

Court No. - 6

Case :- WRIT - C No. - 28011 of 2023

Petitioner :- Nityanand

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

Counsel for Petitioner :- Gaurav Singh, Sr. Advocate

Counsel for Respondent :- C.S.C., Dhiraj Singh, Sudhir Bharti, Surabhi Pandey, Suresh Chandra Pandey

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard Mr. Kripa Shanker Singh, Learned Senior Advocate assisted by Mr. Gaurav Singh, learned counsel for the petitioner, Mr. Vishal Tandon, Advocate holding brief of Mr. Suresh Chandra Pandey, learned counsel for the respondent no.6 and learned Standing Counsel for the State-respondent.

This writ petition has been filed by the petitioner with a prayer to quash the order dated 30.09.2022, 26.06.2023, 28.06.2023 and 06.07.2023 passed by the respondent nos.2&3.

Learned counsel for the petitioner submits that the petitioner was fair price shop owner in Village Panchayat Katyari, Block Bhagalpur; Tehsil Barahaj, District-Deoria. It appears that on some complaint, inquiry was conducted and on the basis of report and after inspection on 14.09.2021 as well as after recording statements of beneficiary cardholders, the fair price shop license of the petitioner, without verifying the report, was suspended on 03.07.2021 requiring him to submit an explanation. The petitioner submitted an explanation, without considering which under political influence, the fair price shop license of the petitioner was canceled vide order dated 10.12.2021 passed by respondent no.3. The aforesaid order was challenged by way of filing an appeal, which was decided on 30.09.2021 and the Appellate Authority setting aside the order dated 10.12.2021 remanded back the matter to respondent no.3 for adjudicating afresh after verification of the records. In compliance of the aforesaid order, the respondent no.3 issued notice dated 16.11.2022 asking for written explanation alongwith documentary evidences from the petitioner, who in turn submitted a detailed written explanation on 25.01.2023. It appears that some report was placed by Nayab Tehsildar, who was deputed to verify the records and submitted a report before the respondent no.3 on 23.03.2023. One more inquiry was conducted by the

concerned Tehsildar, who was submitted its report after which the orders impugned have been passed.

Learned counsel for the petitioner further submits that only relying upon the report as submitted by Nayab Tehsildar, wherein after taking affidavits of 39 persons, out of which 33 persons were in favour of the petitioner, five were against him and one cardholder gave an affidavit that the essential commodities are given only once in a month, the order impugned has been passed without verifying the entire records as directed by the Appellate Authority while remanding the matter to the respondent no.3 to be decided afresh.

He further submits that initially, 68 cardholders had given their statements, hence only by taking the affidavit of 39 persons, it cannot be said that the entire records have been verified. Thus the order impugned has been passed not complying with the observations as made by the Appellate Authority vide order dated 30.09.2021. Hence, it is not justified and the same may be set aside.

Learned Standing Counsel could not dispute the aforesaid facts.

Learned counsel for the respondent no.6 (subsequent allottee) also tried to justify the order impugned, but could not dispute the fact that only out of 68 persons, affidavits of 39 persons have been taken.

In view of the above, as the respondent no.3 has not complied with the direction of the Appellate Authority while deciding the matter afresh, the orders impugned are liable to be quashed.

Accordingly, the impugned orders 30.09.2022, 26.06.2023, 28.06.2023 and 06.07.2023 passed by the respondent nos.2&3 are hereby **quashed**.

The respondent no.3 is directed to verify the entire records of the relevant period and after giving proper notice and opportunity of hearing to the petitioner, pass appropriate orders, in accordance with law, preferably within a period of one month from the date of production of certified copy of this order.

Needless to say that a petition bearing Writ- C No. - 31225 of 2022 (Ravindra Nath Mishra and another vs. State of U.P. and 8 others) has been filed challenging the allotment of Shakuntala Devi (respondent no.6 herein), who is subsequent allottee. While

verifying the records and conducting an inquiry, there is no requirement to make Ravindra Nath Mishra and Shakuntala Devi part of the said inquiry.

With the aforesaid direction, the present writ petition is, accordingly, ***allowed***.

Order Date :- 14.12.2023

Jitendra/-