

Court No. - 8

Case :- WRIT - C No. - 7092 of 2023

Petitioner :- Khalikun

Respondent :- State Of U.P. Thru. Secy. Food And Civil Supplies, Civil Sectt. U.P. Lko. And 2 Others

Counsel for Petitioner :- Satish Kumar Sharma, Anjali Dubey

Counsel for Respondent :- C.S.C., Desh Raj Singh Yadav

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the parties and perused the material available on record.

2. The present writ petition has been filed by the petitioner challenging the order dated 08.11.2017, whereby the fair price shop license of the petitioner was cancelled. The petitioner also challenges the order dated 03.08.2023, whereby the appeal preferred by the petitioner was dismissed.

3. The contention of the counsel for the petitioner is that a suspension order came to be passed against the petitioner on 07.04.2017 (annexure no. 4 to the writ petition). In the said suspension order, it was stated that on 05.04.2017, the Area Lekhpal had done physical inspection, in which certain food-grains was found to be less and an F.I.R. was also got registered with the consent of the District Magistrate and in view of the said

irregularities, a suspension order came to be passed. A show cause notice was issued on the same date i.e. 07.04.2017 as contained in annexure no. 5. The reply was submitted by the petitioner along with the affidavits of the card-holders, which is contained as annexure no. 6, however based on the material on record, the fair price shop license of the petitioner was cancelled solely on the ground that in the inspection done by the Lekhpal, certain food-grains was not found. The order impugned records that in respect of the inspection carried out, the distribution register was not produced. No reasoning with regard to the submission of the petitioner that various affidavits have been filed in his favour was recorded in the order. There also does not appear to be any consideration of verifying the distribution register.

4. Considering the fact that even in the show cause notice, the petitioner was not called upon to produce any distribution register, which is clear from the show cause notice contained in annexure no.5, it was incumbent upon the respondents to prove the allegations which was solely based upon the inspection report dated 05.04.2017. No statement of the Lekhpal in support of the said inspection was on record, by means of the impugned order, the burden of proving the allegation has been shifted on the

petitioner, which is wholly arbitrary. The appellate order also does not consider the said facts.

5. Considering the fact that the foundation for establishing the allegations leveled against the petitioner were missing and the order has been passed by reversing the burden of proof, the same clearly cannot be sustained, as such, the order dated 07.04.2017 and the appellate order dated 03.08.2023 are quashed.

6. In the result, the writ petition is ***allowed***.

Order Date :- 17.10.2023

Arun