

Court No. - 17

Case :- WRIT - C No. - 8670 of 2023

Petitioner :- Shiv Kumar Mishra

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Civil Sectt. Lko. And 8 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Shri Vijay Kumar Tiwari, learned counsel appearing on behalf of petitioner as well as learned Standing Counsel appearing on behalf of respondents.
2. By means of the present writ petition the petitioner has challenged the notice dated 22.3.2022 passed by Regional Supply Inspector, Rupaideeh/ Pandrikripal, District Gonda whereby he has sought certain documents from the petitioner who has a licence to run the fair price shop at Gram Pikhartara, Rupaideeh, Tehsil Sadar, District Gonda as well as order dated 11.11.2021 passed by opposite party no.4.
3. It has been submitted that certain false complaints have been made against the petitioner by unknown card holders of the village and on the basis of the said false and fabricated complaints impugned notice has been issued asking the petitioner to submit the documents including the list of beneficiaries/ Quota card, distribution certificate/ stock register / distribution register / MIS report etc.
4. The petitioner has challenged the said notice stating that the Regional Supply Inspector does not have any authority or power to issue the impugned notice and further submits that in the said notice it has been recorded that the Police Inspector (Food), Faizabad has been repeatedly asking the petitioner to submit the documents which have not been submitted despite the fact that even on telephone the petitioner has been asked to submit the documents and, consequently,

the petitioner is required to hand over the said documents so that the inquiry proceedings can be conducted.

5. Learned counsel for the petitioner submits that the police inspector (Food Prakoshth), Faizabad does not have any power to conduct the inquiry. He submits that inquiry can be conducted only by the District Supply Officer and the SDM and any other person to whom it can be validly delegated.

6. In support of his submissions he has relied upon the Government Order dated 05.8.2019 where detailed procedure has been laid down. He submits that as per Clause 2 of the said Government Order it is provided that the District Supply Officer has the power to conduct inspection of the Fair Price Shop and also pass punishment orders including suspension and cancellation of the Fair Price Shop licence while for the rural areas the SDM has been authorized to conduct the inspection but before any order of punishment is passed, prior approval of the District Magistrate is necessary.

7. In this regard it is submitted that the shop of the petitioner falls in the rural area and accordingly SDM is only authority who can conduct the inspection and pass any order of punishment.

8. He has further relied upon the office order dated 07.01.1975 passed by the Commissioner / Secretary (Food) and submitted that according to the said office order the food cell is not competent to inquire into the matters pertaining to fair price shop.

9. Learned Standing Counsel on the other hand has opposed the writ petition.

10. He has submitted that he has also relied upon the Government Order dated 05.8.2019 and submitted that a detailed procedure has been laid down for conducting of inquiry against the fair price shop licencees where complaints have been received against them. He submits that the complaint can be submitted by the complainants

on the Chief Minister Helpline, Toll Free numbers, call centres, IGRS, on Tehsil Diwas as well as to the SDM or other officials.

11. It is further provided that once a complaint is received then the said complaints have to be verified in the manner prescribed.

12. It has been provided that inquiry shall be conducted in a fair and transparent manner after giving full opportunity of hearing to the persons against whom allegations have been made.

13. In Clause - 2 it is provided that the District Supply Officer has been empowered to take action in the entire District (in the rural as well as the urban areas) and also conduct the inspection of the fair price shop and take punitive action against them while for the rural areas SDM has been empowered to carry out inspection and take any punitive measures against the fair price shop licencees but such action have to be taken subject to the approval of the District Magistrate.

14. When the charges are found to be prima facie proved provisions have been made for suspension of the Fair Price Shop licence and during the period of suspension the said shop is liable to be attached to another Fair Price Shop Licencee in the said area.

15. It has further been provided that only when the allegations are serious and fair price shop licencee has been found to be involved in black marketing and other serious allegations are there only then the licence is liable to be suspended.

16. He further submitted that the office order dated 07.01.1975 does not apply in matters to inquiry against the fair price shop licencees. It has further been submitted that said order was specific order with regard to individual who is holding the post of Commissioner and Deputy Director General of Police (Food) and only his powers have been outlined in the said office order dated 07.01.1975 and the same would not have any relevance with regard to the inquiries conducted against the fair

price shop licencees.

17. He further submitted that in any view of the matter the process which has been initiated is only a fact finding inquiry / preliminary inquiry and only after verification of the allegations a regular inquiry will follow wherein the procedure prescribed under the Government Order dated 05.8.2019 will be scrupulously followed.

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

19. From the impugned order it transpires that certain complaints against the petitioner have been lodged by the card holders. In order to look into those complaints various letters/ communication were sent to the petitioner to send the record for verification but the records were not submitted by him and accordingly by means of the notice dated 22.3.2022 petitioner has again been asked to send the relevant records.

20. In the said order which has been authored by the Regional Supply Officer, Rupadeeh, Pandrikripal, Gonda it has been stated that the inquiry has to be conducted by the police inspector (Food Prakoshth), Faizabad.

21. It is noticed that whenever a complaint is made then in order to verify the veracity of the complaint the preliminary inquiry is conducted. At the stage of preliminary inquiry the person against whom the allegations have been levelled, may or may not be associated. Once the allegations are found to have some substance then a regular inquiry and proceedings will follow which commence with submission of the charge sheet or a show cause notice where detailed allegations against the person against whom the complaint has been made, are detailed.

22. Various materials on the basis of which charges are sought to be proved are also enclosed so as to give a fair opportunity of hearing to the fair price shop licensee. The said provision has been elaborately made in the Government order

dated 05.8.2019.

23. In the present case we are concerned only with the preliminary inquiry inasmuch as the notice dated 22.3.2022 clearly indicates that the documents have been sought for from the petitioner only with a view to conduct the preliminary inquiry to verify the complaints made against him.

24. At this stage this Court is of the considered view that no right vests in the petitioner to have the inquiry conducted only by a particular authority. Only fact which could have been demonstrated that the preliminary inquiry is de horse the provisions of law.

25. We have perused the Government Order dated 05.8.2019 as well as office order dated 07.01.1975 and in both the Government orders there is no provision as to which authority would conduct the preliminary inquiry.

26. In the said Government Order in Clause 1 Kha the said provisions of preliminary inquiry has been detailed where conduct of such preliminary inquiry would be necessary but there is no mention that the same has to be conducted by any particular authority.

27. Accordingly, this Court does not find any merit in the submissions made by the petitioner that the inquiry can be conducted only by a particular authority.

28. The Court has also perused the various Government Orders from which it is clear that after the preliminary inquiry in case respondents choose to conduct the regular inquiry then the same has to be conducted and relevant orders to be passed by the authorities mentioned for the Clause 2 of the Government Order dated 05.8.2019.

29. Learned counsel for the petitioner has submitted that for the similar relief various writ petitions have been filed which are pending before this Court and this Court has passed interim Orders and submitted that those interim orders

would bind the Court in this case also.

30. We have perused the order annexed along with the petition and it is noticed that it is only merely interim order and no finding has been returned and, accordingly, the said interim order cannot be said to be precedent or binding upon this Court.

31. In light of the above, this Court does not find any merit to interfere with the order dated 11.11.2021 passed by opposite party no.4 and the impugned notice dated 22.3.2022 passed by Regional Supply Inspector, Rupaideeh/Pandrikripal, District Gonda.

32. Petition is devoid of merits and accordingly, dismissed, however, the respondents are directed to conduct the inquiry expeditiously in accordance with law.

Order Date :- 10.10.2023

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(Alok Mathur, J.)