

Court No. - 4

Case :- WRIT - C No. - 33707 of 2012

Petitioner :- Arvind Kumar

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

Counsel for Petitioner :- Anurag Singh,Rajesh Yadav

Counsel for Respondent :- C.S.C.,S.P. Singh

Hon'ble Prakash Padia,J.

Ref:- Civil Misc. Impleadment Application No.102902 of 2014

1. The present impleadment application, supported by an affidavit, has been filed with the prayer to implead the applicant namely Smt. Ram Murti wife of Chhote Lal Resident of Village Sihari Post Office Sihari Tehsil Bhognipur District Kanpur Dehat as respondent No.5.
2. It is argued by learned counsel for the applicant that after cancelling of the licence of the fair price shop of the petitioner, the applicant has been allotted the fair price shop, therefore, the applicant is a necessary party and the applicant has the right to be heard before passing any order which is directly effected her.
3. Learned counsel for the petitioner have no objection, if the impleadment application is allowed.
4. In view of the aforesaid, the impleadment application is allowed and learned counsel for the petitioner is directed to implead Smt. Ram Murti wife of Chhote Lal Resident of Village Sihari Post Office Sihari Tehsil Bhognipur District Kanpur Dehat as respondent No.5 during the course of the day.

Ref:- Writ Petition

1. Heard learned counsel for the petitioner, learned Standing Counsel for the respondent State and Sri S.P. Singh, learned counsel for respondent No.5.
2. The petitioner has preferred the present petition with the prayer to quash the order dated 04.10.2011 passed by the S.D.M. Bhognipur District Ramabai Nagar by

which the fair price shop of the petitioner was cancelled and the order dated 16.04.2012 passed by the Deputy Commissioner (Khadya) Kanpur Region, Kanpur by which the order of the S.D.M. was affirmed.

3. Fact 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 at Village Sihari P.S. Musanagar Tehsil Bhognipur District Ramabai Nagar. On 26.04.2011 the respondent No.4/S.D.M. Bhognipur District Ramabai Nagar notice was issued with the allegation that requisite money for distribution of sugar was not deposited. Thereafter another notice was issued to the petitioner on 14.06.2011 calling the explanation from the petitioner with the same allegations. The reply to the aforesaid notice was submitted by the petitioner. Thereafter an F.I.R. under Section 3/7 of Essential Commodities Act has been lodged against the petitioner on 25.07.2011 at Police Station Bhognipur District Ramabai Nagar but without considering the reply and only on the ground that the F.I.R. has been lodged against the petitioner, the fair price shop was cancelled vide order dated 04.10.2011. Against the aforesaid order, the petitioner filed an appeal No.218 of 2011 before the Commissioner Kanpur Region Kanpur and the aforesaid appeal was also dismissed by the Commissioner vide order dated 16.04.2012. Hence the present petition.

4. 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 Full 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 of the same 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?"

5. The aforesaid questions of law had been answered by the Full Bench 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."

6. 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.

7. On the other hand, learned Standing Counsel argued that the order passed by the S.D.M. Bhognipur District Ramabai Nagar and the Appellate Court is absolutely perfect and valid order and does not call for any interference.

8. The same arguments has also been advanced by Sri S.P. Singh, learned counsel for the respondent No.5.

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

10. 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.

11. 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.

12. 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.

13. The Full 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.

14. Consequently the order dated 04.10.2011 passed by the S.D.M. Bhognipur District Ramabai Nagar and the order dated 16.04.2012 passed by the Deputy Commissioner (Khadya) Kanpur Region, Kanpur are set-aside. The respondents are directed to resume the supply of the food grains to the petitioner, if there be no other contrary order. However, it shall be open to the respondents to hold an enquiry and proceed according to law.

15. The writ petition is accordingly allowed.

Order Date :- 12.10.2023/saqlain