

Court No. - 17

Case :- WRIT - C No. - 9076 of 2023

Petitioner :- Hanoman Prasad Verma

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

Counsel for Petitioner :- Vishva Nath Pratap Singh, Ajay Vikram

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Ajay Vikram, learned counsel for the petitioner, learned Standing counsel for respondent No.s 1, 2 and 3 and Sri Tauqueer Alam, learned counsel who has put in appearance on behalf of opposite party No.4. The vakalatnama filed by Sri Tauqueer Alam is taken on record.

2. By means of the present writ petition the petitioner has challenged the order dated 12.9.2023 passed by Deputy Commissioner (Food) Devi Patan Mandal, Gonda.

3. It has been submitted by learned counsel for the petitioner that the petitioner is running a fair price shop in Village and Post- Gulariha Hisampur, Block and Tehsil Tulsipur, District Balrampur. It seems that there were several complaints made by the card-holders against the petitioner and a preliminary inquiry was conducted where the allegations were found to have some substance and accordingly by means of the order passed by Sub Divisional Magistrate, Tehsil Tulsipur, District Balrampur the fair price shop license of the petitioner was suspended on 7.8.2020. Subsequently opportunity of hearing was given to the petitioner to reply to the allegations and after giving opportunity of hearing to the petitioner his fair price shop license was cancelled on 28.3.2022.

4. The petitioner being aggrieved by the order of cancellation dated 28.3.2022 preferred an appeal before Deputy Commissioner (Food), Devi Patan Mandal, Gonda which has been partly allowed by means of order dated 12.9.2023 and the matter has been remanded back to the Prescribed Authority for passing a fresh order after giving opportunity of hearing to the petitioner. In the impugned order it has been stated that though the order of cancellation dated 28.3.2022 has been set aside but the suspension order dated 7.8.2020 shall be maintained.

5. In the present case, the grievance of the petitioner is that once the order of cancellation has been set aside then the order of suspension should also have been set aside and consequently during the remand proceedings the petitioner should be entitled to run his fair price shop. It is stated that once the appellate authority has come to the conclusion that the order of cancellation was passed without giving adequate opportunity of hearing to the petitioner then apart from setting aside the order of cancellation the order of suspension should also have been set aside. He submits that the facts in issue in suspension order as well as cancellation order are the same and consequently both the orders should have been decided together and the appellate authority by not doing so has acted illegally and arbitrarily.

6. Learned Standing counsel, on the other hand, has submitted that suspension order is based on the preliminary inquiry where the allegations against the petitioner are found to be proved *prima facie* and the order of cancellation is passed only after regular inquiry where the charges levelled against the delinquent are proved. Apart from the above, he submits that this aspect of the matter has been concluded by two judgements of this Court, namely ***Ram Achal Vs. State of U.P. and 3 others*** passed in Writ C No.39607 of 2017 as well as in the case of *Shiv Sagar Vs. State of U.P. and others* passed in Writ C No.7896 of 2023. He submits that in the case of *Shiv Sagar (supra)* the Court has relied upon the order passed in *Ram Achal's* case (*supra*). The relevant points discussed by this Court are that the order of suspension is a situation where the order of cancellation is set aside on account of the fact that opportunity of hearing was not provided to the delinquent and during the remand proceedings the suspension order would remain in operation. The relevant portion of the judgment is as under:-

*12. To consider the aforesaid submissions, this Court has noticed that the said issue was considered in the case of **Ram Achal versus State of U.P. and 3 others, Writ - C No.39607 of 2017, dated 30.08.2017** and held that the suspension order would revive, if the matter is remitted to the Prescribed Authority for taking a decision afresh. The relevant findings are quoted hereinbelow:-*

"No strict principles of services jurisprudence are applicable in the contractual matter of allotment of fair price shop dealership. However, the principles of natural justice have been directed to be followed in the matter of departmental enquiry by the Government order dated 29.07.2004 so as to regulate the procedure of enquiry initiated against the dealer on the charges of irregular distribution.

In the matter of departmental enquiry, it is settled law that in a case where the enquiry proceeding is found faulty on account of denial of adequate opportunity to the delinquent employee, instead of directing for reinstatement of the employee, appropriate course would be to relegate the matter to the disciplinary authority to hold enquiry afresh from the stage of the charge-sheet. In such circumstances, the employee has to be treated under suspension during the course of enquiry.

The same analogy has to be drawn in the matter of disciplinary enquiry against the fair price shop dealer. In a case where it is found that adequate opportunity of hearing has not been provided to the dealer or the evidence filed by him have not been properly examined, it is always open for the appellate authority to relegate the matter from the stage of the charge-sheet, keeping the suspension order intact. Doctrine of merger of interim order into the final order would not apply in the case of disciplinary enquiry where the enquiry is initiated with the issuance of the charge-sheet or suspension order. As no defect was found in the decision of the disciplinary authority to initiate disciplinary enquiry based on the preliminary enquiry report, there was no occasion to set aside the suspension order.

This court has not been able to convince itself with the observations by the Learned Single Judge in the case of Shabbir Ahmad Vs. State of U.P. & others passed in Writ -C No.45178 of 2016 and Rama Pundhir passed in Writ-C no.43381 of 2016 relied upon by the learned counsel for the petitioner.

Lastly, learned Counsel for the petitioner submits that the respondent authorities cannot keep the shop suspended for a long time pending final enquiry. It is noteworthy that the remital order has been passed on 5.7.2017, however, till date, no final decision has been taken. There is a legislative mandate under Para 8(VIII) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 to conclude the enquiry into the irregularities against the dealer within a period of two months.

Keeping in view of the above, the present petition is being disposed of with the direction to the competent authority to take a final decision in the matter, expeditiously, preferably within a period of one month from the date of submission of certified copy of this order."

*13. This Court also finds itself in agreement with the findings recorded by the Coordinate Bench of this Court in the case of **Ram Achal versus State of U.P. and 3 others** that on setting*

aside of the order of cancellation, the order of suspension would revive in a case where the order of cancellation is being set aside on technical ground such as violation of principle of natural justice duo to not affording proper opportunity of hearing. In the present case also, this Court has set aside the order of cancellation on finding that the inquiry has not in fact been conducted by the competent authority and accordingly, the proceedings have to be conducted afresh. The charges levelled against the petitioner were very serious as is evident from the chargesheet and consequently during the inquiry, the license of the petitioner was suspended. It has also been informed that in the meanwhile, shop has been attached with another licensee from where the goods are being distributed. Once the order of suspension revives on the setting aside of the order of cancellation, the prayer as sought for by the petitioner cannot be granted and same is rejected.

14. Accordingly, in light of the aforesaid, the writ petition is dismissed."

7. A perusal of the aforesaid judgments makes it clear that the Court has held that in a case where it is found that adequate opportunity of hearing has not been provided to the dealer or the evidence filed by him have not been properly examined, it is always open for the appellate authority to relegate the matter from the stage of the charge -sheet, keeping the suspension order intact. Doctrine of merger of interim order into the final order would not apply in the case of disciplinary enquiry where the enquiry is initiated with the issuance of the charge sheet or suspension order. As no defect was found in the decision of the disciplinary authority to initiate disciplinary enquiry based on the preliminary enquiry report, there was no occasion to set aside the suspension order.

8. There is no finding recorded by the appellate authority that there was any infirmity in the preliminarily inquiry and the order of suspension was passed on the basis of preliminary inquiry, the same would remain intact and operative during the remand proceedings even despite the order of cancellation having not been set aside.

9. In light of the above, the writ petition is bereft of merits and is accordingly **dismissed**.

10. However, it is also noticed by this Court that remand proceedings have to be conducted expeditiously and the license of the petitioner cannot be kept under suspension for a long time and accordingly the competent authority is directed to conclude the proceedings expeditiously, say within a period of

two months from the date a certified copy of this order is placed before him.

11. The parties are also directed to cooperate in the proceedings before the Prescribed Authority and shall not take unnecessary adjournments nor the same shall be granted.

(Alok Mathur, J.)

Order Date :- 17.10.2023
RKM.