

Court No. - 8

Case :- WRIT - C No. - 773 of 2022

Petitioner :- Putan Maurya

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

Counsel for Petitioner :- Vishnu Kumar Srivastava, Abhijat Pratap
Singh, Praveen Kumar, Sandeep Kumar Mishra, Shiv Poojan
Maurya, Upendra Kumar Sagar, Vinod Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

1. The rejoinder affidavit filed by the petitioner in court is taken on record.
2. Heard the counsel for the petitioner, learned Standing Counsel as well as Sri Praveen Kumar who appears to be proposed respondent in terms of the impleadment application filed and numbered as I.A No.4 of 2022.
3. The applicant claims to be a subsequent allottee and as such has filed an impleadment application. Although the appointment of the applicant was contingent appointment, as is clear from the order dated 30.01.2019, however in the interest of justice, the applicant is also heard.
4. The counsel for the petitioner argues that two orders have been passed against the petitioner being an order dated 06.10.2018 whereby the fair price shop license of the petitioner was cancelled as well as the appellate order dated 23.07.2019 whereby the appeal preferred by the petitioner was dismissed.
5. The contention of the counsel for the petitioner is that both the orders are wholly arbitrary and illegal. He argues that the facts leading to the filing of the present writ petition are that the petitioner who is a fair price shop license holder was served with a show cause notice dated 03.08.2018 wherein it was stated that as many as eighteen cardholders had given statement during an enquiry against the petitioner with regard to improper supply of food-grains and misbehaviour. The petitioner was called upon to show cause as to why the license may not be cancelled. The petitioner filed a detailed reply to the said show cause notice denying all the eighteen allegations. It was stated that the proceedings were initiated and the complaints were filed by the persons against whom the petitioner had initiated proceedings for removal of unauthorized construction and thus, there was an enmity in between the complainant and the

petitioner. The petitioner gave specific reply to each of the charges. It was stated that some of the complainants did not come for collection of the food-grains on the date fixed for which specific applications were given on various dates that the said unit holders are not coming to collect their quota of ration and they may be attached to some other shop. The said complaints are on record as Annexure no.5.

6. The licensing authority while passing the order dated 06.08.2018 recorded the submissions of the petitioner and the defense taken by him in respect of each of the allegations and also recorded that there was a dispute going on in between the complainant and the petitioner with regard litigation pertaining to encroachment. The licensing authority recorded that although the petitioner has submitted photocopies of the stock register, however, distribution register was not produced and recorded that the defense taken by the petitioner with regard to allegations levelled against him as bald and further non-furnishing of the distribution register was taken against the petitioner and based upon the said, an order came be passed cancelling the license. In the said order, there was also a mention of the fact that on two earlier occasions also, the proceedings were initiated against the petitioner and thus, the cancellation order came to be passed. The appeal preferred by the petitioner was also dismissed.

7. The learned counsel for the newly added respondent argues that behaviour and conduct of the petitioner was not proper and thus, the order of cancellation was justified.

8. The Standing Counsel also justifies the impugned order by arguing that a lot of complaints were made against the petitioner.

9. Considering the rival submissions, as recorded above, what transpires is that the show cause notice issued to the petitioner stated that eighteen persons had given the statement against the petitioner with regard to improper supply of food-grains to which the petitioner gave a reply, no allegations were made in the show cause notice with regard to non-maintaining of distribution register, the reply of the petitioner in respect of each of the allegations levelled was not considered by the licensing authority and merely by recording that the defense taken by the petitioner was bald defense and non-production of the distribution register was also considered to be against the petitioner and based upon the said reasoning, cancellation order was passed.

10. The said order is clearly arbitrary inasmuch as it is well

settled that the cancellation order cannot go beyond the allegations levelled in the show cause notice. The specific defense of the petitioner with regard to pending litigation in between the parties and the defense that various cardholders were not coming to collect their ration and the information to that effect was duly given to the licensing authority has not even been considered in the impugned orders.

11. In view of the fact that the orders impugned exceeded the scope of show cause notice issued to the petitioner and have been passed on consideration other than what was proposed in the show cause notice and there being no consideration of the specific defense taken by the petitioner, the impugned orders cannot be sustained and are quashed. As the allotment of the proposed allottee was subject to final outcome of the litigation, it is further directed that the fair price shop license of the petitioner shall be restored forthwith on the petitioner filing an application before the appropriate authority.

12. With the said observations, the writ petition stand ***disposed off***.

Order Date :- 29.11.2023

VNP/-