

Court No. - 8

Case :- WRIT - C No. - 8049 of 2023

Petitioner :- Santosh Kumar

Respondent :- State Of U.P. Thru. Secy. Food And Civil Supplies Lko.
And 3 Others

Counsel for Petitioner :- Satish Kumar Sharma

Counsel for Respondent :- C.S.C.,Karunakar Srivastava

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State and Shri Karunakar Srivastava, learned counsel appearing for respondent no.4, the subsequent allottee.

2. Present petition has been filed challenging the order dated 20.03.2023 whereby the fair price shop license of the petitioner was cancelled as well as the order dated 25.08.2023 whereby the appeal preferred by the petitioner was dismissed.

3. The facts, in brief, are that the petitioner was a fair price shop dealer and was served with a show-cause notice cum suspension order calling upon for a reply with regard to the allegations levelled and contained in the show-cause notice. The petitioner gave a reply, however, an order came to be passed cancelling the fair price shop license. Aggrieved against the said, the petitioner preferred an appeal. The said appeal came to be heard and disposed off vide order dated 05.08.2022 whereby the matter was remanded with the observations that the order has been passed on the ground which was not alleged in the show-cause notice, as such, the supplementary charge-sheet be given and a fresh order be passed.

4. In terms of the said remand order, a show-cause notice was served upon the petitioner, however, the charges levelled against the petitioner were similar to the one which were contained in the earlier show-cause notice. The petitioner once again gave a reply and thereafter, the order impugned, cancelling the license came to be passed. It also bears from record that during the pendency of the proceedings after remand, the petitioner had approached this Court by filing Writ - C No.5216 of 2023 in which directions were issued for deciding the stay application vide order dated 26.06.2023. In terms of the said order, an interim order was passed by the appellate authority in favour of the petitioner, however, before the same could be implemented, an order dismissing the appeal came to be passed on 25.08.2023, as such, now the present writ petition has been filed.

5. One of the main contentions of counsel for the petitioner is that the order has been passed based upon allegations of improper distribution by various cardholders who were originally 97 in number. The denial of the petitioner was substantiated by 15 cardholders who had given the affidavit that the food distribution was proper; no such affidavit was given by the remaining 82 cardholders who had complained against the petitioner.

6. Learned counsel for the petitioner argues that the statements given by the said 82 persons ought to have been identified/verified by the data contained in the e-POS machines whereas in the present case while comparing the two, the Licensing Authority has proceeded to hold that the computerized programme was misused to alter the results which, according to the petitioner, was not even a charge levelled in the charge-sheet and thus, to that extent, the finding is bad in law as a procedural unfairness.

7. Learned counsel for the petitioner argues that in the order, it was recorded that despite opportunities for hearing, the said opportunity was not availed and no reply was submitted, which finding the petitioner challenged by pleading in Para - 24 of the writ petition to the following effect:

"24. That the cancellation order shows that the petitioner was given an opportunity for personal hearing, whereas it is wrong to say that no time, date and place was fixed for the personal hearing. When the Upziladhikari was not present at that time, the Supply Inspector said that the explanation given by you will be considered as a personal hearing you don't have to come again. The order has been passed against the Government Order dated 05.08.2019. The cancellation order also shows that the cancellation order is not satisfactory but there is no mention in the cancellation order as to what is not satisfactory."

8. In Para - 13 of the counter affidavit filed by the State, Para - 24 of the writ petition has been replied to the following effect:

"13. That the contents of para 24 of the writ petition are not admitted as stated therein and in reply thereto, it is submitted that the ground taken in the writ petition are not tenable in the eye of law and the writ petition lacks merit as such the same is liable to be dismissed with costs."

9. On this second ground of procedural unfairness, the averments made by the petitioner are not even controverted in the counter affidavit.

10. Thus, on both the grounds, the writ petition deserves to be allowed and is accordingly **allowed**.

11. Impugned orders dated 20.03.2023 & 25.08.2023 are

quashed.

12. The matter is remanded to the Licensing Authority to pass a fresh order. While doing so, the Licensing Authority shall confine the same only in respect of the charges levelled unless a fresh charge-sheet containing supplementary charges is issued.

13. As the petitioner was granted an interim order by the appellate court during the pendency of the appeal, it is directed that till fresh orders are passed, the petitioner would be permitted to carry the operations of the shop in question in accordance with law.

14. As regards the subsequent allottee, as his allotment was contingent upon the outcome of the writ petition, he does not have any right to continue indefinitely.

Order Date :- 8.12.2023

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