

Court No. - 52

Case :- WRIT - C No. - 11192 of 2016

Petitioner :- Ram Kripal Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Arun Kumar Verma, Harish Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Harish Kumar Tripathi, learned counsel for petitioner and Sri Surendra, learned Standing Counsel for the State-respondents.

2. The present petition has been preferred for seeking quashing of the order dated 04.02.2016 passed by respondent no.2 i.e. Commissioner Gorakhpur Mandal, Gorakhpur and order dated 28.05.2013 passed by respondent no.3 i.e. Sub Divisional Magistrate Sahjanwa, District Gorakhpur.

3. Learned counsel for petitioner submitted that at the time of suspending the Fair Price Shop which was conducted by petitioner, explanation was sought only for stock register pertains to December 2012, January and February 2013 and the same has been provided by petitioner but at the time of deciding the same, respondent no.3 while passing the order dated 28.05.2013 decided the same on different footings and there was hardly any consideration with regard to explanation submitted by petitioner with regard to December 2012, January and February 2013. Being aggrieved with the order dated 28.05.2013, petitioner preferred an appeal before respondent no.2 on several other grounds inter-alia specifically on the ground that at the time of suspending the Fair

Price Shop licence extended in favour of petitioner, there was explanation sought from petitioner with regard to stock register and other documents relating to December 2012, January and February 2013.

4. Learned counsel for petitioner raised his arguments for challenging the order dated 28.05.2013 passed by respondent no.3 and order dated 04.02.2016 passed by respondent no.2 that both the respondents although discussed the grounds taken up in defense of petitioner but the same has not been adjudicated and no finding has been given either by respondent no.3 or by respondent no.2.

5. While assailing the order dated 04.02.2016, learned counsel for petitioner sought attention of the Court over page no.49 of the petition, wherein the Appellate Authority although discussed the grounds taken up by petitioner in appeal as well as at the time of pressing the appeal before the Appellate Authority but no finding has been recorded over the discussion of vital ground which was material to be adjudicated at the time of deciding appeal.

6. Learned Standing Counsel vehemently opposed the prayer as made through the instant petition but could not dispute the aforesaid facts that the explanation sought by petitioner has not been discussed while passing the orders impugned.

7. Once the explanation has been sought from petitioner for specific period and not for any other material, events, complaints or any document then under which circumstances, it has been presumed that no material has been provided by petitioner before respondent no.3 in his defense over the complaints made by the then Gram Pradhan along with another villager, whereas the position is otherwise which is apparent from records that the

explanation whatsoever has been sought from petitioner, has been duly replied but the same has neither been mentioned nor decided at the time of passing order of cancellation of Fair Price Shop already extended in favour of petitioner and the same was also not properly decided by respondent no.2 while adjudicating the appeal preferred by petitioner.

8. In view of the aforesaid facts and circumstances, both the orders dated 04.02.2016 and 28.05.2013 passed by respondent nos.2 and 3 respectively are set aside, matter is hereby remitted back to respondent no.3 for deciding afresh by way of affording proper opportunity to petitioner for providing documents and recording his statement in pursuance of the allegations put forward which enabled the authorities for cancelling the Fair Price Shop already extended in favour of petitioner.

9. The aforementioned exercise shall be finalized by respondent no.3 as expeditiously as possible, preferably within a period of six months from the date of production of a certified copy of this order before him.

10. However, it is made clear that during pendency of the present petition, if any fresh allotment has been made, the same shall be subject to outcome of the proceedings as directed above.

11. Writ petition stands **allowed** accordingly.

Order Date :- 20.11.2023

Vivek Kr.