

Court No. - 8

Case :- WRIT - C No. - 27511 of 2017

Petitioner :- Ishwar Chanda

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

Counsel for Petitioner :- Lakshmana Singh, Satish Kumar
Sharma

Counsel for Respondent :- C.S.C, Ram Lakhan Vishwakarma

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel.
2. The present petition has been filed challenging the order dated 05.11.2016 whereby the fair price shop license of the petitioner was cancelled as well as the appellate order dated 28.10.2017 whereby the appeal preferred by the petitioner was dismissed.
3. The facts, in brief, are that the petitioner who has fair price shop license holder was served with a show cause notice-cum-suspension order dated 09.09.2016 calling upon the petitioner to show cause by the license may not be cancelled, in view of the allegations levelled in the show cause notice. The petitioner gave a reply and along with the said reply submitted the affidavits by the cardholders to substantiate the denial of allegation by him in the reply to the show cause notice.
4. The authority concerned rejected the affidavits filed in support of the defence by the petitioner by holding that such poor persons could not afford to file an affidavit and thus disbelieved the affidavits filed by them proceeded to hold that as the petitioner was implicated with the offence under Section 3/7 of E.C. Act, the license was cancelled.

5. The appeal filed by the petitioner was also dismissed by holding that the petitioner did not adduce any evidence in support of his contention and defence.

6. Learned counsel for the petitioner argues that subsequent to the cancellation, the shop in question was allotted to a third person, however, the said allotment has been cancelled.

7. On the basis of the arguments advanced and on perusal of records, what transpires is that the petitioner was served with a show cause notice alleging improper distribution of foodgrains to which the petitioner gave a reply along with the affidavits by the various cardholders testifying that nothing wrong was done by the petitioner. Specific letters signed by the various cardholders were also given by the petitioner along with his reply, however, the licensing authority disbelieved the version by holding that the persons, who had given the affidavits, were utterly poor persons and were not expected to bear the financial burden of giving the said affidavits, it was presumed that the expense in giving the affidavits was borne by the petitioner and the said affidavits was appended along with the reply.

8. It was further recorded that the deponents of the affidavit had themselves not come to prove the contents of the affidavits as such, the affidavits could not come within the definition of credible evidence. As regards the joint letter given by various persons, a view was formed that the signatures were obtained on four blank papers as such, they were also not credible. The appellate authority in its appellate order, in fact, recorded that no evidence whatsoever was produced by the petitioner in support of his defence.

9. Clearly, both the said orders are arbitrary, inasmuch as, the manner in which, the affidavits were disbelieved cannot be

accepted even otherwise, if the licensing authority was of the view that the deponents had not executed the affidavits, it was always open to the licensing authority to have got verified the same or called the deponents for giving the statement, which admittedly was not done. The second reasoning that the joint statement given in favour of the petitioner, was not believable as the same got signed on four blank papers, without there being any material before the licensing authority to form the said view as such the order of the licensing authority dated 05.11.2016 cannot be sustained. The appellate order is further bad in law as it records that no evidence whatsoever was adduced which is wholly perverse and contrary to the record. As such on that ground the appellate order dated 28.10.2017 is also not sustainable.

10. For the reasoning recorded above, both the said orders dated 05.11.2016 and 28.10.2017 cannot be sustained and are quashed. As the allotment to the third persons has been cancelled, the license in question shall be restored to the petitioner with all expedition.

11. The writ petition stands **allowed** in terms of the said orders.

Order Date :- 11.12.2023

Mohd. Sharif