

Court No. - 8

Case :- WRIT - C No. - 1337 of 2022

Petitioner :- Smt. Neelam

Respondent :- State Of U.P. Thru. Secy. Food And Civil Supplies,Lko.
And 2 Others

Counsel for Petitioner :- Satish Kumar Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.

2. Learned counsel for the petitioner at the very outset states that no regular appointment has been done in respect of the shop in question. In view of the said statement, the matter is being finally decided.

3. Present petition challenges the an order dated 15.06.2016 whereby the fair price shop license of the petitioner was cancelled as well as an order dated 21.01.2022 whereby the appeal was dismissed.

4. The facts, in brief, are that the petitioner was running a fair price shop and on account of some inspection carried out, it was found that the kerosene oil meant for distribution was not kept at the place for distribution for which an FIR was also lodged. An allegation to that extent finds mention in the suspension order dated 30.06.2014 (Annexure - 5). Subsequently, on 05.11.2014, a supplementary charge-sheet was issued to the petitioner alleging that the persons named in the said charge-sheet and the beneficiaries of distribution had levelled allegations against the petitioner with regard to improper distribution. Further allegations with regard to retaining the card of the card holders, non-distribution of kerosene oil and non-distribution of sugar in the month of June, 2014 was also alleged. The petitioner gave a reply to the said show-cause notice denying the allegation. Alongwith the said reply, affidavits of various card holders were also filed who had deposed in favour of the petitioner to the effect that no irregularities were reported by them against the petitioner. After the reply was filed, an order came to be passed cancelling the fair price shop license on 15.06.2016.

5. While passing the order dated 15.06.2016, it bears from record that affidavits filed by the petitioner in support of his defense were not found to be credible because of non-

production of the distribution register and non-production of the deponents before the licensing authority. Recording the said coupled with the fact that no explanation was offered in respect of 200 ltrs. of kerosene oil found irregularly stored, the defense was denied. A view was also formed that the petitioner had sold the kerosene oil to one Shri Mangal Verma through black marketing.

6. The petitioner thereafter preferred an appeal which too was dismissed.

7. Contention of learned counsel for the petitioner is that the manner in which the affidavits filed by the petitioner have been disbelieved is wholly arbitrary and illegal. He further argues that the finding with regard to black marketing of 200 ltrs. of kerosene oil to one Mangal Verma was neither alleged in the show-cause notice nor any opportunity to that effect was given to the petitioner and to that extent the said finding is without an foundational basis. He further argues that the appellate authority has not gone into the said questions, as such, the said order is also bad in law.

8. Learned Standing Counsel, on the other hand, justifies the orders by arguing that large scale irregularities were reported against the petitioner which was duly recorded in the supplementary charge-sheet and further on inspection, kerosene oil was not found to be stored in the premise in question, as such, the licensing authority has rightly exercised its power of cancellation and thus, the same requires no interference by this Court.

9. Considering the submissions made at the Bar and on perusal of the order dated 15.06.2016, it is clear that the affidavits in defense filed by the petitioner were disbelieved on two grounds; firstly that the distribution register was not produced and secondly, that the deponents were not presented in respect of their affidavits. The third ground for cancellation of the license is that the petitioner was guilty of black marketing and selling 200 ltrs. of kerosene oil to one Mangal Verma.

10. In considered view of this Court, all the three foundations based upon which, the order has been passed are arbitrary inasmuch as once the affidavits were on record, it was open to the licensing authority to have called the deponents to verify the facts, in the event, the licensing authority was of the view that the deponents had not given the affidavits or the affidavits lacked credibility in any manner, which has not been done. Non-production of distribution register could also not be interpreted against the petitioner as it was always open to the

licensing authority to have directed the petitioner to produce the distribution register which apparently has not been done.

11. The third finding of black marketing and selling of kerosene oil to one Mangal Verma was neither alleged in the show-cause notice nor was any evidence led by the department, as such, the said finding is clearly arbitrary.

12. Finding all the reasoning recorded in the cancellation order as being arbitrary, the said order cannot be sustained. The appellate order is bereft of any reasoning whatsoever, as such, the same also cannot be sustained. Both the orders dated 15.06.2016 and 21.01.2022 are quashed.

13. The petitioner would be entitled to run the shop in question in accordance with law.

14. The writ petition is ***allowed*** in above terms.

Order Date :- 15.12.2023

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