

Court No. - 6

Case :- WRIT - C No. - 28360 of 2023

Petitioner :- Smt. Rukhsana

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sumit Daga, Abhishek Kumar Jaiswal

Counsel for Respondent :- C.S.C., Ajay Kumar Singh Yadav

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard Mr. Sumit Daga, learned counsel for the petitioner, Mr. Ajay Kumar Singh Yadav, learned counsel for the respondent no.4 and learned Standing Counsel for the State-respondents.

This writ petition has been filed by the petitioner with a prayer to quash the impugned orders dated 02.08.2023 as well as 12.05.2023 passed by respondent nos.3 & 2 and a further prayer to direct the respondents authorities not to stop the supply of the commodities to the petitioner in regard to the license in question of the concerned fair price shop.

Learned counsel for the petitioner submits that the respondent no.4 is the original allottee of fair price shop of Village-Tumadiya, Vikas Khand Chamraula, Tehsil-Sadar, District-Rampur. On some complaint, the fair price shop license of the respondent no.4 was canceled vide order dated 15.10.2014 passed by the respondent no.3 against which he filed an appeal on 01.02.2022. The aforesaid time barred appeal was decided on 21.10.2022 and the matter was remanded back to be heard afresh by the respondent no.3. It appears that some application was moved by the respondent no.4 on which the order dated 20.06.2023 was passed by which a further direction was issued to the incensing authority to take into account the other documents as placed by the original allottee on merits. Pursuant to the aforesaid orders passed in appeal, the respondent no.3 has passed the order impugned dated 02.08.2023 vide which the fair price shop license of the respondent no.4; original allottee has been restored, however, that of the petitioner has been canceled. Hence the present petition has been filed.

Learned counsel for the petitioner submits that while remanding the matter to be heard by licensing authority on 21.10.2022, the appellate authority could not have entertained the application as filed by the petitioner and passed a subsequent order dated

12.05.2023 with certain directions to consider certain documents for deciding the matter afresh. He further submits that the fair price shop license was allotted to the petitioner on 06.07.2018, therefore, while canceling his allotment, the petitioner should have been heard prior to passing the order impugned dated 12.05.2022 and 02.08.2023. In support of his contention he has relied upon the judgment of the Division Bench Judgment in the case of **Ram Kumar vs. State of U.P. and others** reported in **2023 (158) RD 625**. 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.4 submits that the petitioner is a subsequent allottee and the allotment order dated 06.07.2018 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.4) 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. They further submits that the petitioner had ample opportunity to move an application before the concerned authority mentioning about his allotment and could have requested of being heard. 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.4 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 case. 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 :- 11.12.2023

Jitendra/-