

Court No. - 6

Case :- WRIT - C No. - 27185 of 2023

Petitioner :- Ujala Self Help Group

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- R.C. Maurya

Counsel for Respondent :- C.S.C,Bhupendra Kumar Tripathi

Hon'ble Mrs. Manju Rani Chauhan,J.

Heard Mr. P. R. Singh, Advocate holding brief of Mr. R.C. Maurya, learned counsel for the petitioner, Mr. Bhupendra Kumar Tripathi, learned counsel for the respondent no.5 and learned Standing Counsel for the State-respondents.

This writ petition has been filed by the petitioner with a prayer to quash the impugned order dated 27.07.2023 vide which the appeal of the respondent no.6; original allottee of the fair price shop has been allowed restoring the license in favour of the respondent no.6.

Brief facts of the case are that fair price shop of Gram Panchayat-Chhitauni Kot, Block-Kashi Vidyapeeth, District-Varanasi was allotted in favour of respondent no.6. On some complaint regarding irregularity in distribution of essential commodities, after enquiry, fair price shop license of the respondent no.6 was cancelled on 09.05.2022 against which appeal has been filed, which has been allowed on 27.07.2023. Hence, the present writ petition has been filed.

Learned counsel for the petitioner submits that the petitioner is a subsequent allottee and the allotment of the shop in question in his favor was made on 26.12.2022. Without any notice or complaint against the petitioner, the allotment as made in his favour has been cancelled. He further submits that the petitioner is a subsequent allottee, thus, prior to passing of impugned order dated 27.07.2023, he ought to have been informed as he has right to be heard, being subsequent allottee, thus the order impugned is bad in the eyes of law, therefore, the impugned order is liable to be set aside.

On the other hand, learned Standing Counsel as well as counsel for the respondent no.5 submits that the petitioner is a subsequent

allottee and the allotment order in favour of the petitioner was subject to specific condition mentioned in the allotment letter that the same is subject to final orders passed by the competent court. They further submit that the case is not of concealment by the original allottee (respondent no.5) as he was not aware of the allotment made in favor of the petitioner and no such plea has been made by the petitioner even in the writ petition. Even otherwise, the petitioner has filed Vakalatnama on 04.05.2023 in the appeal filed before the appellate authority. Therefore, there is no illegality in the impugned order.

I have heard learned counsel for the petitioner, learned Standing Counsel, learned counsel for the respondent no.5 appearing for the State and perused the record.

The order, whereby the petitioner was allotted the shop in question, clearly states that the petitioner has been allotted the shop in question subject to the final orders passed by the Hon'ble Court. Thus, the order of allotment was not an absolute, but was contingent upon the outcome of the litigation and the orders passed by the competent authority.

The issue of right of subsequent allottee has been dealt with by the Supreme Court in a number of cases. In the case of ***Ram Kumar v. State of U.P. and others, 2023 (158) RD 625 : 2022 SCC OnLine SC 1312***, subsequent allottee has been given right of being heard, however, it is not applicable in the facts of present case, as in the said case, the Court considered rival submissions as well as the judgment of the Supreme Court in the case of ***Pawan Chaubey v. State of U.P. & Ors., Civil Appeal No. 3668 of 2022***, decided on 06.05.2022 and the judgment in the case of ***Poonam v. State of U.P. & Ors.; (2016) 2 SCC 779***. The Apex Court, after considering the rival submissions, in Paragraph-18 of the judgement in ***Ram Kumar (supra)***, recorded that the appellant was a regular allottee. The Court also considered the earlier judgment in Poonam (supra) and did not agree with the same on the ground that the appointment in ***Poonam (supra)*** could not establish any independent legal right. The aforesaid issue has also been dealt with by this Court in the case of ***Jyoti vs. Secretary Food And Civil Supplies U.P. And 3 Others reported in Neutral Citation No. - 2023:AHC:162567***.

Thus, admittedly, the petitioner is not a regular allottee and his allotment is subject to the outcome of the litigation. In fact, the allotment order clearly specifies that the allotment shall be subject to final orders passed by the competent court.

The present case is clearly covered by the judgment of this Court in the case of ***Jyoti (supra)*** as the allotment of the petitioner is not an absolute allotment but is a contingent allotment.

In view of the above, the petitioner has not made out a case for interference. The writ petition is, accordingly, ***dismissed***.

No order as to costs.

Order Date :- 2.11.2023

Jitendra/-