

Court No. - 8

Case :- WRIT - C No. - 20359 of 2021

Petitioner :- Malik Ram

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

Counsel for Petitioner :- Vijayendra Prakash
Tripat,Rajesh Kumar Singh

Counsel for Respondent :- C.S.C.,Gyanendra
Pathak

Hon'ble Pankaj Bhatia,J.

C.M. Application No. 138738 of 2021

None appears on behalf of the applicant even in
the revised call.

The impleadment application is accordingly,
rejected for want of prosecution.

Order Date :- 6.12.2023

Arun

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Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the petitioner, learned Standing counsel for the State respondent and perused the material available on record.
2. The present writ petition has been filed by the petitioner challenging an order dated 31.12.2019, whereby the fair price shop license granted earlier in favour of the petitioner was cancelled as well as the appellate order dated 22.03.2021, whereby the appeal preferred by the petitioner was dismissed.
3. The facts in brief are that the petitioner was appointed as a fair price shop dealer. Subsequently, on the basis of some allegations leveled with regard to his functioning, a show cause notice cum suspension order came to be passed on 26.06.2019 (Annexure No. 3). In the said suspension order, it was alleged that as many as 27 persons had given statements with regard to

the improper supply of food-grains against the petitioner, which according to the said order was grave in nature and as such a suspension order came to be passed and the petitioner was called upon to give a reply to the allegation leveled. The petitioner through his letter dated 15.10.2019 gave a reply denying the allegations leveled therein along with said reply, 26 affidavits out of 27 persons, who had given statements against the petitioner were obtained and filed, who had stated that they never made statements against the petitioner as referred to in the show cause notice. The petitioner also annexed the distribution register etc. to substantiate his defence. The Licensing Authority despite noticing that the petitioner had filed affidavits in support of his defence along with relevant documents sought further clarifications with regard to the defence taken by the petitioner and disbelieved the defence based upon the view expressed by the Regional Food Inspector. He further held that on the basis of the analysis of the E-POS Machine, it was clear that distribution was not done properly and goods in question were sold in black-market. It was further observed that in terms of the distribution register submitted by the petitioner himself along with his defence, some thumb impressions were missing, as such, based upon the said irregularity, an order was passed holding that the petitioner was guilty of black-marketing the food-grains contrary to the condition of the license, as such, the license was cancelled. The

petitioner preferred an appeal challenging the said order. In the appeal, it was specifically pleaded that the documents submitted in the form of affidavits were not considered. It was further pleaded that the enquiry report etc. relied upon was also never given to the petitioner. The appellate authority dismissed the appeal as reiterated the order passed by the Licensing Authority. The appellate authority further recorded that the affidavits got prepared by the petitioner were forged. The appellate authority further recorded that the affidavits in support of the petitioner were given at the time of the appellate proceedings being heard and on the basis of the said ground the appeal was dismissed.

4. In the counter affidavit filed by the learned Standing Counsel, the affidavits filed by the petitioner in support of his defence before the Licensing Authority has been annexed and the distribution register has also been annexed.

5. Considering the pleading on record, what transpires is that in the show cause notice the main allegation against the petitioner was based upon the evidence given by the 27 persons with regard to improper distribution of food-grains, the said allegations were duly refuted and were also substantiated by the affidavits on behalf of the 26 out of the 27 persons controverting that they had never given such statements. The Licensing Authority went beyond the allegations leveled in the show cause notice and completely ignoring the

affidavits filed in support of the defence taken by the petitioner proceeded to cancel the license on the ground which were not even alleged in the show cause notice. Clearly there is no consideration of the affidavits filed by the petitioner in support of his defence. Thus, the order canceling the license, is on the face of it perverse and arbitrary as it is founded on the ground which is not even mentioned in the show cause notice, as such, the same cannot be sustained. The appellate order is wholly perverse in as much as it records that the affidavits were filed at the appellate stage, whereas the affidavits filed along with counter affidavit clearly demonstrate that the same was filed before the Licensing Authority. On that ground alone, the findings of the appellate authority are held to be perverse and thus violative of Article 14 of the Constitution of India.

6. For all the reasons recorded above, both the impugned orders cannot be sustained and are quashed.

7. With the aforesaid observations, the present writ petition stands ***disposed of***.

8. The shop in question shall be restored with the petitioner in accordance with law.

Order Date :- 6.12.2023

Arun