

Court No. - 6

Case :- WRIT - C No. - 33618 of 2023

Petitioner :- Smt.Muskan

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

Counsel for Petitioner :- Chandra Bhan Dubey, Anil Kumar Dubey

Counsel for Respondent :- C.S.C., P.K. Upadhyay

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard learned counsel for the petitioner and learned Standing Counsel for the respondents-State.

This writ petition has been filed by the petitioner with a prayer to quash the impugned order dated 26.08.2023 passed by respondent no.2 by which the fair price shop licence of the original allottee i.e. respondent no. 4 has been restored.

Brief facts of the case are that respondent no. 4 was allotted fair price shop of Gram Panchayat- Kusa, Post- Kusha, Block- Barsathi, Tahsil- Madiyahun, District- Jaunpur. Due to complaints regarding irregularities in distribution of essential commodities as against respondent no. 4, the original allottee's fair price shop licence was cancelled vide order dated 01.10.2022. Against the aforesaid order, respondent no. 4 filed an appeal on 12.10.2022 which has been allowed by order dated 26.08.2023. During pendency of the appeal, petitioner was subsequently allotted the fair price shop in question on 29.04.2023. The petition has been filed as the appeal filed by original allottee has been allowed without hearing the petitioner/subsequent allottee.

Learned counsel for the petitioner submits that the petitioner is subsequent allottee and has right of being heard as there was allotment of the shop in question in his favour. The impugned orders has been passed without hearing the petitioner. Therefore, the same is in violation of principles of natural justice as no opportunity of hearing has been provided to the petitioner.

Learned counsel for respondent no. 4 as well as learned Standing Counsel for the State, on the other hand, submit that the appeal was filed on 12.10.2022 after which, the allotment was made subsequently on 29.04.2023 in favour of the petitioner. Thus, it cannot be said that respondent no. 4 had knowledge of such allotment prior to filing of the appeal which is subsequent to filing the appeal by respondent no. 4. It can also not be said that respondent no. 4 has in any way concealed any fact before the appellate authority. Even otherwise, the allotment order in favour of the petitioner is conditional one while it has been clearly mentioned that the allotment is subject to any orders passed by Court concerned. It

has been further submitted that the order of allotment in favour of the petitioner as on 29.04.2023 has already been cancelled by order dated 30.09.2023.

I have heard learned counsel for the petitioner, learned Standing Counsel 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 outcome of litigation. 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.

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 decision of the court in pending litigation.

The present case is clearly covered by the judgment in Poonam (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 :- 28.10.2023

Anjali