

Court No. - 4

Case :- WRIT - C No. - 5356 of 2014

Petitioner :- Ajendra Singh

Respondent :- State Of U.P. Thru Secy. And 3 Others

Counsel for Petitioner :- Ravi Sahu,Ajay Sengar

Counsel for Respondent :- C.S.C.

Hon'ble Prakash Padia,J.

1. Heard Shri Ajay Sengar, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the record.

2. Pleadings have already been exchanged between the parties.

3. With the consent of counsel for the parties, the present petition is disposed of finally at the admission stage itself.

4. The present petition has been filed initially by Shri Ajendra Singh challenging the orders dated 10.01.2012 passed by the respondent no.4 as well as order dated 24.08.2013 passed by the respondent no.2 against him cancelling his fair price shop license. During the pendency of the present petition, the sole petitioner died and thereafter his legal heirs namely Smt. Rekha Singh Chauhan (widow) and Shri Sameer Singh Chauhan (son) were arrayed as petitioner nos. 1/1 and 1/2.

5. Facts in brief as contained in the petition are that the petitioner is a fair price shop dealer under U.P. Scheduled Commodities Distribution Order 2004 and running the same as the Shop No. A-63, Anwarganj, Kanpur Nagar. On 11.11.2011, the respondent No.4/District Supply Officer, Kanpur Nagar, claimed that he along with his team have caught one loader No. U.P.-78, BT 6277, loading with 25 bags of wheat. When they interrogated to its driver i.e. Mansoor Ali who disclosed that the said bags have been loaded from the petitioner's shop and are going to be sold. On the basis of the aforesaid suspicion, the Respondent No.4/D.S.O., Kanpur Nagar lodged the FIR registered as Case Crime No. 268 of 2011 under Section 3/7 of the Essential Commodities Act, 1955 on 11.11.2011 and send to the petitioner in Jail on 13.11.2011. In view of the aforesaid FIR, the respondent no.4 alongwith his team have inspected the petitioner's shop and claimed certain irregularities. Regarding the aforesaid occurrence, he issued notice to the petitioner on 16.11.2011 but due to the confinement in the Jail, the petitioner could not receive the said show cause notice. Hence the petitioner neither received the said notice nor he has submitted his explanation before the respondent no.4. Consequently, the respondent no.4 has cancelled the fair price shop of the petitioner on 11.01.2012. Against the aforesaid order, the petitioner filed an appeal No.0140 of 2013 (Old No. 0299 of 2012) under Section 28 of the U.P. Scheduled Commodities Distribution Order 2004 on 23.01.2012 before the Commissioner Kanpur Division Kanpur Nagar

and the aforesaid appeal was also dismissed by the Additional Commissioner, Kanpur Division Kanpur Nagar vide order dated 24.08.2013. Hence the present petition.

6. It is argued by learned counsel for the petitioner that the fair price shop of the petitioner was cancelled on the basis of the lodging of F.I.R. and vague charges made against the fair price shop of the petitioner and in the present matter no formal enquiry had been made in pursuance of the Government Order dated 29.07.2004. Learned counsel for the petitioner submits that merely the lodging of first information report, cannot result in holding a fair price shop owner guilty of the offences charged and the fair price shop license of the petitioner could not be cancelled only on the ground that the F.I.R. has been lodged against the petitioner and in support of his argument, he relied upon the Division Bench Judgement of this Court dated 26.10.2017 passed in **Misc. Single No.8033 of 2013 (Bajrangi Tiwari Vs. The Commissioner Devi Patan Mandal Gonga and another)**. In the aforesaid matter, following questions of law had been referred by the learned Single Judge for consideration before the Larger Bench which are reproduced hereinbelow:-

"1. Whether the fair price shop licence can be cancelled merely on lodging of a criminal case against the licensee?; and

2. Whether, while passing any such order the Government Order dated 17.8.2002, particularly para-10 of said Government Order would be applicable/considered or not?"

7. The aforesaid questions of law had been answered in paragraph 14 of the aforesaid judgment which is reproduced hereinbelow:-

"14. Looking into the meaning of word, 'discretion', as explained, above, and also looking to the fact that the Government order dated 29.7.2014, as a policy, requires such a discretion to be exercised in suspension/ cancellation of a licence. The answer to the two questions referred to this Court are answered as follows:-

(i) The answer is no. Licence of a fair price shop cannot be cancelled merely on lodging of FIR against the licensee.

(ii) The answer is no. The Government order dated 17.8.2002 relates to allotment of a fair price shop and hence the same cannot be referred to in suspension/cancellation of licence. It is the Government order dated 29.7.2014 according to which the suspension/cancellation of a fair price shop licence can take place."

8. Learned counsel for the petitioner also relied upon the judgement passed in the case of **Dev Singh Vs. State of U.P. and others (Writ C No.66235 of 2013)** decided on 08.12.2014 and **Jagdamba Prasad Vs. State of U.P. and others (Writ C No.54917 of 2017)** decided on 01.12.2021.

9. On the other hand, learned Standing Counsel argued that the order passed by the respondent no.4 namely District Supply Officer, Kanpur Nagar and the Appellate Court are absolutely perfect and valid order and does not call for any interference.

10. Heard learned counsel for the parties and perused the record.

11. Learned Standing Counsel has failed to bring to the notice of the Court any provision either under the Essential Commodities Distribution Order, 2004 or under any other Government Order issued either under the 2004 order or 1990 order empowering the Licensing Authority to cancel a fair price shop agreement merely on account of a dealer being involved in a criminal case. Hence the cancellation of the petitioner's agreement on the ground of his involvement in aforesaid criminal case under the Essential Commodities Act is unsustainable.

12. Even otherwise, I am of the opinion that mere filing of a F.I.R. cannot result in holding a fair price shop owner guilty of the offences charged. If there be a conviction, then it is possible to proceed, based on the conviction and not otherwise. In case if the F.I.R. is lodged, it is still open to the respondents to proceed by leading independent evidence and statements of the persons recorded.

13. It is admitted situation that in the present matter at any point of time no inquiry/inspection has been made by the competent authority or stock registrar had been verified from the fair price shop of the petitioner, and without affording any opportunity of hearing to the petitioner, merely on lodging of the first information report under Section 3/7 E.C. Act, against the petitioner, the fair price shop of the petitioner had been cancelled.

14. The Division Bench Judgement of this Court dated 26.10.2017 passed in the case of **Bajrangi Tiwari (supra)** is also supported the case of the petitioner.

15. Consequently the order dated 10.01.2012 passed by the respondent no.4 namely District Supply Officer, Kanpur Nagar and the order dated 24.08.2013 passed by the Additional Commissioner, Kanpur Division Kanpur Nagar are set-aside. The respondents are directed to resume the supply of the food grains to the petitioners who are the legal heirs of the sole petitioner in whose favour the fair price shop license was granted in accordance with law if there be no other contrary order. However, it shall be open to the respondents to hold an enquiry and proceed according to law.

16. The writ petition is accordingly allowed.

Order Date :- 17.11.2023

Swati