

Court No. - 17

Case :- WRIT - C No. - 7966 of 2022

Petitioner :- Chinta Ram Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Civil Supply
Deptt. Up Civil Sectt. Up Lko. And 2 Others

Counsel for Petitioner :- Rajesh Kumar Singh, Neeta Singh
Chandel, Vijayendra Prakash Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Ms. Neeta Singh Chandel, learned counsel for the petitioner as well as learned Standing counsel on behalf of the respondents.

2. By means of the present writ petition the petitioner has challenged the order dated 20.10.2022 passed by Additional Commissioner, Devi Patan Mandal, Gonda District Gonda thereby rejecting the appeal preferred by the petitioner against cancellation of his fair price license as well as order passed by Prescribed Authority on 22.10.2019 cancelling the license.

3. It has been submitted by learned counsel or the petitioner that the petitioner was granted license to run fair price shop in gram panchayat Khaira, Vikas Khand- Padri Kripal, Tehsil Sadar, District Gonda. It is on 23.7.2019 that Distribution Inspector, Padri Kripal made a complaint against the petitioner that the petitioner has not deposited requisite amount for lifting essential commodities for the month of July, 2019. The competent authority considering the fact that in fact the petitioner has not deposited the said amount through e- challan for supplying the goods for July, 2019 and consequently suspended the fair price shop license by means of order dated 27.7.2019. Subsequently to the suspension of fair price shop license a show cause notice was given to the petitioner. It seems that the petitioner did not submit any reply nor participated in the said proceedings resulting in cancellation of the license by means of order dated 22.10.2019.

4. Against the said order of cancellation the petitioner had filed an appeal before Commissioner, Devi Patan Mandal, Gonda which has been decided by means of impugned order dated 20.10.2022.

5. Before the appellate authority the petitioner had submitted that the petitioner was ill and was undergoing treatment at Sahara Hospital Lucknow. He has also filed various certificates

indicating that he was suffering from heart ailment i.e. accelerated hypertension with angina. It is due to the said ailment that the petitioner was not available at the village and consequently could not deposit the amount for supply for the month of July, 2019. The grounds and documents filed by the petitioner had been duly noted and taken cognizance by the appellate authority but in the entire order there is no analysis or consideration whether the said grounds taken by the petitioner would be admissible to him or not. It is further submitted that once the ground has been raised by the petitioner assailing the impugned order of cancellation then the said order ought to have been adequately considered by the appellate authority and by not considering the same the appellate authority has acted illegally and arbitrarily and also that the order is without application of any mind. A perusal of the order passed by the appellate authority indicates that in the order it has been reiterated that the petitioner admittedly did not deposit the amount for supplying the goods for July, 2019. It was also taken note of that on previous occasion also the petitioner did not deposit the advance amount on e-portal, therefore, the supply for subsequent months could not be given to the petitioner for disbursement to the card holders.

6. Learned Standing counsel, on the other hand, has submitted that there is no infirmity in the orders impugned. He submits that the petitioner had been repeatedly making default in depositing the money with the nodal officer within the prescribed time. He further submits that non-deposition of the said amount leads to serious consequences as distribution for the following month is adversely affected as no goods could be supplied to the petitioner in case the money is not deposited by the cutoff date. He further submits that the petitioner did not tender any explanation to the order of suspension nor to the charge sheet given to the petitioner and consequently after serving several notices the matter was concluded by cancelling the fair price shop license. He further submits that the appellate authority has also upheld the order of the Prescribed Authority and there is no infirmity in the same.

7. I have heard learned counsel for the parties and perused the record.

8. The only aspect which requires consideration is that as to whether the appellate authority had adequately considered the defence taken by the petitioner for not depositing the amount before the nodal officer for supply for the month of July, 2019. There is no dispute that the petitioner did not deposit the said amount by the cutoff date and consequently the fair price shop license of the petitioner was suspended by means of order dated

27.7.2019 and subsequently the same was cancelled on 22.10.2019.

9. In the appeal the petitioner had annexed all the documents pertaining to his treatment at Sahara Hospital. The appellate authority had also taken into account the fact that the petitioner had informed the competent authority with regard to his illness. Despite noting the defence taken by the petitioner he has not considered the said defence in the entire order. In case, the petitioner was able to demonstrate his illness and non-presence in the village on account of the same then it lay upon the appellate authority to consider the said illness upon the proceedings initiating against the petitioner. It was incumbent upon him to either accept the contentions raised by the petitioner or to reject the same but non-consideration of the submissions raised by the petitioner in his defence is clearly illegal and arbitrary and consequently this Court is of the considered view that the impugned order dated 20.10.2022 has been passed without any application of mind. In light of the above, the order dated 20.10.2022 is set aside.

10. The matter is remitted back to the Additional Commissioner, Devi Patan Mandal, Gonda to reconsider and pass fresh orders with regard to the appeal filed by the petitioner. While passing the said order he shall take into account the notice of all the contentions and defence raised by the petitioner in his appeal and give reasons for either accepting or rejecting the same. Let the said exercise be conducted, expeditiously, say within a period of four weeks from the date a certified copy of this order is placed before him.

11. The writ petition thus stands **allowed**.

(Alok Mathur, J.)

Order Date :- 16.10.2023
RKM.