

**Court No. - 19**

**Case :-** WRIT - C No. - 10937 of 2023

**Petitioner :-** Ibrar And 2 Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Food And Civil Supplies, Lko. And 2 Others

**Counsel for Petitioner :-** Shahid Salam,Ashutosh Kumar  
Srivastava,Kavita Mishra

**Counsel for Respondent :-** C.S.C.

**Hon'ble Jaspreet Singh,J.**

Heard learned counsel for the petitioner. Notice on behalf of respondent nos. 1, 2 and 3 has been accepted by the office of the learned Additional Chief Standing Counsel.

In view of the controversy involved as well as the fact that the position as indicated in the order has not been disputed by the learned Standing Counsel, accordingly, with the consent of the parties, this petition is being disposed of at the admission stage itself.

The limited issue before this Court is that predecessors in interest of the present petitioners namely Ibrar was a fair price shop license holder. By means of order dated 14.07.2023, the license of the predecessors of the petitioner-Ibrar was cancelled and being aggrieved, he had preferred an appeal before the respondent no. 2 who is the Appellate Authority.

During the pendency of the appeal on 13.10.2023 Sri Abdul Jabbar was left for his heavenly abode. The appeal was listed on 21st October, 2023 whereby the respondent no. 2 noticing the fact that Sri Abdul Jabbar had expired on 13.10.2023 without affording any opportunity to the petitioners to be substituted in place of the deceased appellant-the appeal has been dismissed as infructuous.

The submission of the learned counsel for the petitioners is that once an order of cancellation has been passed by the respondent no. 3 which was under appeal before the respondent no. 2, it was incumbent upon the respondent no. 2 to have impleaded/substituted the heirs of Abdul Jabbar so that the appeal could be heard and it is incorrect to say that the appeal has been rendered infructuous.

Sri Devendra Mohan Shukla, learned Standing Counsel for the

State could not dispute the legal position regarding the fact that upon the death of the appellant, his legal heirs ought to have been substituted especially where the period of limitation was still available as the deceased Abdul Jabbar expired on 13.10.2023 and the appellate order has been passed on 21.10.2023.

Apparently, the respondent no. 2 lost sight of the fact that even though Abdul Zabbar was the license holder and upon his death, the license may not be inheritable but the fact remains that there are the provisions in terms whereof the legal heirs can claim the benefit under the Dying-in-Harness quota, however, unless and until the aforesaid appeals could have been taken to its logical conclusion, the same would always interfere in the exercise of rights of the petitioners before the Court for claiming such Dying-in-Harness Quota.

Having considered the material on record, this Court is satisfied that the impugned order dated 21.10.2023 for the aforesaid reasons is apparently patently erroneous and cannot be sustained, accordingly, the order dated 21.10.2023 passed by the respondent no. 2 is set aside. The appeal shall stand restored on the board of the respondent no. 2. The petitioners are granted the liberty of making an appropriate application for substitution within two weeks from today. In case if the same is done, the Appellate Authority shall pass appropriate orders and decide the appeal on its own merit within a period of six weeks thereafter.

It is made clear that the Court has not examined the case of the petitioners on merit and it has been considered in light of the impugned order whereby the right of the appellants to be substituted has not been find favour.

With the aforesaid, the petition shall stands ***allowed***. In the facts and circumstances, there shall be no order as to costs.

**Order Date :- 18.12.2023**

Asheesh