

Court No. - 8

Case :- WRIT - C No. - 5494 of 2019

Petitioner :- Sohrab Khan

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

Counsel for Petitioner :- Vijayendra Prakash Tripat, Vijayendra Prakash Tripathi

Counsel for Respondent :- C.S.C., Ajey Singh, Govind Kumar Chourasia

Hon'ble Pankaj Bhatia, J.

I. A. No. 5 of 2022 - Application for Substitution

1. An application for substitution has been filed seeking substitution on account of the death of the sole petitioner who died on 22.02.2022 during the pendency of the writ petition.
2. The counsel for the applicant argues that there is some delay in filing the application and the same may be condoned by exercising the inherent power of this court.
3. The delay in filing the substitution application is condoned.
4. The application is allowed. The applicants are substituted as petitioners. Let the necessary correction be made in the array of the parties during the course of the day.

I. A./CM Application No.57954 of 2019 - Application for Impleadment

5. The application has been filed by Sri Makhan Lal Verma claiming to be a subsequent allottee of the fair price shop in question during the pendency of the proceedings which were against the then petitioner.
6. The application is allowed. The counsel for the petitioner is directed to make necessary incorporation in the array of the parties impleading Sri Makhan Lal Verma as respondent no.4.

Order on Writ Petition

8. Heard the counsel for the petitioner, learned Standing Counsel as well as the counsel for the newly added respondents.
9. The present petition has been filed challenging the order dated 08.10.2014 whereby the fair price shop license granted to the then petitioner Sohrab Khan was cancelled as well as the appellate order dated 09.03.2018 whereby the appeal preferred

by the petitioner was dismissed.

10. The contention of the counsel for the petitioner is that the father of the petitioner, the original petitioner, was allotted a shop in question and on account of certain allegations levelled, on the basis of a report of an employee of the supply department dated 07.07.2014 to the effect that certain irregularities were noticed in an inspection carried out, the then petitioner was served with a show cause notice and the shop of the then petitioner was suspended.

11. In the show cause notice - cum suspension order, which is on record as Annexure no.3, it was stated that in terms of the report of the employee of the supply department dated 07.07.2014, it is revealed that he had visited the shop in question and according to him, the goods were stored at a place other than the licensed premises. It was also alleged that on being asked for the stock register, the then petitioner had refused to produced the same, the food-grains found there were seized and were given under supurdagi. It was also alleged that during inspection, a discrepancy was found in the stock available in Godown and the folder provided by the Godown In-charge. It was also alleged that on the basis of the evaluation of the goods available, a view was formed that the goods were sold in black market, which was a violation of the Control Order of 2004 and as an offence under section 3/7 of the Essential Commodities Act for which the FIR was also lodged.

12. It bears from the record that the petitioner had given a reply to the said show cause notice, however an order came to be passed cancelling the fair price shop license of the petitioner. In the order impugned, contained in Annexure no.2, the factum of reply being submitted was mentioned, the defense of the petitioner was also mentioned. Solely based upon one another report dated 06.07.2014, it was concluded that the petitioner did not distribute the food grains properly and it was also held that the defense of the petitioner was not acceptable as the same was illusory and fictional. On the said grounds, the license of the petitioner was cancelled.

13. The contention of the counsel for the petitioner is that no allegation whatsoever of improper distribution was levelled in the show cause notice, however, based upon another report obtained, the order impugned was passed. He argues that the said report was never supplied to the petitioner. In the appeal, a specific plea was taken by the petitioner that the inspection carried out by an employee of the supply department was not in terms of the mandate of section 2 of the U.P. Scheduled Commodities Distribution Order 2004 as he was not a officer

authorized. He argues that this question was also dealt with in judgment in the case of ***Geeta Devi vs. State of U.P. and others; Writ Petition Misc. Single No.6605 of 2013 decided on 13.11.2017.***

14. What transpires is that during the pendency of the writ petition, the petitioner died and his legal heirs have been substituted.

15. Considering the nature of the order passed against the petitioner cancelling the fair price shop license on a ground which were not even alleged in the show cause notice, the order dated 08.10.2014 cannot be sustained. The appellate order is also bad in law inasmuch as the specific plea of the inspector not having the jurisdiction was raised but not dealt with, as such, on these two grounds, both the orders are quashed.

16. As admittedly the fair price shop license holder, the original petitioner Sohrab Khan, has died and the license cannot be restored to him however in view of the fact that this court has quashed both the orders, it is directed that the present substituted petitioners, if they apply for appointment on compassionate grounds, their application shall be considered in accordance with law considering the fact that the cancellation order passed in the case of the Sohrab Khan has been quashed by this Court.

17. The writ petition stands allowed with the said directions.

Order Date :- 12.10.2023

VNP/-