

Court No. - 17

Case :- WRIT - C No. - 7831 of 2023

Petitioner :- Jai Bhim Livelihood Self Help Group Through Its President, Indu

Respondent :- State Of U.P. Thru. Prin. Secy., Food And Civil Supplies, Lko. And 4 Others

Counsel for Petitioner :- Manuvendra Singh

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Alok Mathur, J.

1. Heard Sri Manuvendra Singh, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. In view of order proposed to pass, notice to private respondents is dispensed with.

3. By means of present writ petition petitioner has sought mandamus commanding the respondents specifically the District Magistrate, Pratapgarh to constitute enquiry committee to verify as to whether name of respondent no. 6 is present in the voter list of Gram Panchayat - Chaumari, Block - Mangroura, Tehsil - Patti, District - Pratapgarh and whether she owns any land in the said Gram Panchayat and consequently cannot be granted fair price shop license for the said Gram Panchayat.

4. It is submitted by learned counsel for the petitioner that for grant of new fair price shop license in Gram Panchayat - Chaumari, Block - Mangroura, Tehsil - Patti, District - Pratapgarh, a meeting of Gram Panchayat was held on 25.02.2023 and resolution was passed in favour of respondent no. 6. It is alleged that no procedure was followed while conducting the said meeting and proposal was passed in favour of respondent no. 6, is illegal and arbitrary. It is further submitted that several complaints were made against proposal dated 25.02.2023, were given to the authorities with regard to eligibility of respondent no. 6 being eligible for grant of fair price shop license for the said Gram Panchayat. Petitioner has annexed several representations/complaints given to Block Development Officer, Sub Divisional Magistrate and District Magistrate.

5. It is stated that despite several letters/representations, no

enquiry has been conducted and proposal made in favour of respondent no. 6 is being processed further.

6. Learned Standing Counsel on the other hand has opposed the writ petition. He has submitted that petitioner is the unsuccessful candidate and his candidature was not considered by the Gram Panchayat in its meeting dated 25.02.2023. It is next submitted that till such time allotment is made no right accrues to the petitioner to challenge the proceedings. It is further submitted that merely the fact of proposal having been passed in favour of any individual does not confer any right to the said individual and challenge can be made only when fair price shop license is allotted.

7. Learned Standing Counsel also submits that any proposal forwarded by the Gram Panchayat is scrutinised by the Tehsil level Committee and defect if any, can be looked into by the said Committee. The said Committee makes its recommendation to the District Magistrate on the basis of which fair price shop license is granted.

8. Learned Standing Counsel in support of his submissions has relied upon the judgment of this Court rendered in the case of **Writ - C No. 7880 of 2023 - Rekha Devi Vs. State of U.P. Thru. Secy. Food and Civil Supplies Lko. And 4 Others** (decided on 06.10.2023), wherein the Court has observed as under :-

"7. Learned Standing Counsel on the other hand has opposed the writ petition by submitting that merely passing of proposal by the Gram Panchayat, does not create any vested right in favour of a person whose name has not been forwarded for grant of fair price shop license in a particular Gram Panchayat. He has submitted that as per provisions of Government Order dated 05.08.2019, it is provided that only proposal has to be forwarded by the Gram Panchayat in its open meeting. The said proposal has to be considered and scrutinised by a Committee headed by the Sub Divisional Magistrate, which is known as the Tehsil level committee. Once the proposal is scrutinised and considered by the Tehsil level committee, it is open for the said committee either to approve the proposal or in case there is any infirmity or any ineligible person has been considered the proposal can be rejected and the consideration in this regard has to be informed to the District Magistrate. In case the District Magistrate on finding that the proceedings are in order will proceed to grant license for running fair price shop or in case he is not satisfied with the proceedings, the proposal will be returned back for fresh consideration.

8. With regard to holding of meeting it is provided that proposal has to be forwarded in an open meeting. There is no provision that all the persons who participate their names have to be recommended or that consideration has to be made in any particular manner or merit or qualification or eligibility criteria, mentioned in the Government Order in question. The Government Order provides for forwarding the proposal in an open meeting by the Gram Panchayat. Subsequently the said proposal has to be passed by the majority of members present and voting in a particular Gram Panchayat. It is needless to say that scrutiny has to be done only by the Tehsil level committee with regard to eligibility of the proposed candidate.

9. In the aforesaid circumstances it is noticed that unsuccessful persons do not have any right to challenge the said proposal such right would vest only after an order of allotment is passed in favour of any person whose name is proposed by the Gram Panchayat. After passing of the such proposal by the Gram Panchayat, scrutiny is done by the Tehsil level committee headed by the Sub Divisional Magistrate and in case any infirmity is found with regard to eligibility or any other condition, the said proposal may be rejected and sent back for fresh consideration. It is only when the proposal is accepted the fair price shop license is granted, same can be subject to challenge by any unsuccessful candidate.

10. The proposal has to be passed in favour of the person who secures majority of votes. In such a situation there is no relevancy of consideration of merit of the candidates instead the person who secures majority of votes in the Gram Panchayat, his name is recommended and proposal is duly forwarded.

11. Any Person who is aggrieved by the proposal and not particularly by ineligibility of the person whose name has been so proposed can make a representation to the Tehsil level authority so as to bring to their knowledge the relevant facts with regard to ineligibility of the person whose name has been so proposed.

12. As already discussed earlier, the aspect with regard to eligibility is considered by the Tehsil level authorities, it is also noticed that merely by passing of the proposal, no right vests in the person in whose favour proposal has been passed as the said proposal has to be scrutinised by the Tehsil level authorities and only when the same is in order, recommendation is made to the District Magistrate and allotment letter is issued. It is the agreement entered into by the allottee, where vested right accrues in his favour and it is only on the basis of allotment letter that the process of allotment can be questioned.

13. Accordingly, this Court is of the considered view that till such time when allotment is made, any person claiming himself to be a candidate cannot challenge the proposal and accordingly for the aforesaid reasons, the writ petition at this stage could not be entertained under Article 226 of the Constitution of India."

8. Heard learned counsel for the parties and perused the record.

9. It is clear that in the present writ petition challenge has been made to the proposal passed in favour of respondent no. 6. In case petitioner has any grievance he can always move representation/complaint before the Tehsil Level Committee, who will consider the said representation and scrutinise the proposal made by the Gram Panchayat. From the judgment of this Court in the case of **Rekha Devi (Supra)** it is clear that no right vests in the petitioner at this stage. In case there is any ineligibility in the person in whose name proposal for allotment of fair price shop license is made, the same can be challenged at the stage of issuance of allotment letter.

10. In view of above, no case for interference in the matter at this stage is made out. The writ petition being devoid of merits is **dismissed**.

Order Date :- 13.10.2023

A. Verma

(Alok Mathur, J.)