

Court No. - 52

Case :- WRIT - C No. - 46153 of 2017

Petitioner :- M/S Sahkari Sangh Bhaisrauli Bulandshahar

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

Counsel for Petitioner :- Vinod Sinha, Mahesh Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Mahesh Sharma, learned counsel for the petitioner and Sri Arun Gaur learned Standing counsel.

2. This writ petition has been filed for following relief :

"i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 15.07.2017 passed by respondent no.3 and order dated 08.09.2017 passed by respondent no.2 in Appeal No.46 of 2017, M/s Sahkari Sangh, Bhaisrauli vs. State of UP.

ii) Issue a writ order or direction in the nature of mandamus directing the respondents to restore the fair price shop dealership of the M/s. Sahkari Sangh, Bhaisrauli, Tehsil and District Bulandshahr."

3. It is the case of the petitioner that the license for conducting fair price shop has been extended in favour of *M/s. Sahkari Sangh, Bhaisrauli, Tehsil and District Bulandshahr* for operating the same at village Bhaisrauli, Block Agota, District and Tehsil Bulandshahr way back in the year 1992 and there was hardly any complaint or any inconvenience made by the card holder, but spot inspection has been carried out by respondent no.3 wherein, certain discrepancies have been recorded while passing the suspension order dated 26.05.2017.

4. In reply to the certain allegations, which are specifically not conducting the operation of the fair price shop on the prescribed procedure as contained in the Essential Commodities Act, 1955 mentioned under Section 3 of the Essential Commodities Act, 1955, however, the detailed reply in shape of objection has already been preferred by the petitioner in respect to the allegations and the charges leveled against the society within the stipulated time and categorical denial has been made before respondent no.3,

certain affidavits have already been preferred by the concerned persons whose name has been mentioned with regard to non-extending the benefits for which they were entitled, the total number of grounds including paras mentioned while preferring objection was 26 in numbers. But, the same has been decided against the petitioner vide order dated 15.07.2017 without discussing the vital grounds taken up by the petitioner and the contract along with the license has been cancelled by way of maintaining the suspension & attachment order dated 25.05.2017 with the fair price shop situated at Village Anhedha and Sihi.

5. Being aggrieved with the order dated 15.07.2017, petitioner preferred appeal under Section 13(3) of the Control Order 2016 on several other grounds *inter alia* specifically on the ground that the stock and the distribution has never been pointed at the time of inspection as irregular, the certain other formalities, which have been reflected while issuing the letter dated 26.05.2017 has already been rectified and maintained in consonance with the provisions available under the statutory rules.

6. Without considering the grounds mentioned in the appeal, the same was also dismissed by order dated 08.09.2017 passed by respondent no.2, which impugned the present petition.

7. While assailing both the orders passed by respondent nos.2 and 3, petitioner submitted that the license, which was extended in favour of the society was carried out not by the individual and as such, the proceedings which were initiated presuming the petitioner being an individual has been illegally initiated and at the time of inspection, there is hardly any ground available for suspending and thereafter, terminating the license extended in favour of petitioner on any of the ground which shows that the stock, which has been received has not been distributed in pursuance to the units mentioned in the card holders, specific plea has been taken up by learned counsel for the petitioner that the affidavit preferred by the concerned card holders have not been taken into consideration while deciding the objection as well as appeal by respondent nos.3 and 2 respectively.

8. Per contra, learned Standing Counsel vehemently opposed the entire grounds mentioned in the petition but at the same time, did not disputed the fact that the provisions for determining the legality, if any, carried out by an individual as well as by the society/company has to be dealt separately in consonance with the provisions mentioned in the Essential Commodities Act, 1955. However, no such ground has been taken up by the petitioner

either at the time of filing objection or before the Appellate Authority while challenging the order of cancelling the license extended in favour of the petitioner. Moreover, the entire action has been taken up by respondent authority has been supported by learned Standing Counsel. Since, the same has been properly performed on the basis of the inspection carried out with due intimation to the license holder, but at the time of inspection, the proper information reflected over the board has not been maintained and the stock verification register has not been produced on the date when the inspection has been carried out which culminated into order of suspension and thereafter, cancellation after having the entire ground whatsoever, has been raised by the petitioner. After hearing arguments submitted by rival learned counsels, it is apparent from the records that the entire proceeding has been initiated against the petitioner not under Section 10 of the Essential Commodities Act and the rectification of the discrepancies as mentioned at the time of inspection has already been rectified and maintained by the license holder.

9. In view of aforementioned grounds as well as facts available in the records orders dated 15.07.2017 and 08.09.2017 passed by respondent nos.2 and 3 are set aside and matter is remanded back to respondent no.3 for deciding as fresh by way of affording proper opportunity of hearing to all concerned.

10. The above mentioned exercise shall be finalized by respondent no.3 as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order.

11. Writ petition stands allowed, accordingly.

Order Date :- 4.12.2023

Priya