

Court No. - 8

Case :- WRIT - C No. - 12336 of 2019

Petitioner :- Ram Pheran

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Civil Supply Lko. Andor

Counsel for Petitioner :- Rajesh Kumar Singh

Counsel for Respondent :- C.S.C., Vivek Kumar Shukla

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel and Ms. Deepika, Advocate, who appears for the subsequent allottee and has filed an impleadment application.
2. The present petition has been filed challenging an order dated 30.06.2018 whereby the fair price shop licence of the petitioner was cancelled as well as the appellate order dated 03.04.2019 whereby the appeal preferred by the petitioner was dismissed.
3. The contention in brief are that the petitioner was running a fair price shop licence and was served with a show cause notice-cum-suspension order dated 23.06.2017 allenging that in the inspection carried out certain persons, named in the show cause notice had given statement against the petitioner with regard to improper distribution of food rains.
4. The petitioner gave a reply to the said show cause notice, denying the allegation levelled against him.
5. Although in the said reply, a reference was made with regard to certain card holders giving an affidavit in support of the petitioner, the same were not not filed along with a reply. The licencing authority after considering the reply proceeded to cancel the licence. While doing so, the licencing authority referred to the distribution register provided by the petitioner and found the same to be carrying interpolations. As a result thereof, the defence of the petitioner was disbelieved and the licence was cancelled.
6. The petitioner preferred an appeal against the said order. Along with the said appeal, the petitioner claims to have filed affidavits of various cardholders as well as the affidavits of Pradhan in his favour. However, the appeal came to be dismissed vide order dated 03.04.2019.

7. The submission of the counsel for the petitioner is that the affidavits filed by the petitioner before the appellate authority were not considered. Specific pleading to that effect has been made in para 15 of the petition and the notary affidavits has also been annexed as Annexure No.7.

8. In reply to the said averments in the writ petition, particularly para 15, a counter affidavit has been filed by the State wherein there is no denial of the facts that the affidavits were filed, however a defence has been taken that the evidences/deponents should have been produced by the petitioner before the appellate authority which has not been done, as such, the allegations in para 15 of the writ petition are false.

9. It appears from record that after the suspension of the shop in question, the shop has been allotted to the subsequent allottee, who has also been heard.

10. On the perusal of the records and on the basis of the arguments as recorded above, what transpires is that the petitioner had filed certain affidavits before the appellate authorities which have not been considered in the appellate order and there is no denial of them being filed before the appellate authority in the counter affidavit, as such, the finding that the exercise of appellate power is not a proper exerciser of power on the ground of non consideration of the materials filed before the appellate authority, the matter is remanded to the appellate authority for passing an order afresh after considering the affidavits filed by the petitioner before the appellate authority, if any. The order dated 03.04.2019 is quashed .

11. It is further directed that the appellate authority shall also hear the subsequent allottee while deciding the appeal in accordance with law.

12. The writ petition stands **disposed** off in terms of the said order.

Order Date :- 16.12.2023

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