

Court No. - 8

Case :- WRIT - C No. - 3407 of 2022

Petitioner :- Amodnath Mishra

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

Counsel for Petitioner :- Awadhesh Kumar Singh

Counsel for Respondent :- C.S.C.,Ved Prakash Shukla

Hon'ble Pankaj Bhatia,J.

1. Heard the counsel for the petitioner, learned Standing Counsel as well as Sri Ved Prakash Shukla who appears on behalf of subsequent allottee, however, the impleadment application has also been filed being I.A. No.3 of 2022.
2. Considering the fact that the applicant claims to be the subsequent allottee, the I.A. No.3 of 2022 is disposed off by according hearing to the applicant. In pursuance to the said, the parties have been heard.
3. The present petition has been filed challenging the order dated 15.12.2020 whereby the fair price shop license of the petitioner was cancelled as well as the order dated 28.04.2022 whereby the appeal preferred by the petitioner was dismissed.
4. The facts, in brief, are that the petitioner was running a fair price shop. Subsequently, on an inspection carried out on 06.04.2020 by the District Supply Officer along with Tehsildar and the Supply Officer, the petitioner was not found in the shop in question. It is further recorded that in the shop in question, the stock board rate, the signboard were displayed, however, the list of the Antyodaya Cardholders, the rights under the Food Security Act and the toll free number were not published and although the shop was found open, the petitioner was not found in the shop in question.

5. The petitioner was served with a show cause notice indicating the said discrepancies as well as alleging that on weighing the stocks, it was revealed that forty five Antyodaya Cardholders and 274 other cardholders were attached to the shop of the petitioner. It was also indicated that as per the NICPDS report, for the period March 2020, the balance of 31.08 quintals of wheat and 20.72 quintals of rice should be available with the license holder, however, after taking into consideration the distributions made and the stocks, which were kept, 40.00 quintals of rice and 26.75 quintals of wheat were found to be less. As the said food-grains were not found in the shop in question, it was stated that the same has been done with a view to sale the food-grains in black market and to earn profit there from, which according to the show cause notice, was also an offence under section 3/7 of the Essential Commodities Act.

6. The petitioner gave a reply to the said show cause notice -cum- suspension order denying the allegations and also controverting that after the distribution of the food-grains, the petitioner had the difference of wheat and rice in a store, which was kept in a Godown, which can be verified. After the reply was submitted by the petitioner, the petitioner had approached this Court by filing a Writ Petition challenging the suspension order, however, the said writ petition was disposed off on 07.08.2020 with direction to dispose off the matter in which the reply was to be filed by the petitioner within a time frame of two months. When the matter was pending, the petitioner applied for revocation of the suspension, on which a report was called by the DGC (Civil) Gonda to express his view that in view of the fact that the petitioner has already submitted a reply on 14.07.2020, no legal impediment existed in restoration of the shop.

7. The facts remains that the suspension order was not revoked

in the case of the petitioner despite there being a legal opinion in his favour, however after taking into account the reply filed by the petitioner, a fresh enquiry was got conducted and in view of the fresh enquiry, the Regional Food Inspector, Gonda submitted his report and on the basis of the said report, the order of cancellation came to be passed. The appeal preferred was also dismissed.

8. The contention of the counsel for the petitioner is that subsequent report obtained from the Regional Food Inspector is contrary to the mandate of clause 5(1) of the Government Order dated 05.08.2019, which specifically provides that after the reply, if any fresh enquiry is conducted, the same would be got done by an officer who is higher in rank than a District Level Officer. Clause 5(1) further provides that in case the license holder has submitted any additional evidence, the same would also be got verified. It is submitted by the counsel for the petitioner that the second report obtained from the Regional Food Inspector is bad in law and no reliance could be placed on the said report.

9. The counsel for the proposed applicant and the subsequent allottee argues that the food-grains were kept in a godown, as per their own submission of the petitioner, which is not permissible as the limits of the shop where the food-grains are contained, are duly specified in the license and the food-grains cannot be stored in the premises other than the licensed premises, which is also the foundation for passing the cancellation order, as such, no interference is called for.

10. The Standing Counsel also opposes the writ petition by arguing that the impugned orders have been passed after holding that the petitioner was guilty of non-maintaining the food-grains in the stock, which is a violation of license

condition, as such, the license has been rightly cancelled and no interference is called for.

11. Considering the rival submissions made at the bar and recorded above, what transpires is that in the show cause notice, it was specifically alleged that on the basis of an inspection carried out, the food-grains stock was found less than what should have been maintained. Apart from the said, no allegations whatsoever was levelled against the petitioner except also that the name of the cardholders, the rights under the Food Security Act and the toll free number were also not depicted in the Board. A specific reply of the petitioner to the said allegation was that the stock was available, which could be re-verified and was kept in a godown, which is separate from the shop in question, as such, there was no material whatsoever to take a severe action as proposed in the show cause notice. After the reply was submitted by the petitioner, a fresh report was called by an officer who is lower in rank than the officer who had conducted the preliminary enquiry and based upon the said report alone, the cancellation order was passed.

12. The second enquiry report, besides being contrary to the mandate of Clause 5(1) of the Government Order dated 05.08.2019, also virtually recites the defense taken by the petitioner in the reply to the show cause notice, in the said report, it is recorded that in terms of the license, no sale or storage can happen in a premises other than the licensed premises and in case any godown is established, the same should be duly informed to the licensing authority. The report further records that the defense of the petitioner was only to save himself and the acts of the petitioner pointed out towards his intend of black marketing of the food-grains.

13. It is admitted on record that subsequent to the second report,

no specific allegation other than what were levelled in the show cause notice dated 11.04.2020 were levelled against the petitioner. It is not even clear as to whether the second enquiry report was supplied to the petitioner or not, however, the order cancelling the license came to be passed placing reliance on the second report of the Regional Food Inspector Gonda. The said report levelled allegations over and above what was alleged against him in the show cause notice and that too based upon a report by an officer who was lower in rank than the officer who had conducted the preliminary enquiry. As the entire orders have been passed based upon a second enquiry report and on recording of findings which were not even alleged in the show cause notice coupled with the fact that there is no finding as to what was the premises registered and where the food-grains were found to be stored and whether the two are different, as such, finding that the second enquiry report dated 15.12.2020, which is the foundation for passing the order being contrary to the mandate of Clause 5(1) of the Government Order dated 05.08.2019, thus, the same levelling allegations over and above what was alleged against the petitioner in the initial show cause notice cannot be sustained and is quashed. The appellate order is bereft of any reasoning whatsoever and cannot be sustained.

14. The writ petition is **allowed** with direction to the respondents to restore the fair price shop license of the petitioner.

15. Needless to add that as the subsequent allottee had a right to continue only till the adjudication of dispute, he would not be entitled to run the shop in question.

Order Date :- 30.11.2023

VNP/-