

Court No. - 22

Case :- WRIT - C No. - 5822 of 2023

Petitioner :- Surendra Singh

Respondent :- District Magistrate-Cum-Collector,Collectorate, Raibareilly And Another

Counsel for Petitioner :- Pradeep Agrawal,Amar Mani Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel appearing for the State.
2. The present writ petition has been preferred for quashing of the impugned order dated 18.8.2022 passed by respondent no.2-Sub-Divisional Officer, Collectorate, Raibareli by which the representation of the petitioner against the suspension order has been rejected and the fair price shop of the petitioner has been attached to some other Kotedar; with the further prayer to direct the opposite parties to allow the petitioner to carry on the business in the fair price shop license to him and to direct the opposite parties to comply with the orders passed by the appellate authority in exercise of jurisdiction under Section 28 Scheduled Commodities Distribution Order, 2004.
3. Learned counsel for the petitioner has submitted that a license was issued in favour of the petitioner for running a fair price shop in Gram Panchayat, Kodrash Bujurg, Post-Budanpur, Tehsil- Sadar, District- Raebareli. The fair price shop license of the petitioner was cancelled by order dated 22.06.2012 by the respondent no.2 due to bouncing of the cheque submitted by the petitioner against the supply of the essential commodities.
4. Against the order of cancellation dated 22.06.2012, petitioner has preferred an appeal under Section 28(3) of the Scheduled Commodities Distribution Order, 2004 before the Commissioner Lucknow, Division Lucknow. The interim order was granted on 16.08.2012 by the Commissioner. In compliance thereof, the petitioner was running the fair price shop.
5. The appeal was dismissed in default on 24.03.2022 against which the petitioner preferred a recall application which was allowed vide order dated 08.04.2022 and restored the earlier

interim order granted in favour of the petitioner.

6. The petitioner made a representation to the respondent no.2 on 26.04.2022 along with the certified copy of the order passed in the appeal. The respondent no.2 rejected the representation of the petitioner dated 26.04.2022 by impugned order dated 18.8.2022 without considering the interim order passed by the appellate authority in the appeal preferred by the petitioner.

7. Learned counsel for petitioner has further submitted that the sub-ordinate authorities are bound by the orders passed by the higher authorities and especially when any order has been passed in the appeal, the sub-ordinate authority is bound to comply with the same and in support of his submission, learned counsel for petitioner has relied upon the judgment of the hon'ble Supreme Court in the case of ***Union of India and Others Vs. Kamlakshi Finance Corporation Ltd. reported in 1992 supplementary (1) SCC 443*** and on the judgment dated 01.02.2023 passed in case of ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others reported in 2023 SCC online SC 95.***

8. On the other hand, learned Standing Counsel has submitted that the order passed on 08.04.2022 was communicated to the respondent no.2 by the petitioner on 26.04.2022, by that time, the shop of the petitioner has already been attached to some other Kotedar vide order dated 22.04.2022.

9. After hearing the learned counsel for the parties, going through the record, it is an undisputed fact that the appellate authority passed an interim order in favour of the petitioner against the cancellation order dated 22.06.2012 that the said interim order dated 16.08.2012 continued up till 24.03.2022. The petitioner continued to run the fair price shop during this period, as on 24.03.2022, the appeal was dismissed on account of non prosecution. The appeal has again been restored vide order dated 08.04.2022 and the interim order dated 16.08.2012 has also been restored.

10. Despite the service of the order dated 08.04.2022 passed by the appellate authority upon respondent no.2, the respondent no.2 did not consider the orders passed in the appeal by the Commissioner i.e higher as well as the appellate authority. The respondent no.2 though acknowledged the order dated 08.04.2022 passed by the Commissioner/appellate authority in the appeal but has passed the impugned order dated 18.08.2022 against the petitioner with a finding that suspension of fair price shop of petitioner was never stayed ignoring completely that in paragraph 3 (viii) of counter affidavit, the respondent no.2

admitted that after the interim order dated 16.8.2012, an order dated 12.9.2012 was passed permitted the petitioner to run the fair price shop subject to decision in the appeal and copy of the order dated 12.09.2012 is enclosed as CA-2. The sub-ordinates are bound by the decision of the appellate authorities and that the principle of judicial discipline requires that the orders of the higher appellate authorities are followed un-reservedly by the sub-ordinate authorities as per law laid down in the cases of ***Kamlakshi Finance Corporation Ltd. (Supra)*** and ***Godrej Sara Lee Ltd.(supra)***.

11. The attachment of a fair price shop is temporary in nature and such attachment is dependent upon the orders passed in the appeal. In the present case, interim order has been passed on 08.04.2022 while restoring the appeal and the attachment order was passed subsequently on 22.04.2022. But even after having the knowledge of the interim order passed in the appeal within four days of the passing of the attachment order, the attachment order should have been withdrawn by the respondent no.2. The impugned order dated 18.08.2022 is in the teeth of the order dated 08.04.2022 passed in the appeal which is not tenable in the eyes of the law.

12. In view of the discussion made above, the writ petition is hereby ***allowed*** and the impugned order dated 18.08.2022 passed by respondent no.2 is hereby ***quashed***.

13. Respondent no.2-Sub-Divisional Officer, Collectorate, Raibareli is directed to act in accordance with the order passed by the appellate authority and permit the petitioner to continue with the fair price shop during the pendency of the appeal.

14. This order will not come in the way of the appeal which is pending before the appellate authority.

Order Date :- 28.11.2023

-Amit K-