

Court No. - 8

Case :- WRIT - C No. - 65 of 2023

Petitioner :- Ram Janki

Respondent :- State Of U.P. Thru. Secy. Food And Civil Supplies, Lko. And Others

Counsel for Petitioner :- Satish Kumar Sharma

Counsel for Respondent :- C.S.C.,Anjali Dubey

Hon'ble Pankaj Bhatia,J.

1. Heard learned Counsel for the petitioner as well as learned Standing Counsel and Ms. Anjali Dubey, learned Counsel for the subsequent allottee, who was impleaded subsequently as respondent no.4.

2. The present petition has been filed challenging the order dated 21.10.2016, whereby the fair price shop license of the petitioner was cancelled as well as the appellate order dated 26.12.2022, whereby the appeal preferred by the petitioner was dismissed.

3. The contention of the Counsel for the petitioner is that the petitioner was a fair price shop dealer and on 08.03.2016, the Nayab Tehsildar submitted a report stating that on 06.03.2016, one area Lekhpal had inspected the petitioner's shop and informed on telephone that 17 bags of wheat and 18 bags of rice were missing from the shop in question and before the Nayab Tehsildar reached the shop in question, the petitioner somehow placed 17 bags of wheat and 18 bags of rice in the shop. It was alleged that in the initial survey done by the area Lekhpal food grains were found less and thus, the same was evident that the petitioner was misappropriating the food grains for oblique purpose, which was an offence under Section 3/7 of the EC Act. The petitioner denied the said allegations by filing a detailed reply, however, the licensing authority solely based upon the report of the Tehsildar and the first information report held that as per the telephonic instructions, 17 bags of wheat and 18 bags of rice were not found and were subsequently introduced by the petitioner, which according to the licensing authority was bad in law and is also contrary to the mandate of Section 3/7 of the E.C. Act and as such, the license was cancelled, and the appeal preferred by the petitioner was also dismissed.

4. The contention of the Counsel for the petitioner is that both the orders arbitrary and illegal, inasmuch as, the same have

been passed solely based upon a telephonic instructions without there being any material on record, in support of the said allegations of the food grains not being found or being subsequent replaced, as such, the orders deserve to be quashed.

5. The Counsel for the respondent no.4 as well as the learned Standing Counsel supported the impugned orders by arguing that when the petitioner was caught with deficient food grains, he somehow introduced the deficient food grains only to escape from any action against him, as such, the impugned orders are justified.

6. Considering the submissions made at the bar and on perusal of the record, what transpires is that the allegations against the petitioner were based upon telephonic instructions of the area Lekhpal; in the entire order, there is no mention as to how the charges levelled against the petitioner were substantiated; the area Lekhpal was not introduced in evidence; the telephonic instructions given were not a part of the evidence on record, thus, the orders have been passed solely based upon a report without it being corroborated by any evidence whatsoever; the order clearly being based upon no evidence whatsoever, cannot be sustained and the same is clearly in violation of Article 14 of the Constitution of India.

7. Accordingly, the orders impugned dated 21.10.2016 and the order dated 26.12.2022 are quashed. The writ petition is ***allowed***.

8. The respondents are directed that the shop in question shall be restored in favour of the petitioner as the allotment of the respondent no.4 was a contingent allotment which was the subject to the outcome of the litigation.

Order Date :- 12.12.2023

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