

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of Decision: 15.02.2011

1. **CWP No. 8515 of 2010**

R.S.Motors Shop No. 114-115, Feroz Gandhi Market, Ludhiana,
through its Proprietor Shri Rajinder Kumar Sharma.

...Petitioner

Versus

State of Punjab and others

..Respondents.

2. **CWP No. 8519 of 2010**

Nanak Car Bazar Shop No. 48, Feroz Gandhi Market, Ludhiana,
through its Proprietor Shri Nanak Singh.

..Petitioner

Versus

State of Punjab and others

..Respondents

3. **CWP No. 8535 of 2010**

Gurjeet Motors, Shop No. 62, Feroz Gandhi Market, Ludhiana,
through its Proprietor Shri Gurjeet Singh.

..Petitioner

Versus

State of Punjab and others

..Respondents

4. **CWP No. 8536 of 2010**

Bindra Motors Shop Shop No.565, Feroz Gandhi Market, Ludhiana,
through its Proprietor Shri Preet Mohan Singh.

..Petitioner

Versus

State of Punjab and others

..Respondents

CWP No. 8515 of 2010

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5. **CWP No. 8537 of 2010**

Sodhi Car Bazar Shop No. 95, Feroz Gandhi Market, Ludhiana,
through its Proprietor Shri S.S.Sodhi.

..Petitioner

Versus

State of Punjab and others

..Respondents

6. **CWP No. 8545 of 2010**

J.V. Car Bazar Shop No. 107, Feroz Gandhi Market, Ludhiana,
through its Proprietor Shri Suresh Kumar.

..Petitioner

Versus

State of Punjab and others

..Respondents

7. **CWP No. 8548 of 2010**

Deep Motors Shop No. 99, Feroz Gandhi Market, Ludhiana, through
its Proprietor Shri Kuldeep Singh Gujral.

..Petitioner

Versus

State of Punjab and others

..Respondents

8. **CWP No. 8551 of 2010**

Maharaja Motors Shop No. 83, Feroz Gandhi Market, Ludhiana,
through its Proprietor Shri Baljeet Singh.

..Petitioner

Versus

State of Punjab and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE RANJAN GOGOI, CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. D.S.Patwalia, Advocate, for the petitioners
in all the petitions.

Ms. Madhu Dayal, Addl. A.G. Punjab
for the respondents No.1, 3, and 4.

Mr. Harsh Aggarwal, Advocate,
for respondent No.2-M.C.Ludhiana in all the petitions.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. G.S.Ghuman, Advocate, for the respondent No.5 i.e.
President, Traders & Property Owners Association, in
all the petitions.

RANJAN GOGOI, C.J.(Oral)

All these cases having raised a common question on more or less identical facts were considered together and are being disposed of by this common order.

The essence of the relief prayed for in the writ petition is for a direction to the respondents not to interfere or cause any obstruction in the running of the Sunday car bazar by the petitioners in Feroz Gandhi Market, Ludhiana. According to the petitioners, they are stall holders in the said market for which licences have been issued by the Municipal Corporation, Ludhiana. They earn their livelihood by carrying on the business of sale and purchase of second hand cars which is conducted only on Sundays. Such a right according to the petitioners has already been recognized by this Court by orders dated 22.05.2006 and 22.08.2008 passed in Civil Writ Petition No. 5692 of 2003 and Civil Writ Petition No. 2174 of 2007 (Annexures P-3 & P-4).

While the Municipal Corporation of Ludhiana support the petitioners in asserting their right to carry on the business on one day of the week i.e. Sunday, the self impleaded fifth respondent has pleaded that it is not only on Sundays but on every day of the week that the said business is carried on by the petitioners which is affecting the business of the traders represented by the Respondent Association. That apart, the right of the petitioners to carry on the said business has also been questioned. In so far as the running of the business of sale and purchase of Cars on Sundays is concerned, it is the case of the said respondent that Sunday is the weekly cleaning day of the other stalls and any business of sale and purchase of cars on a Sunday interferes with such activities which is vital to the smooth conduct of the business of the members of the Respondent Association.

The first question that has to be answered by the Court is whether the petitioners have been able to establish a right to carry on the business of sale and purchase of second hand vehicles in the market in question. The repeated reference by the learned counsel for the petitioners to Article 19(1)(g) of the Constitution will be of no avail unless the petitioners can satisfy the Court that they have been duly licensed to carry on the said business even be it on a Sunday. The licence granted by the Municipal Corporation, admittedly, is for the purpose of general trading and not to carry on the specific trade of sale and purchase of second hand vehicles. In a situation where the right to carry any particular business in the market is regulated by a system of licence to be issued by the Municipal Corporation, in the

absence of any such licence to carry out the specific trade, it is difficult for the Court to accept the position that the petitioners have a legal right to carry on the said business and that any interference with the same would be in breach of Article 19(1)(g) of the Constitution of India.

In so far as the orders passed by this Court is concerned, having perused the same, we are of the view that this Court could not have and did not intend to confer any right on the petitioners which they, otherwise, did not possess. A close reading of the orders of the Court would go to show that the same proceeds on an acknowledgment of a pre-existing right to do the business on a Sunday. On both the earlier occasions, this Court was not required to consider the existence of any such pre-existing right which, however, is an issue that has been raised in the present proceeding. The answer to the same has already been provided by us in the preceding paragraph. We are, therefore, inclined to take the view that the petitioners have failed to establish any right to carry on the business of sale and purchase of second hand vehicles in the market in question on the basis of the licences granted to them by the Municipal Corporation, Ludhiana and they are liable to be directed to discontinue their operations in the market. However, having regard to the fact that such directions with immediate effect will cause some hardship to the petitioners, we permit them to continue the said business on every Sundays for the next eight weeks, whereafter, they will close down their business in the said market, failing which the Deputy Commissioner, Ludhiana will ensure that the directions of this

Court are complied with.

An issue has been raised by Mr. Patwalia, learned counsel for the petitioners that the Municipal Corporation, Ludhiana has a duty to re-allocate alternative sites to enable the petitioners to carry on the business in question. A reference has been made to what is perceived by the learned counsel for the petitioners to a like situation arising in Delhi on account of the implementation of the orders for shifting of Industries. Only 8/9 traders who are engaged in the business of sale and purchase of second hand vehicles are before the Court. Court orders will always have to be moulded having regard to the fact situation of every case. In any event, the question of re-allocation of alternative sites having been dealt with by this Court in its previous order dated 22.08.2008 (Annexure P-4), we are of the view that the matter should not be reopened by a co-ordinate Bench and, instead, the earlier order to the effect that the petitioners do not have any such right to insist on a reallocation of sites should be allowed to prevail.

Consequently and in the light of the foregoing discussion, all the writ petitions shall stand disposed of in the above terms.

(RANJAN GOGOI)
CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

15.02.2011
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