

Court No. - 8

Case :- WRIT - C No. - 2884 of 2022

Petitioner :- Chandra Bhal

Respondent :- State Of U.P. Thru. Prin. 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. None has appeared for respondent no.4.

2. Present petition has been filed by the petitioner alleging that the petitioner was running a fair price shop, however, on account of certain allegations levelled, a suspension order - cum - show cause notice was passed against the petitioner on 03.01.2018 (Annexure - 3). It was alleged in the show-cause notice that the persons referred to in the said notice has given statement against the petitioner with regard to the improper supply of food-grains; certain other allegations with regard to the door of the shop opening in the house of the petitioner was also made, thus, on the said allegations, the license of the petitioner was suspended and he was called upon to give a reply to the allegations levelled. Thereafter, an order was came to be passed on 02.04.2018 cancelling the fair price shop license of the petitioner. The said order was challenged by the petitioner by preferring an appeal, which came to be allowed vide order dated 09.07.2019 and the matter was remanded with direction to decide the matter afresh after permitting the petitioner to file his defense.

3. In response to the said permission granted by the appellate Court, the petitioner filed a detailed reply denying the allegations levelled against the petitioner. In support of his contentions, the petitioner placed on record the affidavits signed by most of the persons. The said affidavits are on record alongwith the defense filed by the petitioner. After filing of the defense, a fresh order came to be filed against the petitioner on 07.10.2020 once again cancelling the fair price shop license - the said order is contained in Annexure - 2 to the writ petition and is also impugned.

4. The order dated 07.10.2020 itself reveals that the reply of the petitioner was mentioned, however, the same was disbelieved by holding that the clarification was illusory and not worthy of acceptance, and the reply given was not satisfactory. The order

dated 07.10.2020 was ultimately challenged in appeal, which came to be dismissed vide order dated 02.02.2022 (Annexure - 1). Even in the appellate order, the defense of the petitioner alongwith affidavits was not considered.

5. Another interesting aspect in the present case, as pointed out by counsel for the petitioner, is that after the affidavits were given by various card holders, the licensing authority to verify the genuineness of the said affidavits got another inspection done and the said persons stated that they had given the affidavit in support of the petitioner. In the light of the said, learned counsel for the petitioner argues that both the orders are arbitrary and illegal and the reply of the petitioner has been rejected without any grounds whatsoever and without any reasoning, which is clearly in violation of Article 14 of the Constitution of India and is also arbitrary on the face of it.

6. Learned Standing Counsel on the other hand tries to justify the order by arguing that in the inspection carried out at the first instance, various card holders had given a statement against the petitioner, which is demonstrated in the show-cause notice and the petitioner to somehow scuttle the said reply, filed affidavits of various person and thus, disbelieving the said affidavits was not an erroneous exercise of powers and thus, the writ petition should be dismissed.

7. The State Government has issued a Government Order dated 05.08.2019 clarifying the manner in which the quasi-judicial authorities are supposed to act.

8. In the present case, the decision making process is clearly erroneous inasmuch as the adjudicating authority has not followed the procedure prescribed in the Government Order dated 05.08.2019. Even otherwise, the rejection of the defense of the petitioner by simply observing that the reply submitted by the petitioner was not found to be satisfactory, clearly makes the order an arbitrary order, which is clearly in violation of Article 14 of the Constitution of India. The appellate order also suffers from the same vice of not being a speaking order.

9. In view of the above, both the orders i.e. 07.10.2020 & 02.02.2022 are quashed.

10. The matter is remanded back to the licensing authority to pass a fresh order after taking into consideration the affidavits as submitted by the petitioner to be correct affidavits in view of the subsequent inspection that was carried out after the affidavits were filed and noticed in the order dated 07.10.2020.

11. The licensing authority shall pass a fresh order in the light of the directions given herein above within a period of six weeks from today.

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

Order Date :- 13.10.2023

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