

Court No. - 17

Case :- WRIT - C No. - 9978 of 2023

Petitioner :- Munni Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Civil Supply Deptt. Civil Sectt. Lko. And 4 Others

Counsel for Petitioner :- Kapil Dev Chaubey, Ajaiy Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Ajay Kumar Mishra, learned counsel for the petitioner as well as learned Standing counsel on behalf of respondent No.s 1 to 4.

2. In view of the order proposed to be passed there is no need to issue notice to the private respondent.

3. By means of the present writ petition the petitioner has challenged the order dated 16/25.7.2009 passed by Sub Divisional Magistrate, Gola Gokaran Nath, District Kheri thereby cancelling the fair price shop license of the petitioner. He has also challenged the order dated 20/21.7.2018 passed by Joint Commissioner (Food), Lucknow Division, Lucknow thereby rejecting the appeal preferred by the petitioner, in fact, only on the ground of limitation as the same was filed after a period of nine years.

4. It has been submitted by learned counsel for the petitioner that the petitioner was allotted fair price shop license on 3rd February, 2007 for Gram Panchayat Grunt No.10, Block Bankeyganj, Tehsil Gola, District Kheri. After grant of the said license one writ petition was filed before this Court being writ petition No.10998 (M/B) of 2008 (*Haneef Khand and others Vs. State of U.P. and others*) where it was alleged that there were large number of fair price shop licenses and there were lesser number of card holders in the village panchayat while the shops were in excess and consequently prayer was made to reduce the number of fair price shops. The said writ petition was disposed of by this Court by means of order dated 8.12.2008 with a direction the the District Magistrate to consider the grievances raised by the petitioner, expeditiously. In compliance of the order of this Court notices were issued to the fair price shop licensees including the petitioner. The petitioner had submitted reply to the said show cause notice on

21.3.2009. In the meanwhile, it was noticed that there were certain allegations of illegalities in running the said fair price shop of the petitioner and consequently in light of the order of this Court dated 8.12.2008 as well as the allegations levelled against the petitioner, the Sub Divisional Magistrate, Gola Gokaran Nath, District Kheri passed order dated 17.7.2009 cancelling two fair price shop licenses including that of the petitioner.

5. The petitioner did not take any action against the order of cancellation of the said licenses dated 16/25.7.2009 but an appeal was filed after a lapse of nine years before Joint Commissioner (Food), Lucknow Division, Lucknow who rejected the said appeal only on the ground of limitation in as much as the said appeal was filed after a lapse of nine years. In the said appeal an application for condonation of delay was also filed in which it was stated that the petitioner being an illiterate woman had given her vakalatnama to the local counsel in the Village who in turn was supposed to contact a counsel who was to file the appeal at Kheri before the appellate court. It is only when she did not receive any intimation with regard to the fate of the appeal that she had asked her son to find out the status of the appeal. When she came to know that the appeal has, in fact, not been filed and consequently in the said manner the delay was sought to be condoned.

6. The appellate order was passed on 20/21.7.2008 and even the present writ petition has been filed after a delay of more than five years. With regard to the delay in filing the present writ petition the only reasons stated in paragraph 22 of the writ petition is that a representation was given to the Chief Minister, which was pending. Because of pendency of the said representation there was delay in filing the present writ petition. Considering the aforesaid facts; firstly the reasons stated in the application for condonation of delay in filing the appeal is totally unsatisfactory. Even if the circumstances as narrated by the petitioner are believed then the papers were given to the local counsel who in turn was to contact a counsel at Kheri and file vakalatnama but there is no reason as to why the petitioner did not find out the fate of the appeal for nine years.

7. A person who is not vigilant about his/her rights and the one who sleeps over his/her rights and is not vigilant, the courts will not come to their rescue as has been held by Hon'ble Supreme Court in the case of ***Prakash Corporates v. Dee Vee Projects Ltd.***, (2022) 5 SCC 112 : (2022) 1 SCC (L&S) 771 : 2022 SCC OnLine SC 180 at page 144 as under:-

"33.1. This Court observed that the appellants were not entitled to take refuge under the above order in SMWP No. 3 of 2020

because what was extended was only the period of limitation and not the period up to which delay could be condoned in exercise of discretion conferred by the statute. This Court said thus : (Sagufa Ahmed case [Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd., (2021) 2 SCC 317 : (2021) 2 SCC (Civ) 178] , SCC p. 322, para 17)

"17. ... What was extended by the above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them."

(emphasis in original)

8. In the present case there has been unreasonable delay by the petitioner in prosecuting the said appeal. As the reasons for delay is not satisfactory this Court does not find any infirmity in the impugned order dated 20/21.7.2018 rejecting the said appeal. Even delay of five years in filing the present writ petition has not been satisfactorily explained.

9. Learned counsel for the petitioner fairly submits that there is no provisions under the relevant Control Order where against appellate order remedy lies before the Chief Minister.

10. No other reasons has been stated for the delay in filing the present writ petition. It is for the aforesaid circumstances the delay is hopelessly barred by latches.

11. For the reasons stated above, the writ petition is **dismissed**.

(Alok Mathur, J.)

Order Date :- 17.11.2023

RKM.