

**IN THE HIGH COURT OF UTTARAKHAND**

**AT NAINITAL**

**HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI**

**AND**

**HON'BLE SRI JUSTICE RAKESH THAPLIYAL**

**SPECIAL APPEAL NO. 285 OF 2023**

**09<sup>TH</sup> AUGUST, 2023**

**BETWEEN:**

Mohan Singh

.....Appellant.

And

State of Uttarakhand & others

....Respondents.

Counsel for the Appellant

:

Mr. B.S. Adhikari, learned counsel.

Counsel for the Respondent Nos.1 to 4:

Mr. S.S. Chauhan, learned Deputy Advocate General.

**The Court made the following:**

**JUDGMENT:**(per Hon'ble The Chief Justice Sri Vipin Sanghi)

**Delay Condonation Application (IA No.01 of 2023)**

Issue notice. Learned counsel appears and accepts notice on behalf of respondent nos.1 to 4.

2. Learned counsel for respondent nos.1 to 4 does not fairly oppose the application seeking condonation of 299 days delay in preferring the present special appeal. The application is, accordingly, allowed and the delay is condoned.

**Special Appeal No. 285 of 2023**

3. The present appeal is directed against the order dated 05.09.2022, passed by the learned Single Judge in Writ Petition (M/S) No.2102 of 2022. The impugned order is short, and we, accordingly, reproduce the same hereunder:-

"Mr. K.K. Harbola, learned counsel for the petitioner.

Mr. Yogesh Pandey, learned Addl. Chief Standing Counsel for the State.

Admittedly, the petitioner's wife is a Gram Pradhan of the Village, where he is running a fair price shop.

The Government of Uttarakhand has taken a decision to cancel all such retail outlet under the P.D.S. Scheme, which is being allotted to any relative of the Gram Pradhan or Up-Pradhan.

The petitioner's case, therefore does not have any merit in consideration; hence, the writ petition is dismissed in limine".

4. The appellant had preferred the said writ petition to assail the cancellation of P.D.S. allotted to him by order dated 03.01.2022. The said order, which was impugned in the writ petition, reads as follows:-

"पूर्ति निरीक्षक, बाराकोट ने अपने पत्रांक ज्ञाप / पू०नि० / जॉच / दिनांक 16 सितम्बर, 2021 के द्वारा अवगत कराया गया है कि श्री मोहन सिंह, उचित दर विक्रेता मटियाल की पत्नी श्रीमती शान्ति देवी ग्राम प्रधान के पद पर नियुक्त है।

अपर आयुक्त, खाद्य नागरिक आपूर्ति एवं उपभोक्ता मामले विभाग, उत्तराखण्ड देहरादून के पत्र संख्या - 2818 / आ० खा० / 804-3/2021 दिनांक 30 दिसम्बर, 2021 के द्वारा अवगत कराया गया है, कि शासनादेश संख्या 1179/xix/ 08-162/ खाद्य / 2005 दिनांक 26 दिसम्बर, 2008 में व्यवस्था है कि प्रधान एवं उपप्रधान अथवा उसके परिवार या सम्बन्धियों "के नाम पूर्व में स्वीकृत उचित दर की दुकान निरस्त की जाए तथा शासनादेश के अनुसार आवश्यक कार्यवाही करने के निर्देश दिये गए हैं।

अतः पूर्ति निरीक्षक, बाराकोट के उक्त पत्र एवं उक्त शासनादेश के क्रम में जिलाधिकारी महोदय के अनुमोदन आदेश दिनांक 03.01.2022 के अनुपालन में श्री मोहन सिंह उचित दर विक्रेता मटियाल की उचित दर की दुकान का प्राधिकार पत्र तत्काल प्रभाव से निरस्त किया जाता है।

जिला पूर्ति अधिकारी,  
चम्पावत।"

5. The aforesaid order would show that it was premised on the communication dated 30.12.2021, issued by the Additional Commissioner, Food and Civil Supplies, which referred to the Government Order bearing No.1179/xix/08-162/ ~~ख/ए~~ /2005, dated 26.12.2008. It also refers to the order dated 03.01.2022, issued with the approval of the District Magistrate, pursuant to the aforesaid Government Order dated 30.12.2021. However, neither of those documents were filed by the appellant/ writ petition before the Court, nor put to challenge.

6. Mr. Adhikari, learned counsel for the appellant submits that the appellant was not possessed of the said documents, and therefore, could not put them to challenge. He states that he will assail the said orders as well, apart from assailing the order dated 03.01.2022.

7. In the face of the aforesaid Government Orders, the cancellation of the allotment made to the petitioner could not have been challenged, unless the Government Orders themselves were put to challenge.

8. In the light of the aforesaid, we dispose of this appeal with liberty to the appellant to assail the Government orders above referred to.

9. The appeal stand disposed of with liberty, as prayed for.

10. Pending application, if any, also stands disposed of.

**(VIPIN SANGHI, C.J.)**

**(RAKESH THAPLIYAL, J.)**

Dated: 09<sup>th</sup> August, 2023

NISHANT