

Before Surya Kant, J

AGYA RAM AND OTHERS,—Petitioners

versus

U.T. ADMINISTRATION AND OTHERS,—Respondents

C.W.P. No. 8127 of 2002

4th March, 2009

Constitution of India, 1950—Art. 226—Capital of Punjab (Development and Regulation) Act, 1952—S.22—Allotment/Transfer of Built-up Booths in any Sector on Lease/Hire Purchase Basis in Chandigarh Rules, 1991—RI.5-A—Kashmiri Migrants applying for allotment of built-up booth sites in pursuance to Scheme of Administration—Rejection of—Challenge thereto—Administration allowing petitioners to run their business through open stalls—Sufficient proof—Competent authorities proving petitioners genuine and bona fide Kashmiri Migrants—Petitioners fully satisfy requirement of provisions of RI.5-A—Eligible for consideration for allotment of built up booth sites—Petition allowed.

Held, that it is an admitted case of the parties that the first reason assigned in the impugned order, namely non-possession of a valid hand cart/driving licence or the fact they did not own any cart, is inapplicable in the case of the Kashmiri Migrants and the petitioners' claim could not have been rejected on that count. In this view of the matter, the first ground for rejecting the petitioners' claim no longer survives.

(Para 7)

Further held, that in fact Finance Secretary, Chandigarh Administration himself has candidly admitted in the impugned order that "Whereas Shri Agya Ram along with seventeen other families migrated to Chandigarh in the year 1990 from Kashmir Valley due to unfortunate circumstances over there. They were accommodated in the community Centre" and that the said Agya Ram "started business of selling towels etc. in Sector 22-C, in front of Kiran Cinema, Chandigarh". Suffice it to say that the object behind addition of Rule 5-A, is to enforce a

laudable welfare scheme of the State, therefore, it deserves to be liberally interpreted. In my considered view, the fact that the authorities allowed the petitioners to run the stalls, may be in a tented accommodation, is sufficient proof of implied permission to them to run their petty business as a source of livelihood.

(Para 9)

Navkiran Singh, Advocate, with Shallit Saini, Advocate, *for the petitioners.*

K. K. Gupta, Advocate, *for the respondents.*

SURYA KANT, J. (ORAL)

(1) The petitioners seek quashing of the order dated 24th January, 2002 [Annexure P-20] whereby their claim for allotment of Booths to be reserved for the Kashmiri Migrants, has been rejected.

(2) According to the petitioners, they along with 17 other families, in total 20 families, were forced to migrate from the Kashmir Valley due to unfortunate prevailing circumstances over there. They arrived in Chandigarh and were accommodated in the Community Centres of Sectors 20, 29 and 40 of the City. The petitioners and the other migrant families were issued Identity Cards by the Chandigarh Administration in the year 1990 [Annexures P2 to P4]. It is the petitioners' case that besides shelter, the Chandigarh Administration has been providing them free ration and other benefits as per the policy decisions taken by the Central Government from time to time. They were allowed to earn their livelihood by installing *Rehris* in a tented accommodation in front of Kiran Cinema, Sector 22, Chandigarh.

(3) In exercise of his powers under Section 22 of the Capital of Punjab [Development and Regulation] Act, 1952, the Administrator, U.T., Chandigarh,—*vide* notification dated 6th January, 1998 [Annexure P-18] amended the Rules called as "Allotment/Transfer of Built-up Booths in any Sector on Lease/Hire Purchase Basis in Chandigarh, Rules, 1991, adding Rule 5-A, Which reads as follows :—

"5-A The Competent Authority may allot a built-up booth in the market in any sector to :—

(a) such registered Kashmiri Migrants as had been provided temporary sites for the sale of goods in

Sector 20 and 22 and are recommended for allotment by the Deputy Commissioner, Union Territory, Chandigarh.

- (b) such person who are running shops and other commercial establishments along V-3 road dividing Sector 40 and 41 and in the vicinity thereof, and are recommended for allotment by the Estate Officer, Union Territory, Chandigarh.*
- (c) Government and Semi-Government departments and Undertakings that provide public utility services”.*

(4) Asserting themselves to be registered Kashmiri Migrants who had been permitted to sell goods in the Market of Sector 22, Chandigarh to earn their livelihood and, thus, eligible in terms of Rule 5-A, reproduced above, that the petitioners applied to the Chandigarh Administration for allotment of built-up booth sites to them. Their applications, however, having remained pending for a considerably long period, they approached this Court by way of *CWP No. 7447 of 2000* which was disposed of,—*vide* order dated 4th September, 2001 by directing the Chandigarh Administration to consider the claim of the petitioners in terms of Rule 5-A of the Rules and if found eligible, to allot them the built-up booths in the market of any Sector. The Chandigarh Administration considered the petitioners’ claim as directed by this Court but has turned down the same,—*vide* the impugned order dated 24th January, 2002 [Annexure P-20] for the following two reasons which find mention in the operative part of the impugned order :—

“Whereas, in view of the above conditions, Shri Agya Ram and two other petitioners are not eligible for allotment of built-up booth under Rule 5-[a] of the Scheme of 1991 as they are neither holding any valid hand cart licence as well as driving licence nor do they own hand carts nor they have been provided any temporary site for sale of goods in Sector 20 and 22 and no recommendations for allotment of built up booth has been made by D.C., Chandigarh”.

(5) Aggrieved, the petitioners have approached this Court.

(6) It may be noticed here that while issuing notice of motion, a Division Bench of this Court,—*vide* order dated 28th May, 2002 stayed dispossession of the petitioners from the open space occupied by them opposite the Kiran Cinema, Sector 22, Chandigarh. The petitioners are accordingly earning their livelihood through petty shop-keeping in the tented premises which they came to occupy in the year 1991.

(7) It is an admitted case of the parties that the first reason assigned in the impugned order, namely, non-possession of a valid hand cart/driving licence or the fact that they did not own any cart, is inapplicable in the case of the Kashmiri Migrants and the petitioners' claim could not have been rejected on that count. In this view of the matter, the first ground for rejecting the petitioners' claim no longer survives.

(8) Adverting to the second ground, namely, that the petitioners have not been provided any temporary site for selling goods in Sector 22 or that no recommendation for allotment of built-up booth has been made in their favour by the Deputy Commissioner, Chandigarh, learned counsel for the petitioners has referred to various documents on record to demonstrate that the petitioners have been earning their livelihood from the tented shops in the open space in front of Kiran Cinema, Sector 22, Chandigarh.

(9) Relying upon Memo dated 4th October, 1995 [Annexure P-16] and Seizure Memo dated 7th June, 1997 [Annexure P-14], it is urged and rightly so that the fact that the petitioners have been running their business through the open stalls opposite Kiran Cinema, Sector 22, Chandigarh for a sufficient long period of time even prior to the grant of *ad-interim* injunction against their dispossession by this Court on 28th May, 2002, stands proved beyond any doubt. In fact, the Finance Secretary, Chandigarh Administration himself has candidly admitted in the impugned order that “whereas Shri Agya Ram alongwith seventeen other families migrated to Chandigarh in the year 1990 from Kashmir Valley due to unfortunate circumstances prevailing over there. They were accommodated in the Community Centre” and that the said Agya

Ram “started business of selling towels etc. in Sector 22-C, in front of Kiran Cinema, Chandigarh”. Suffice it to say that the object behind addition of Rule 5-A, is to enforce a laudable welfare scheme of the State, therefore, it deserves to be liberally interpreted. In my considered view, the fact that the authorities allowed the petitioners to run the stalls, may be in a tented accommodation, is sufficient proof of implied permission to them to run their petty business as a source of livelihood.

(10) Insofar as the second objection that the Deputy Commissioner, Chandigarh has not recommended the petitioners’ cases, it appears that such recommendations were not made for want of sufficient proof of the petitioners’ coming to Chandigarh as “migrants” from Kashmir as they were required to produce the ‘Migrant Status Certificate’ issued by the Jammu and Kashmir Government. This Court accordingly passed the following order on 19th September, 2007 :—

“During the course of arguments, learned counsel for the respondent, Mr. K. K. Gupta has pointed out that for the allotment of built up booths to the present petitioners, certain formalities are required to be completed in accordance with the Government of India instructions dated 24th December, 1990 read with Rule 5-A of the Allotment/Transfer of built up booths in any Sector on lease/hire purchase basis in Chandigarh Rules, 1991. He has further pointed out that in accordance with these Rules, the petitioners are required to produce Migrant Status Certificate issued by the J & K Government. Learned counsel for the petitioners has submitted that in view of these Rules, an effort would be made by the petitioner to procure the above mentioned certificate from the competent authority and for that purpose, he requires some time”.

(11) It is not in dispute that in deference to the afore-stated order, the Deputy Commissioner, Chandigarh,—*vide* his letter dated 11th January, 2008 [Annexure A-2] requested the Deputy Commissioner, Sri Nagar [J & K] to verify the genuineness of the petitioners as ‘Kashmiri Migrants’. In response thereto, the Deputy Commissioner, Sri Nagar,—*vide* his letter dated 15th September, 2008 [Annexure A-4] sent

a copy of the verification report of the Tehsildar [S], Sri Nagar dated 11th September, 2008 [Annexure A-5] which reads as follows :—

“Kindly refer to your No. and date quoted above regarding the subject matter. In this connection as verified and reported by N-Tehsildar Chatabal Shri Agya Ram son of More Chand was putting at Hari Singh High Street on rental basis and has left outside valley in the year 1989, Mangat Ram son of Agya Ram was residing at Dhobi Mohalla Batamalloo before a period of eighteen years and then had migrated out side valley, and accordingly Shri Raj Kumar s/o Shri Malik Ram was also putting at Magarmal Bagh on rental basis and in the year 1989 has migrated out side valley”.

(12) In the light of the above reproduced proof which establishes without any room to doubt that the petitioners used to live in Sri Nagar and had to migrate from the valley for the reasons beyond their control on account of adverse circumstances and, thus they are genuine and *bona-fide* Kashmiri Migrants. It is accordingly held that the petitioners fully satisfy the requirement of Rule 5-A of the Rules and are eligible for consideration for the allotment of the built-up booth sites.

(13) For reasons afore-stated, the writ petition is allowed, the impugned order dated 24th January, 2002 [Annexure P-20] is quashed and the respondents are directed to include the names of each of the petitioners in the list of eligible Kashmiri Migrants, if any, for the purposes of allotment of built-up booth sites as per entitlement of each of the petitioners. The respondents are also directed to consider the claims of other 17 Kashmiri Migrant families so as to obviate their hardship in approaching this Court. The respondents are also directed to earmark booth sites for allotment to the Kashmiri Migrants as provided in Rule 5-A of the said Rules and make allotments as early as possible but not later than four months from the date a certified copy of this order is received.

(14) Parties are left to bear their own costs.

R.N.R.