

Court No. - 52

Case :- WRIT - C No. - 49721 of 2017

Petitioner :- Virendra Kumar Mishra

Respondent :- Commissioner Azamgarh Region And Another

Counsel for Petitioner :- Durga Prasad Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Durga Prasad Singh, learned counsel for petitioner and Sri Ajay Kumar Barnawal, learned Standing counsel appearing on behalf of respondents.

2. Present petition has been filed seeking following reliefs:

"I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 23.01.2017 (Annexure no. 1) passed by learned Commissioner in Appeal no. 273/B-2015 and order dated 29.07.2015 passed by respondent no. 3, learned Sub Divisional Magistrate against the petitioner cancelling his dealership of another newly fare price shop with manipulation of shiv Bachan Ram on frivolous ground without giving proper opportunity of hearing to him.

II. Issue a writ, order or direction in the nature of mandamus directing the respondents to restore the petitioner's dealership of another newly fare price shop on basis of population being more than 4350 (four thousand) and total unite 4110 in concerned Gram Sabha also."

3. The matrix of the matter derives on the cancellation of the fair price shop already allocated to one Shiv Bachan situated at village Chorkant, Tehsil Bansdih, District Ballia vide order dated 04.08.2014. For maintaining the daily needs and the item which has been put for distribution through fair price shop and ensuring the convenience of public at large pertaining to the same village, an open meeting has been convened of Land Management Committee, village Chorkant, Tehsil Bansdih, District Ballia on dated 02.02.2015 and the proposal has been made in favour of the petitioner, the same has been forwarded by the Block Development Officer vide letter dated 07.02.2015 before the respondent no. 2. After observing the prescribed and mandatory procedure for extension of fresh licence for fair conduction of fair price shop, the same has been approved in favour of the petitioner by the respondent no. 2 vide order dated 20.02.2015.

4. Learned counsel for the petitioner sought the attention of the Court over para 2 of the order dated 20.02.2015 through which it has been demonstrated that the licence of fair price shop extended in favour of the petitioner was a fresh one and not in substitution of the order dated 04.08.2014. The basis for extension of fresh fair price shop license was the population of the village as well as unit holder that is above 4000 and the same has been provided in the specific Government order that if the unit holders are above than 4000 the second fair price shop is admissible in the same village.

5. In continuation to the event dated 04.08.2014, one Shiv Bachan whose fair price shop license was cancelled preferred an statutory appeal, which culminated into order dated 10.06.2015 through which the fair price shop licence already extended in favour of one Shiv Bachan has been restored. After restoration of the order dated 04.08.2014, the another fair price shop owner requested before the respondent no. 2 for cancelling the license for fair price shop extended in favour of the petitioner and the same was acceded and culminated into order dated 29.07.2015.

6. Being aggrieved with the order dated 29.07.2015, petitioner preferred an appeal before respondent no. 1 under Section 28(3) of Essential Commodities Act, 1955 wherein the several other grounds have been taken along with the provision of continuation of second fair price shop in the same village, if the unit holders are above 4000 but without considering the vital grounds available in the memo of appeal along with the averments made by learned counsel for the petitioner who informed that at the time of challenging the order passed by respondent no. 2 several other grounds have been mentioned before respondent no. 1 but all were of no avail which culminated into order dated 23.01.2017 which impugned the present petition.

7. Learned counsel for the petitioner while assailing both the orders passed by respondent no. 1 and 2 submitted that the ground for cancellation of licence pertains to that fair price shop cannot be cancelled on the basis of the submission made by the second fair price shop conductor. The epigenis of the opening of the second fair price shop has not been dealt and considered by respondent no. 2 while passing the order dated 29.07.2015 but the same has been cancelled only on the ground since the earlier shop which was cancelled was restored by the orders passed by the Appellate Authority i.e. respondent no. 1 in favour of one Mr. Shiv Bachan, at the same time the entire proposal of the open meeting decided by the Land Management Committee, forwarding letter of the Block Development Officer and the approval made over the same

by the competent authority i.e. respondent no. 2 himself has not been taken into consideration while passing the order which adversely affected the petitioner since the licence of fair price shop extended in favour of the petitioner was not dependent upon the proceedings whatsoever has been culminated in pursuance to the order dated 04.08.2014 but the extension of licence of fair price shop in favour of the petitioner was a fresh one and the same has been observed by the respondent no. 2 at the time when the interim protection has been granted in favour of the petitioner while preferring appeal before the respondent no. 1.

8. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition and negated the stand taken up by learned counsel for the petitioner by way of supporting the orders passed by respondent no. 1 and 2. The basis of the objection raised by learned Standing counsel is on the averment made in the counter-affidavit wherein the total population of the concerned village has been reflected as 3607 and the unit holders are 2747 in numbers but at the same time there is hardly any averment made available while preferring the counter-affidavit with regard to the report as submitted and observed while passing the order dated 29.07.2015 as well as 10.12.2015 by respondent no. 2.

9. Learned Standing counsel also failed to submit the precise query made before him that once the fresh allocation of fair price shop has been made in favour of the petitioner vide order dated 29.07.2015 then what was the occasion available before respondent no. 2 for acceding the prayer made by another fair price shop owner for seeking cancellation of the license extended in favour of the petitioner, once the order dated 29.07.2015 was not the conditional one and dependent upon the proceedings whatsoever has been initiated in pursuance to the cancellation of the earlier fair price shop.

10. In view of the aforementioned facts and circumstances, order dated 23.01.2017 and 29.07.2015 passed by respondent no. 1 and 2 respectively are hereby set aside. Writ petition stands **allowed** accordingly.

Order Date :- 30.11.2023

Shaswat