

Court No. - 17

Case :- WRIT - C No. - 9448 of 2023

Petitioner :- Smt. Fiza Khatoon

Respondent :- State Of U.P Thru. Secy. Deptt. Food And Civil Supplies Govt. Of U.P. Civil Secrt.Lko. And 5 Others

Counsel for Petitioner :- O.P. Tiwari

Counsel for Respondent :- C.S.C.,Dilip Kumar Pandey

Hon'ble Alok Mathur,J.

1. Heard Sri O.P. Tiwari, learned counsel for the petitioner as well as learned Standing Counsel for the State respondents and Sri Dilip Kumar Pandey, learned counsel appearing for respondent no. 5.

2. It has been submitted by learned counsel for the petitioner that process for grant of Fair Price Shop dealership/license was initiated for Village Panchayat - Unwan, Block and Tehsil - Safipur, District - Unnao. The said fair price shop is reserved for woman candidate and an open meeting of gram panchayat was held on 19.09.2023, where resolution was passed in favour of respondent no. 6 - Maa Shankari Devi Self Help Group.

3. It is next submitted by learned counsel for the petitioner that the aforesaid proposal made by the gram panchayat is illegal and arbitrary inasmuch as respondent no. 6 should be an active "self help group" and accordingly respondent no. 6 is not eligible for grant of fair price shop license.

4. Learned counsel for the respondents on the other hand have opposed the writ petition by submitting that passing of mere proposal does not give any right either to the petitioner or to respondent no. 6 with regard to running of fair price shop. Right accrues only when fair price shop allotment is made. It is further submitted that proposal of gram panchayat would be scrutinized by the Tehsil level committee with regard to the fact as to whether all the formalities have been completed or not and as to whether the proposed candidate fulfils all the requisite prescribed qualification. It is submitted that at this stage the Court would not interfere in the proposal passed by the gram Panchayat. In support of their submissions the counsel for the respondents have placed reliance on the judgment of this Court rendered in **Writ-C No. 7880 of 2013 - Rekha Devi Vs. State of U.P. and Others** (decided on 06.10.2023), wherein the Court has held 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 the 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.

14. In the light of above, present writ petition is dismissed."

5. Learned counsel for the petitioner at this stage submits that grievance of the petitioner shall be substantially redressed in case allegations levelled against respondent no. 6 are duly considered by the Tehsil level Committee. Further prayer has been made by counsel for the petitioner to grant liberty to the petitioner to move fresh representation before the Sub Divisional Magistrate, Safipur in this regard.

6. Learned counsel for the respondents have no objection in case suitable directions are issued to the authority concerned for consideration of petitioner's representation.

7. Accordingly, without entering into the merits of the case, present writ petition is **disposed of** with liberty to the petitioner to move fresh representation before the Sub Divisional Magistrate, Safipur, District - Unnao within two weeks from today. In case Tehsil level Committee has not already forwarded the proposal to the District Magistrate in respect of meeting dated 09.09.2023, then they shall take into consideration the

representation of the petitioner at the stage of considering proposal of Gram Panchayat before forwarding the same to the District Magistrate.

Order Date :- 30.10.2023

A. Verma

(Alok Mathur, J.)