

Court No. - 8

Case :- WRIT - C No. - 31530 of 2019

Petitioner :- Mohammad Waseem Khan

Respondent :- Addl. Commissioner Food Ayodhya Mandal
Ayodhya And Anr.

Counsel for Petitioner :- Pramod Kumar Shukla, Janardan
Singh, Suresh Chandra Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

(C.M.Application No.75077 of 2021)

An impleadment application has been filed by the subsequent allottee.

It is argued that after the cancellation of fair price shop licence and during pendency of appeal, it is clear that the applicant was allotted the shop in question subject to the final order being passed by any court.

In view thereof, the petitioner can have no objection to hearing of the matter. The applicant is not a necessary party although a proper party as the writ petition is to be argued based upon the show cause notice issued to the petitioner, reply filed by him as well as the orders passed which are not in the domain of knowledge of the proposed applicant.

The application is disposed of holding that the applicant is not a necessary party but a proper party.

(On the memo of writ petition)

Heard learned counsel for petitioner and learned Standing
Counsel for the State-respondents.

The present writ petition has been filed challenging the order dated 14.12.2018 whereby license of the fair price shop of the

petitioner was cancelled as well as appellate order dated 15.10.2019 whereby the appeal preferred by the petitioner was dismissed.

The contention of learned counsel for petitioner is that the petitioner was running a fair price shop in accordance with law, however, on account of certain allegations levelled, he was served with a show cause notice-cum-suspension order dated 10.09.2018 wherein it was stated that as many as 39 persons had given statement against the petitioner with regard to improper supply of food grains. It was further recorded that in the meeting of the gram panchayat, six persons out of 32 antodya card holders had alleged non-supply of a kerosene oil and rest of the card holders had given statement in favour of the petitioner. It was alleged in the show cause notice that on 01.09.2018, an inspection was carried out and it was found that whole amount of the food grains and kerosene oil allotted to the petitioner and lifted by him was not distributed. In light of the said charges, the petitioner was called upon to show cause and give his reply. The suspension order was passed immediately. The petitioner gave a reply to the allegations levelled against him. In the reply, the petitioner specifically denied all the allegations and along with the reply, he had annexed the affidavits of all the persons who had allegedly given statement against the petitioner as was recorded in the show cause. The said reply is on record.

After considering the reply filed by the petitioner, an order came to be passed cancelling the fair price shop license vide order dated 14.12.2018, which is on record as annexure no.5.

On perusal of the said order, it is revealed that after reproducing the allegations as levelled in the show cause notice, it was recorded that on the basis of inquiry report, charge sheet and

reply of the petitioner, it was found that the reply was merely alibi. As regards the affidavits, it was stated that as the said persons had given statement before the Inquiry Officer, the petitioner was found to have given a reply as an alibi and merely by recording the same, cancellation order was passed. The petitioner filed appeal against the said order. In the memo of appeal, the petitioner reiterated that he had specifically denied the charges and had substantiated his defence by the affidavits signed separately by the persons, who had allegedly given statement against him. Copies of the affidavits were also annexed along with memo of appeal. The petitioner also places reliance on the statement of gram Pradhan, who had deposed that the manner of working of the petitioner was satisfactory and there was nothing against him in so far as the supplies of goods. The appellate authority without even considering the said affidavits on record, simply based upon an inquiry report proceeded to dismiss the appeal.

Contention of learned counsel for petitioner is that both the orders are non-speaking orders and have wrongly rejected the defence taken by the petitioner which was duly supported by the affidavits. He also places reliance on the judgment of this Court in Writ-C No.34609 of 2018: Mohd Masi Alam Khan and State of U.P. and others, decided on 14.03.2022.

Learned Standing Counsel as well as subsequent allottee justify the order by arguing that it is very detailed order and the license has rightly been cancelled and no interference is required.

Considering the submissions made at the bar, as regards the cancellation order, the same is only arbitrary inasmuch as it does not consider the defence of the petitioner by simply recording that the defence taken by the petitioner and the affidavits filed are an alibi. The recording of this finding clearly

demonstrate that the order has been passed by a person, who does not have legally trained mind as clearly the defence of the petitioner was in response to the show cause submitted and cannot be termed as alibi, thus, on that term the cancellation order cannot be sustained. The appellate order suffers from vice of non-application of mind as the affidavits filed by the petitioner as also that of gram Pradhan have not even been considered while dismissing the appeal. Thus, for that reason the appellate order also cannot be sustained.

Both the orders for the reasoning recorded above are set-aside. As allotment of the subsequent allottee was subject to outcome of the litigation, the natural consequence of the judgment is that the petitioner would be running shop in question. The respondent no.2 is directed to pass fresh orders in light of the directions given hereinabove within a period of six weeks from today.

The petition is allowed in the aforesaid terms.

Order Date :- 13.10.2023

Renu/-