there was no provision for preferential allotment to the old dealers. They had to take part in auctions and pay the market price. It was after this judgment that the 1999 Rules were notified. Relevant portion of Rule 3 of the 1999 Rules reads as follows: "3. Sale of plots □All plots in the markets developed by the Board or Committees shall be disposed of by way of open auction or allotment in accordance with the provisions of these rules:

Provided that the plots will be allotted to the licenced dealers of old market which are denotified resulting in displacement of such licenced dealers on free hold basis for conducting business of purchase or sale of agricultural produce in the new markets on the following terms and conditions, namely:□

- (i) xxx xxx xxx
 - (ii) the allotment price shall be fixed at thirty five percent above the reserve price in the markets where no auction has so far been held;
 - (iii) only those licencees shall be eligible for allotment of plots on the price specified in clauses (i) and (ii) who have been granted licenses in the old denotified markets for a minimum period of five years before the date of allotment. Such licencees must have submitted returns in Form M appended to the Punjab Agricultural Produce Markets (General) Rules 1962 for the last four years out of these five years. The eligibility in respect of five years continuity shall be taken with effect from the date of notice inviting applications for allotment;

(v) the licence should have been in possession of an

independent premises either as a owner or a tenant in the old market;

(vi) To (xiii) xxx xxx xxx

9. The 1999 Rules were further amended by the 2008 Rules by which various amendments have been made in Rule 3 of the 1999 Rules. The relevant amendments are extracted as under: □“4 In the said rules, in rule 3–

(a) before the existing proviso, the following proviso shall be added, namely:□
Provided that not more than fifty per cent of the available plots shall be disposed of by way of allotment and the process of allotment shall be completed before conducting the sale by auction.

(b) at the existing proviso, which has been renumbered as the second proviso: i for the word “provided”, the “provided further” shall be substituted; and ii for condition Nos.(ii) and (iii), the following conditions shall be substituted, namely—

(ii) the allotment price shall be fixed at the five per cent, above the reserve price in the markets, where no auction has so far been held; Provided that no corner plot shall be allotted by way of allotment. The corner plot shall be allotted by way of auction only, by adding ten per cent extra cost to the reserved price, fixed for plots, other than the corner plots.

(iii) only those licencees shall be eligible for allotment of plots on the price, specified in clauses (i) and (ii), who have been granted licences in the old denotified markets for a minimum period of three years before the date of allotment. Such licences must have submitted returns in Form M appended to the Punjab Agricultural Produce Markets (General) Rules, 1962 for all three years or such licensee shall have to furnish adequate proof of working in the denotified old markets. In accordance with the provisions of Form ‘H’ and Form ‘J’, as specified in the Punjab Agricultural Produce Markets (General) Rules, 1962 read with the provisions of Form ‘F’, as specified in the bye-laws of the Market Committee for the aforesaid period of three years. The period of three years referred to above shall be counted with effect from the date of notice inviting applications for allotment; Provided that only those licensees shall be eligible for allotment of plots, who have transacted the business of sale and purchase of agricultural produce for an amount, not less than five lacs rupees per annum during last three years.

(iii) to (xiii) xxx xxx xxx” It would be appropriate to make a comparative chart of both the Rules with regard to allotment of shops which is as follows: 1999 Rules 2008 Rules Price of plot was reserve rate Price of plot was reserve price + +35%. 5%.

Submission of ‘M’ return was In case record of ‘M’ return is mandatory. not available, proof of work by producing Heap Register ‘J’ Form and Auction Register can be produced.

Business for 5 years was Business for 3 years is required for allotment of a plot. required for allotment of a plot. If there was new issuance of In case new licence is issued licence during the last 5 years, within 3 months in the same firm was not eligible for allotment name and title of the firm, the of plot. case can be considered for allotment of plot.

Only one shop could be allotted Allotment of plots of two firms against one independent shop. working in the same premises could be considered.

There was no provision for On dissolution of firm and on allotment of plot in case of issuance of new licence in the dissolution of the firm during the same name and title of the last five years. previous firm, case for allotment of plot can be considered.

No discount was given for There is a cash discount of 2% depositing the amount in lump on depositing the lump sum sum. amount.

Plot after allotment could not be Period for transferring the plot transferred for a period of 7 has been reduced to 5 years. years.

10. An analysis of the Rules of 1999 and 2008 makes it clear that 50% of the respective plots in any market are to be auctioned and remaining 50% are to be given at a premium above the reserved price. In the 1999 Rules the premium was 35% and under the 2008 Rules the premium is 5%. The period of business vide the 1999 Rules was 5 years and was reduced to 3 years under the 2008 Rules. It is more than obvious that 2008 Rules are much more liberal.

11. As far as the Constitutional validity of these Rules is concerned, we find nothing in the Rules which is violative of any provisions of the Constitution including Article 14. The main contention is that the Rules violate the mandate laid down by this Court in Labha Ram's case (*supra*). Another three Judge Bench of this Court in Prem Chand Trilok Chand and Others vs. State of Haryana and Others² also made similar observations.

² 1989 Supp(1) SCC 286

12. The contention of the appellants is that as per the law laid down by this Court, all the old dealers should be provided shops/plots in the new market at the concessional rate. We are unable to accept this contention. The judgment relied upon by the appellants were given in light of the Rules which did not make any reservation whatsoever for existing licence holders. Now, 50% of the shops are reserved for the existing licence holders but some conditions have been laid down. We are concerned mainly with two conditions. The first condition is that a person must be having a licence for 3 years; and the second condition is that the dealer must have an annual turnover of Rs.5 lakhs in each of the three financial years. We find that these conditions are salutary in nature. These are necessary to ensure that only those dealers who have been in the trade for 3 years or more will be eligible for allotment of plots/shops. Similarly, only those dealers who have a minimum turnover of Rs. 5 lakhs in each financial year are eligible. On the one hand the old dealers want that they should not be forced to compete with new people in the business and, on the other hand there is a self-defeating argument that the criteria of 3 years should not be there. If such a criteria was not there, then anybody would become eligible to get a licence even if he started business a day prior to the date of inviting applications.

13. Similarly, the requirement of having Rs.5 lakhs as annual turnover is to ensure that only those dealers get shops/plots who are actually engaged in the business. The High Court has noted that the Government has fixed the price of wheat at Rs.1080/-per bag/quintal and the annual turnover would be achieved by sale or purchase of only 500 bags. A person who does not do business of even 500 bags in a year cannot claim that he is entitled to a shop at a concessional rate. The allotment of shop cannot be made a bounty or lottery for those who are transacting no or very little business but want to get shops/plots at concessional rate.

14. We may also point that a new market does not come into being overnight. First, land has to be acquired, then plans have to be approved and only thereafter process of setting up a new market begins. The public, especially those in the trade of agricultural produce know years in advance that a

new market is being set up. If there are no conditions like the ones laid down in the Rules, any person would get a licence, not transact any business, and after a few months apply for a new shop at a concessional rate. This would defeat the purpose which was sought to be highlighted by this Court in Labha Ram and Prem Chand's case (supra). Therefore, according to us, both the conditions of 3 years and having Rs. 5 lakhs turnover per financial year are reasonable and not violative of Article 14 of the Constitution.

15. Therefore, we find no merit in the appeals challenging the Constitutional validity of the provisions.

16. The next issue relates to the judgments, in the second batch of cases where the Market Board is in appeal before us. We have made reference to Rule 3(iii) above, which provides that to prove the turnover, the dealer is required to produce Form 'M' which is in the nature of a daily return, to be filed by the licensed dealer with the Market Committee/Board under Rules 29(3) and 31(1) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as 1962 Rules). In the absence of Form 'M' the dealer can rely on Form 'H' and 'J'. Form 'H' is an auction register to be maintained by every dealer under Rule 24(8) of the 1962 Rules. Form 'J' is the sale voucher to be maintained by the dealer under Rule 24(14) of the 1962 Rules. The Rule is clear that if the dealer produces Form 'M' then that will be taken into consideration. In case the dealer does not produce Form 'M' then he can prove his turnover by producing Forms 'H and J'. These have to be read along with Form 'F', which is the form of renewal for licence. The High Court held as follows: □
“...Therefore, Form 'F' is not the only document required for determination of eligibility of an old licensee for allotment of a plot, but the independent adequate proof of working in the de□notified market yard is required to be considered to determine the eligibility of the old licensees for allotment of plots. Rule 3(iii□a) of the Rules deals with a situation where after the expiry of the licence, a fresh licence is issued in the name of the same firm or even after the splitting of firm, but when the licence is issued in the name of same firm, as an entity eligible for allotment of a plot on concessional basis. Such provision provides the period prior to issuance of new licensee to be taken into consideration for allotment of plot.”

17. We are unable to accept the reasoning of the High Court in this regard. Licence is mandatory and no person can carry on business in an agricultural market without having a licence. The Rules provide that renewal of the licence should be applied for one month before the expiry of the previous licence. The Rules further provide that if the licence is granted within one month of its expiry then its renewal will be from the date of expiry of the earlier licence, meaning that it will relate back to the date of original licence.

18. Rule 3(iii□a) of the 2008 Rules provides an even bigger window for allotment of plots and lands to those licence holders whose licences have expired but were renewed or fresh license obtained within 3 months of the expiry of the old license. A dealer who gets his license renewed or obtains fresh license within 3 months of the expiry of the old license, is not considered a new license, and for the purpose of allotment deemed to be eligible. The Rules provide that if a licence is not renewed within 1 month of its expiry, it shall be treated to be a fresh licence. The High Court has gone wrong in holding that even if the gap between the expiry of old licence and issuance of new licence is more

than 3 months, the dealer can still furnish adequate proof of working in the de-notified market yard. We are clearly of the view that once the gap is more than 3 months the same cannot be condoned unless the dealer gives an explanation to the satisfaction of the Market Board, with which issue we shall deal later on.

19. We may point out that the learned counsel appearing for dealers has been at pains to point out that in some cases the licence could not be renewed within 1 month or even within 3 months because of reasons beyond the control of licensee. One example given is where the original dealer died leaving a minor as his heir. It has also been contended that there are some dealers who have been working for a long period of time, may be 20 years but in the last 3 years, in one year, there is a slight shortfall to meet the target of Rs.5 lakhs turnover. It is contended that if these dealers could satisfy the Market Committee/Board for the reasons of gap in licence or shortfall in trade they should not be denied shops in the new markets on allotment basis.

20. On the other hand, learned counsel appearing for the Board submits that the dealers must comply with the Rules and if they fail to comply with the Rules and the conditions laid therein, and if the dealers are unable to fulfil all the conditions, they cannot be allotted shops.

21. “§271. Miscellaneous Implied Exceptions from the Requirements of Mandatory Statutes, In General.—Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their justification in considerations of justice. It is a well known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient calibre to excuse or justify a technical violation of the law.”³ We are in agreement and approve the aforesaid passage because the Rules must be read in a reasonable manner. In cases like the present, where the old dealers are to be allotted shops if they can satisfy the concerned authority, be it the market committee or the board that a particular condition could not be met for a short period due to reasons beyond the control of the dealer, then even though he may not be in strict compliance of the rules, the power of relaxation must be read into the Rules. We may refer to two instances from the cases before us. In the case of appellant M/s Lachhman Dass Krishan Baldev, the dates of renewal of licence was 06.09.2005, and the turnover for three years was Rs. 13,53,241, in 2005-06, Rs.21,19,272/-in 2006-07 and Rs.23,65,574/-in 2007-08. It is stated that there was a delay of few months in obtaining the renewal because a minor was involved. We are not going into the merits, but if that be so, then a case would be made out for condonation of such minor 3 Crawford’s Interpretation of Laws, by Earl T.Crawford, Saint Louis Thomas Law book Company 1940 §271, pg. 539 variation. Similarly, in the case of Walaiti Ram Charan Dass & Ors., the licence was held for more than 13 years and there is a shortfall of Rs. 1,28,000/-and odd in the year 2005-06, whereas the turnover in the next two years is much above Rs.5 lakhs. His case may have to be considered sympathetically.

22. We make it clear that since we are upholding the validity of the Rules, deviation from the Rules can only be done if it has occurred due to reasons beyond the control of the dealer. One example of such reason can be if the dealer being the sole proprietor is admitted in hospital, or is otherwise

incapacitated, which may either affect the turnover or the renewal of the licence. This is done only to avoid injustice by following letter of the law and not the spirit thereof. Every law must be read in an equitable and humane manner. Only technical violations can be condoned and not violations which go to the root of the matter.

23. We, therefore, dispose of the appeals with the following directions: □(1) The Rules of 1999 and 2008 are legally valid; (2) Any person who has obtained a license for the first time must have a valid licence for a period of more than 3 years; (3) In case of renewal of license the Rules provide a window of 3 months as discussed above. We further direct that if any dealer had submitted a complete application for renewal prior to the expiry of his licence but the licence was not renewed for 3 months for no fault of the dealer, then he would be entitled to count that period as a period of licence.

(4) We make it clear that other than this, a dealer must have a license and a person who has not renewed his license without justifiable cause, cannot get any benefit. (5) As far as proof of turnover is concerned, the primary evidence is Form 'M' and in the absence of form 'M', Form 'H' and 'J'. No other document can be taken into consideration for proving the turnover.

24. We had asked the counsel for the Board to give us a list of the position regarding availability of plots and shops in various Mandis. The list has been filed which shows that even now a large number of plots are available in the State of Punjab in different Mandis for allotment. As such the Board/Committee should reconsider the case of those where there are marginal deficiencies, which deficiency occurred due to reasons beyond the control of the dealer. This reconsideration be done within 3 months.

25. With the above observations all the appeals stand disposed of. Pending application(s) if any shall also stand disposed of.

.....J. (Deepak Gupta)J. (Aniruddha Bose) New Delhi October 16,
2019