

PETITIONER:
MUMBAI AGRICULTURAL PRODUCE MARKET COMMITTEE & ANR.

Vs.

RESPONDENT:
SHARAFATULLAH HAFIZ INAYATULLA & ANR.

DATE OF JUDGMENT: 15/02/2000

BENCH:
N.S.Hegde, A.P.Misra

JUDGMENT:

SANTOSH HEGDE, J.

CA.../2000 {@ SLP c .(CC 3870/99)}

Delay condoned.

Leave granted.

In this appeal, the appellant has challenged the order made by the Division Bench of the Bombay High Court dated 8th September, 1998 whereby the High Court held that the respondent had substantially complied with the norms fixed for allotting galas for trading in wholesale fruits in the market presently situated at Navi, Mumbai. Consequent to the decision of the appellant to shift wholesale markets including the fruit market from Bombay Municipal Corporation Area to Navi Mumbai, disputes arose as to the allotment of galas to the vendors which dispute was challenged before the High Court of Bombay in various writ petitions and the High Court, with a view to avoid arbitrariness in the allotment of galas, had appointed Mr. Justice Daud (Retired) to formulate the norms based on which the gala would be allotted to various claimants. Justice Daud had submitted various reports. Ultimately, the report dated 6th July, 1999 came to be accepted. As per this report, the basic requirement needed for the allotment of a gala was that the claimant had to establish that he was doing the concerned business for 5 years within a block period of 1985-86 to 1994-95 which should be reflected by way of payment of market fee irrespective of the quantum and further show that he held an APMC licence for a period of at least 2 years during the said block period. Since the respondent was not allotted a gala in spite of his claim that he was qualified to be allotted a gala within the norms referred to above, he filed Writ Petition No.4248 of 1998 before the High Court of Bombay which having been allowed, the Market Committee has preferred the above noted appeal. Before the High Court, the respondent contended that he had been doing business as a fruit vendor for many years in the Subsidiary Market at Mahatma Jyotiba Phule Mandai, Bombay. A dispute had arisen between him and the appellant herein consequent to which the appellant had filed a suit in the City Civil Court at Bombay

wherein the appellant had sought for an injunction against the respondent restraining him from doing business in the market without obtaining necessary licence from the appellant and paying the required market fee. It was the contention of the respondent before the High Court that during the pendency of the said suit there was certain correspondences between him and the appellant-Committee consequent to which he had paid all the arrears of market fee due from him which was accepted by the appellant and he had also accepted the authority of the appellant to insist on taking out a licence. Therefore, his activity as a trader being accepted by the Market Committee for the relevant period fixed by Justice Daud, he was entitled to be granted a gala. The claim of the respondent before the High Court was opposed by the appellant primarily on the ground that though appellant did carry on business, he did not hold a licence during the relevant period i.e. 1985-86 to 1994-1995. Therefore, he was not entitled for the grant of a gala since the condition precedent for the allotment of a gala being the payment of the market fee and having held licence during the relevant period which conditions the respondent did not satisfy. The High Court having considered the facts of the case came to the conclusion that there was a dispute between the appellant and the respondent in regard to the authority of the Market Committee to levy fee and taking of a licence. Still, the fact remained that the writ petitioner was doing business for a number of years including the block period fixed by Justice Daud and subsequently the writ petitioner had paid all the arrears of market fee which was accepted by the Market Committee. Therefore, there was substantial compliance of the norms fixed by Justice Daud and the fact that the writ petitioner had not taken out a licence, was due to the pending dispute which did not exist any more in view of the fact the writ petitioner had accepted the authority of Market Committee and the two norms fixed by Justice Daud was more in the nature to establish the fact that a claimant was doing business for at least 5 years during the block period which fact not being in dispute, the writ petitioner was entitled for the allotment of a gala. Challenging the above order of the High Court, it was contended before us that the High Court committed a factual error in coming to the conclusion that the suit which was filed by the Market Committee had since been compromised and because of this basic error the Court came to the conclusion that the respondent had established his right for the allotment of a gala, which finding of the High Court, according to the appellant, is erroneous because, as a matter of fact, the suit was never compromised and the respondent had also not taken a licence. It is also further contended by the appellant that if allotments are to be made on the basis of the finding of the High Court then all the persons similarly situated as the respondent will also be entitled to similar allotment which would create practical difficulties inasmuch as the number of galas available will not be sufficient to accommodate all such claimants. The appellant also pointed out before us that some more writ petitions are still pending in the High Court making similar claims.

Before we proceed to examine the correctness of the order impugned before us, we should bear in mind the fact that the High Court appointed a Commission presided over by Justice Daud only for the purpose of finding out norms by which allotment could be made avoiding the allegation of arbitrariness. Justice Daud, as could be seen from the

records available before us, had elaborately considered the factual situation and had fixed certain norms. We have already referred to some of the relevant norms applicable to the facts of the case, i.e., that a person staking a claim for the allotment of a gala must establish that he was doing business in the original place at least for a period of 5 years during the block period viz., 1985-86 to 1994-1995. Of course, in addition, it is also necessary that the claimant should establish that he had a licence from the APMC for a period of at least 2 years during that block period. In the instant case, the High Court noticed that there was no dispute in regard to the factum that the respondent was doing business for at least 5 years during the block period, if not more, but the contention is that he had not paid the market fee and had not obtained the licence. This lacuna, the High Court felt, was due to genuine dispute between the parties and now that the appellant had accepted all the arrears of market fee, the High Court came to the conclusion that the dispute does not exist any more and that his not obtaining the licence by itself, did not detract from the fact that the writ petitioner had in fact done business during the relevant block period. Having come to this conclusion, the High Court held that there was substantial compliance of the norms. It is true in the course of the discussion of the facts of the case, the High Court referred to a compromise which, in our opinion, is obviously an error and this error in fact did not vitiate its finding. Therefore, we are in agreement with the finding of the High Court that when the respondent had established that he was doing business during the relevant period, non-payment of market fee because of the pendency of the dispute in a competent court of law and subsequent acceptance of the arrears of market fee would justify the claim of the respondent for the allotment of a gala. In regard to the absence of a licence, it must be held on the basis of the facts of this case that when the Market Committee accepted the arrears of market fee for a past period, it should be deemed that it accepted the business done by the respondent during that period to be legitimate and there is no question of issuing a licence for a period which has already expired. That apart, Justice Daud norms were meant to establish the fact that a claimant to a gala had in fact done legitimate business in the market for a period of at least five years during the block period which we have held the respondent had done. Therefore, we do not find any reason to differ with the conclusion arrived at by the High Court.

However, we must deal with the next contention raised on behalf of the appellant in regard to the possible difficulty that may be faced by the Market Committee arising from the claims of similarly situated persons as the respondents before us. First of all, no material has been placed before us to show that there are claimants who had regularly done business during the relevant period and who like the writ petitioner had not paid the market fee and obtained a licence because of any genuine dispute with the Market Committee which dispute culminated in legal proceedings. Assuming that there are such further claimants then their conduct will have to be judged with reference to laches as and when they stake their claims. Further assuming that in the pending cases the claims of the writ petitioners are similar to that of the respondents herein even then, in our opinion, no problem can be envisaged because Justice Daud had taken note of this fact and had

recommended a norm which he termed as : "Early Bird Norm" which in principle means that the allotment will be made between the similarly-situated persons on the basis of the date of application which, in our opinion, is a fair method to be adopted in the event of there being more eligible claimants than the available number of galas. For these reasons, this appeal fails and the same is dismissed.

SLPc No. 10733/99 :

In view of the judgment of this Court in C.A. No.../2000 (arising out of SLPc ..(cc No.3870/99), this petition is also dismissed.