S. Gupta

Before M.M. Kumar & Rajiv Narain Raina, JJ.

M/S VARDHAMAN TRADING COMPANY AND OTHERS—*Petitioners*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 5230 of 2008

15th December, 2011

Constitution of India, 1950 - Art.14, 19,226/227 - Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 - Rl. 3(iii) - Punjab Agricultural Produce Markets Act, 1961 - Ss. 7, 10 - Allotment of plots on preferential price to commission agents (katcha aartiya) of the old market which is to be de-notified - Vires challenged - Wholesale dealers and Katcha aartiya form two

separate classes and thus cannot claim parity for the purposes of eligibility for allotment of plots/shops - Katcha aartiya in consideration of commission offers his services to sell agricultural produce - Auction can take place only within the notified market yard - Wholesale dealer can do business outside the market yard as well - Reasonable classification - Shops/Booths are only to facilitate sale and purchase - It is more for convenience - The object of protecting the weaker one was laudable and but for this protection, he may have been uprooted - Vires upheld.

Held, that on a reading of the Act and the Rules, we find that there is nothing in it which requires that the seat of business of a dealer license under Section 10 must be within the physical boundaries of the Mandi. All that the Act and the Rules require is that the auction, for the sale and purchase of auction produce shall be within the notified market yard or sub yard. Shops/Booths, if they exist are only to facilitate sale and purchase. It is more for convenience. The issue of providing an alternative site or a shop to a licensed dealer has been examined by the Hon'ble Supreme Court in M/s Chint Ram Ram Chand v. State of Punjab and others reported in (1996) 9 SCC 338 and it was found that there would be no violation of fundamental rights under Articles 14, 19(1)(g) or 21 of the Constitution of India. In this case the rights of existing licensees/dealers to allotment of alternative shops in the new market yards and their claim against open auction and for allotment of alternative sites or shops on a reasonable rate in the new market was considered by holding that sale by auction is one of the fairest means of disposal/sale of property by Government. It gives opportunity to everyone to make a bid. The petitioners in the present case can participate in auction without any restriction.

(Paras 13)

Held further, that by applying the twin test, we uphold the vires of Rule 3(i)(iii) as creating a reasonable classification between wholesale dealers and katcha artiyas and the object of protecting the weaker one was laudable and but for this protection, he may have been uprooted.

(Paras 14)

None for the petitioners in CWP No. 5230 of 2008

Alok Jain, Advocate, for the petitioner (in CWP NO. 12455 of 2008).

Ashok Jindal, Addl. A.G Haryana for the respondents.

RAIIV NARAIN RAINA, J.

(1) This order shall dispose of aforesaid two writ petitions filed under Articles 226/227 of the Constitution of India, in which challenge has been laid to the *vires* of Rule 3(iii) of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for short, "Rules2000"), insofaras it deniesallotmentof plotsto Commission Agents licensed under the provisions of the Punjab Agricultural Produce Markets Act, 1961 (for short, **"1961 Act"**) as applicable to the State of Haryana, for convenience called old licensees in the. Notified Market Yard at Madlauda, District Panipat. In laying such challenge the petitioners have impugned the orders both dated 24.1.2008 (P1) and (P-1/A) passed by the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula (for short **"HSAMB"**), rejecting the claim of the petitioners for allotment of plots on reserve price on the ground that they do not fulfill the requisite conditions laid down in the Rules, 2000. They. have been given liberty though to purchase a plot through open auction in the New Grain Market at Madlauda. The further challenge is to the notification dated 29.2.1998 issued by the State Government in the Agricultural Department (in exercise of powers conferred by sub Section (2) of Section 7 of the 1961 Act) which abolishes the Sub Market Yard, Old Grain Market at Madlauda (R2).

(2) The brief facts which may be necessary to examine in the context of the issues raised in the petition are recounted. The petitioners claim that they have been engaged in the business of Commission Agents ***(katcha arliya)*** under old licenses issued to them to do business as dealers. These licences are dated 1.5.1992 and 25.4.1997 issued by the Board under Section 10 of the Act read with Rule 17 (6). The conditions of license are specified in Form B appended as Annexures P3 and P4. It is averred in the petition that the business of sale and purchase can be carried out by licensed dealers of the notified market yard which may be either Principal Yard or Sub-Yard. At Madlauda, there are number of sub yards besides the Principal Yard notified under the Act" in the old grain market where the petitioners were licensed to carry on business was the principal market yard.

(3) It is then averred that the HSAMB, Panch kula formulated a scheme for establishing new grain markets throughout the State including at Madlauda and decided to phase out the old market yards. Since their

displacement was threatened, the petitioners along with other dealers filed CWP 12207 of 1998 in this Court praying that they may be given alternative plots at reserve price and till then they be allowed to continue in the old market yards. It is further stated that a spate of writ petitions were filed in this Court which ultimately reached the Hon'ble Supreme Court and under directions of the apex court, State Government framed a policy reserving 45 % plots for shops for old licensees in the new market yards. One of the conditions for eligibility was that a licensee ought to have worked for more than two years as a licensed dealer, was still holding a valid license. This policy is said to have come into existence in 1994. The judgment of the Hon'ble Supreme Court dated 7.8.1991(P5) has been mentioned in the case of **Prem Chand Tarlok Chand and Others** v. **State of Haryana** in which it was held that in the transitional process from old to new sites, there should be no closure of old sites. It is next stated that in the year 1997, the respondent-Board decided to allot 74 plots by open auction. Aggrieved, petitioner NO.1 filed CWP 12207 of 1998 and the other two petitioners filed CWP 3484 of 2006 for preferential allotment. An interim order (P6) dated 5.8.1998 was passed that the auction process would continue but it would not be finalized. During the pendency of the petition, the new rules and regulations came into existence which led to remanding of the matter to the ChiefAdministrator HSAMB, Panchkula for consideration under the new rules. During the pendency of remand proceedings, the petitioners again approached this Court by way of CWP 16736 of 2008 against the decision to put to auction 18 unsold shops. This court by interim order dated 4.2.2008 issued notice for 28.3.2008 and in the meanwhile stayed the auction till the next date of hearing. A direction was also issued to the respondents to dispose of the appeal/representation of the petitioners. However, in the meanwhile the two orders dated 24.1.2008 challenged in this petition had come into existence resulting in the dismissal of the writ petition as infructuous on 13,3.2008. This was the broad back ground when the present petition was instituted in March 2008.

(4) In challenge to the rules, the petitioners have questioned the validity of Rule 3(iii) which is said to be discriminatory and hit by Article 14 and '19 (g) of the Constitution of India. The petitioners contend that they cannot be treated differently from ***katcha artiya*** in the matter of allotment of plots and, therefore, the provision is legally bad and ought to be declared as unconstitutional.

(5) On notice being issued on the petition, the respondents put in appearance and filed separate written statements one on behalf of the respondent/ State in the Agriculture Department and one on behalf of the respondent Market Committee Madlauda through its Secretary.

(6) In defence of the writ petition, the respondents have relied upon Rule 3(iii) of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules 2000 which were notified on 10.3.2000. In order to appreciate the controversy, the text of Rule 2(1)(b) which defines "category (ii) License and Rule 3(iii)" is reproduced below:-

> *3(iii) Only those category (ii) license shall be eligible for allotment of plots who has valid license of two years on the date of first auction, in the case of mandis where some auctions have already been held in the case of already developed mandis where no auctions have so far been held, the licenses should have valid license of category (ii) for at lest five years as on 1st January, 2000. In the case of mandis to be developed in future, the licenses should have at least two years license of category (ii) on the date of issuance of notification under section 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise, as the c'ase may be;*

The avowed purpose and object of the Rules 2000 is to regulate the sale and transfer of immovable property of the Board and its market committees throughout the State of Haryana. Rule 3 (i) lays down that all immovable properties in the markets developed by the Board or the market committees shall be disposed of by way of allotment, transfer or open auction in accordance with the provisions of the rules. The shops and plots would be allotted to the old licensees of category (i) of the Old Market which is to be de-notified, resulting in displacement of such licensed dealers of category (ii) on free hold basis for conducting the business of sale and purchase of agricultural produce in the new market. The rules lay down 11 terms and conditions under Rule 30(1). In this petition, we are —— pre-occupied

with Rule 2(1) (b) which defines a category (ii) licensee and restricts it to the business of ***katcha artiya*** and Rule 3 (iii) which hones the benefit of allotment in the following manner:-

(i) In case of first auction, in Mandis where some auction has been held.

(ii) A category (ii) licensee for at least five years as on 1.1.2000 in developed Mandis where no auctions have been held and who has a valid license for five years.

(iii) In Mandis to be developed in future, the licensees should have at least category (ii) license on the date of notification under Section 4 of the Land Acquisition Act or date of transfer of land to the Market Committee without resort to land acquisition proceedings.

(7) The present rules have been framed by the respondent-State in pursuance to the judgment of the Hon'ble Supreme Court in the case of **M/s Labha Ram and Sons *versus* State of Punjab (1).**

(8) The petitioners stand excluded from the benefit of Rule 3(iii) by virtue of operation of Rule 2(1) (b) read with Rule 3(iii) which makes only ***katcha artiya*** eligible for consideration for allotment. The petitioners are admittedly **"Commission Agents"** involved in wholesale business. Section 10 mentioned in Rule 2(1)(b) of the Haryana Rules deals with applications for licenses, fees to be paid and cancellation for suspension of licenses. **It is the contention of the respondents that *katcha artiya* and wholesale dealers form two separate classes and thus cannot claim parity for the purposes of eligibility for allotment of plots/shops.** Similarly, the non-allotment of shops does not debar the petitioners for carrying the wholesale business in the notified market yard. It is the further stand of the respondents that the petitioners having approached this Court in CWPs 1\10. 12207 of 1998, 1780 of 1999 and 293 of 1999 and withdrawn the writ petitions with liberty to apply for allotment to the Board under the new rules, if eligible are estopped

(1) (1998) 5 SCC 207

from challenging the alleged offending provisions of the 2000 Rules. We reproduce the short order passed by the Division Bench of this Court on 4.5.2006:-

"CWP No., 293 of 1999

Present : Mr. Ravi Kapur, Advocate for the petitioner.
Mr. Ajai Gulati, Assistant Advocate General, Haryana
Mr. K.K. Gupta, Advocate for the respondent.

"Mr. Ravi Kapur, learned counsel for the petitioner points out that during the pendency of the present petition, new rules have been framed by the Haryana State Agricultural Marketing Board. Learned counsel further states that the petitioner would now apply ito the Board in terms of the new rules as per his eligibility and the present petition be disposed of granting the petitioner aforesaid liberty.

Dismissed as withdrawn with a liberty to the petitioner to apply to the Board under the new rules, if eligible. The application filed by the petitioner shall be considered under the new rules as per law.

The writ petition is disposed of with the aforesaid observations."

It is submitted by learned counsel for the State that on the face of this order, the petitioners are precluded from challenging the vires of Rule 3(iii). The sum and substance of the defence is that the petitioners have held wholesale dealers license. The licensing policy permits the wholesale dealers to do business in the market yard as well as outside the market yard. A ***katcha artiya*** offers his services for consideration or commission for the sale of agricultural produce brought in the market yard. He cannot engage in legal and valid business outside the market yard. Thus, with the de-notification of the old market yard as in the present case a ***katcha artiya*** would be bound to be displaced as he is required to shift his business physically in the new notified area. This, however, is not the case of wholesale dealer as he can still carry on his business even outside the market yard. Therefore, the special protection given to ***katcha artiya.***

(9) Another limb of the argument of the counsel for the respondent is that the existing market area in Madlauda was de-notified on 29.2.1998. The petitioner Nos.1 to 3 were not even licensees then since they admittedly held licenses for the first time on 19.6.1992, 25.4.1997 and 1.5.1992 respectively. They cannot claim parity with ***katcha artiya*** who are existing licensees at the time of de-notification of the old market area. It is also contended that a further bar would operate on petitioner NO.1 as he gave in writing on 28.3.2005 that he was shifting to the de-notified area of old market committee and this fact has not been disclosed in the petition.

(10) It would be worth mentioning that the respondent-State had first issued notification dated 7.5.1985 by which New Grain Market-Mandi Madlauda was declared as "Principal yard" and the Old Grain Market/ Mandi Madlauda was declared as Sub Market Yard. Thereafter, the notification dated 29.2.1988(R2) was issued by which the "Old Grain Market/Mandi", i.e., the sub market yard was de-notified/abolished. In the written statement filed by the market committee, it has been emphatically stated in response to para 7 to 8 that none of the petitioners have done business of ***katcha artiya*** acting as Commission Agents at the grass root level of farmers. Still further, that petitioner NO.3-firm was run under the sole proprietorship of Smt. Sheela Oevi who expired on 6.10.2006 and thereafter her license under section 10was not renewed.

(11) Mr. Alok Jain learned counsel for the petitioners has invited our attention to various provisions of the 1961 Act to contend that restricting benefit to ***katcha artiya*** is discriminatory. ***katcha artiy as*** are also commission agents and licensed under Section 10. Section 2 (hh) defines licensee being a person granted license under Section 10 and includes any per~onwho buys/sellsagricultureproduceand to whom a license is granted as *katcha artiya* of Commission or otherwise but does not include a person falling under Section 13. He has also taken us to the definitions of the "notified market area" in S.2(1) which means any area notified under section 6; retail sale {S.2(q)} which means sale of agricultural produce not exceeding such quantity as may be prescribed; Section 10(i) which deals with application for license fees to be paid and cancellation of licenses: Section 43 which deals with State Government to notify rules to carry out for the purposes of theAct and in the framework of these provisions contends that the 2000 Rules are beyond the rule making power of the State.

(12) Mr. Alok Jain, has also drawn our attention to Rule 17 (ii) which prescribes license fee and security for licenses and that in sub rule (ii) Commission Agent, ***katcha artiya*** or other wholesale dealer for sale, purchase or storage of agricultural produce have the same amount of license fee and security deposit and therefore, they form a group and therefore, the offending Rule 3(iii) is discriminatory. We are not impressed by the argument. There is a qualitative difference between a ***katcha artiya*** and wholesale dealer. By definition a ***katcha artiya*** means a dealer who, in consideration of commission offers his services to sell agricultural produce. Merely because a license fee or Rs. 60/- per annum or security Rs. 300/- is chargeable to all within the group would not lead us to strike down Rule 3(iii) which has been created to protect a class which was found to be vulnerable to the decision of de-notification of market yard.

(13) On a reading of the Act and the Rules, we find that there is nothing in it which requires that the seat of business of a dealer license under Section 10 must be within the physical boundaries of the Mandi. All that the Act and the Rules require is that the auction, for the sale and purchase of auction produce shall be within the notified market yard or sub yard. Shops/ Booths, if they exist are only to facilitate sale and purchase. It is more for convenience. The issue of providing an alternative site or a shop to a licensed dealer has been examined by the Hon'ble Supreme Court in **M/s Chint Ram' Ram Chand *versus* State of Punjab and others (2)** and it was found that there would be no violation of fundamental rights under Articles 14, 19(1)(g) or 21 of the Constitution of India. In this case the rights of existing licensees/dealers to allotment of alternative shops in the new market yards and their claim against open auction and for allotment of alternative sites or shops on a reasonable rate in the new market was considered by holding that sale by auction is one of the fairest means of disposal/sale of property by Government. It gives opportunity to everyone to make a bid. The petitioners in the present case can participate in auction without any restriction.

(14) The Division Bench of this court in ***M/s* Rama Fruit Company *versus* State of Haryana and others (3)** have examined Rule 3(i)(iii) of the 2000 rules in the context of payment of market fee of Rs.5000/- per

(2) (1996) 9 SCC 338
(3) 2009 (4) RCR (Civil) 389

year for the last two years or who had annual turnover of Rs. 2.5 lacs to be eligible for allotment of plots in new market yard on. denotification of the old Sabzi Mandi have held that such provision is neither arbitrary nor hit by Article 14 of the Constitution. This court relied upon the Hon'ble Supreme Court decision in the case of **Confederation of Ex. servicemen Associations *versus* Union of India (4),** which in relevant part to this case reads as under:-

> *"The basic principle which informs Article 14 of the Constitution is equality and inhibition against discrimination. Article 14, however, permits reasonable classification for the purpose of legislation and such classification must satisfy the aforementioned twin test of being founded on an intelligible differentia which must distinguish persons or things that are grouped together from others who are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.*
>
> *When we apply the aforementioned twin test to the facts of the present case, it is evident that the classification has been created with the object of allotting shops/plots to the licensee of category (ii) to whom a license is granted for doing the business of katcha artiya under Section 10 of the Punjab Agricultural Produce Market Act, 1961 in the new market area where the old market has been de-notified and the old license dealers of that category have been displaced. Clause (iv) of sub-rule (1) of Rule 3 of the Rules has excluded from the benefit all such persons who have virtually no business and clause (iv) lays a test to find out a genuine dealer transacting business by stating that such a licensee must have paid market fee of at least Rs. 5,000/-per year for the last two years. In case he does not pay market fee then his annual. turn over during the last two years is required to be at least Rs. 2,50,000/-. Such like licensees have been left out of the group to whom the plots/shops are to be allotted on reserve price as provided in the Rules.*

(4) 2006 (4) SCT 128

It is, thus, obvious that a licensee who does not deposit market fee of Rs. 5,000/- has hardly any business to transact in the market committee and would not be entitled to any concessional rate which are applicable to the classified group. The object of the Rule is to help the old licensed dealers who have been transacting business in the old market area and would also be needing plots in the net market area. The criterion laid down by clause (iv) has a direct relationship with the object sought to be achieved, namely, allotment of shops/plots to old licensed dealers in the new market area. The classification is reasonable and is based on a rationale principle which is co-related to the object sought to be achieved. Therefore, we do not find that clause (iv) of sub-rule (1) of Rule 3 of the Rules suffers from the vice of arbitrariness so as to declare the same violative of Article 14 of the Constitution. The clause, in fact, satisfies the twin test. Moreover, very recently a similar controversy came up for our consideration in the case of M/s Avinash &Co. v. State of Haryana and others (C.W.P. No. 18321 of 2008, decided on 22.10.2008). In the said case the order passed by the Chief Administrator rejecting the claim of the old licensee, who did not fulfill the stipulation of clause (ii) and (iv) of sub-clause (1) of Rule 3 of the Rules, was the subject matter of challenge. After referring to the aforementioned provisions of the Rules, we have dismissed the petition vide order dated 22.10.2008."

Still further the Division Bench of this Court in **M/s Rozy Trading Company vs. State of Haryana and others** had occasion to examine the vires of Rule 3(1)(iv) of the same Rules 2000 and have upheld the vires of the aforesaid rules. The Division Bench applied the test of classification laid down by the seven Judge Constitution Bench of the Supreme Court in the case of **State of West Bengal *versus* Anwar Ali Sarkar (5),** to uphold Rule 3(i) (iv) which provision lays down that a licensee would be entitled to allotment only if he pays market fee of at least the stipulated Rs. 5000/- annually for the last two years with the proviso that in the case

(5) AIR 1952 SC 75

of a (category 2 licensee) who does not pay market fee himself his annual turnover during the last two years should be at least Rs. 2 .50 lacs. We would reproduce para 54 of the Constitution Bench:-

> *"54...In order to pass the test, two conditions must be tulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved t-, by the Act. The differential which is basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrary selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary..."*

By applying the twin test, we uphold the vires of Rule 3(i)(iii) as creating a reasonable classification between wholesale dealers and ***katcha artiyas*** and the object of protecting the weaker one was laudable and but for this protection, he may have been uprooted.

(15) We would now briefly examine the impugned orders dated 21.1.2008 (P1 and P2) passed by the Chief Administrator, rejecting the representation of the petitioners since it was passed as a consequence of an order of this Court. It bears out from the order that at the time of denotification of the old market in 1988, the old licensees of the said market were duly accommodated in the new grain market through preferential allotment *of* plot at reserve price. The petitioners then were nowhere at sight and claimed to be issued licenses post 1.5.1992. The licenses issued to them in the de-notified market for carrying out the business of wholesale dealer. The license of ***Katcha Ahrtiya*** cannot be issued in de-notified market. Therefore, it is not a case of displacement of the applicants from the old market. The market committee has imposed no prohibition on the firm from doing its business under the license as a wholesale dealer and is free to

arrange and carry out its business in accordance with its acumen. The petitioners have an eye only on the property without any demonstrable legal right thereto. We uphold the impugned provisions.

(16) We also find no legal infirmity or error of jurisdiction in the impugned orders passed by the ChiefAdministrator, HSAMB, Panchkula. Consequently, the petition is dismissed on merits as well.