

Court No. - 18

Case :- WRIT - C No. - 1006284 of 2013

Petitioner :- Rajesh Kumar

Respondent :- State Of U.P. Thru. Secretary Food And Civil Supplies And Ors.

Counsel for Petitioner :- S.P. Tiwari

Counsel for Respondent :- C.S.C., Abhinav Mishra, Ganga Prasad Mishra

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri S.P. Tiwari, the learned counsel for the petitioner, Sri Dheeraj Ojha, the learned Standing Counsel and Sri Ganga Prasad Mishra, the learned counsel for the opposite party no. 4.

2. Upon an oral request made by the learned counsel for the petitioner, he is permitted to incorporate impleadment of opposite party no. 4 in furtherance of order dated 27.04.2023.

3. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has sought quashing of an order dated 03.11.2009 passed by the Sub Divisional Magistrate Milkipur, District Faizabad whereby the agreement executed with the petitioner for running a fair price shop in village Para Tajpur, Development Block Haringteenganj, Tehsil Milkipur, District Faizabad, was cancelled. The petitioner has also challenged validity of a judgment and order date 17.06.2013 passed by the Additional Commissioner (Administration), Faizabad Division, Faizabad in Appeal No. 218/2009-10/Faizabad under Section 28(3) of U.P. Scheduled Commodities Distribution Order, 2004, whereby the appeal has been dismissed and the order dated 03.11.2009 has been affirmed.

4. Briefly stated, facts of the case are that the petitioner was allotted a fair price shop license in respect of the fair price shop of Village Para Tajpur, Tehsil Milkpur, District Faizabad in furtherance of a resolution dated 13.03.2003 passed by the Gaon Sabha. On 20.02.2007, the Sub Divisional Magistrate passed an order whereby certain ration card holders were attached with the fair price shop of Kedar Nath. The petitioner's fair price shop license was suspended by means of an order dated 16.08.2007 passed by the Sub Divisional Magistrate. The petitioner gave his explanation denying the charges levelled against him. He submitted affidavits of several ration card holders stating that they were receiving commodities from the petitioner's shop regularly. However, the petitioner's explanation was not accepted by the Sub Divisional Magistrate, who passed an order dated 09.10.2007 cancelling the fair price shop agreement of the petitioner.

5. The petitioner challenged the aforesaid order dated 09.10.2007 by filing an appeal under Section 28(3) of U.P. Essential Commodities Act, which was allowed by means of an order dated 04.09.2008 and the matter was remanded for being decided afresh in view of observations made by the appellate authority.

6. On 04.09.2008, the Sub Divisional Magistrate passed another order whereby the petitioner's fair price shop agreement was again cancelled. The petitioner again filed an appeal, which was allowed by the Commissioner, Faizabad Division, Faizabad by means of a judgment and order dated 06.07.2009 and the matter was again remanded to the Sub Divisional Magistrate.

7. The Sub Divisional Magistrate cancelled the petitioner's fair price shop agreement for the third time by means of an order dated 03.11.2009.

8. The petitioner again challenged the cancellation order by filing an appeal, which was dismissed by means of the impugned order dated 07.06.2012 passed by the Commissioner, Faizabad Division, Faizabad.

9. The petitioner challenged the orders dated 03.11.2009 passed by the Sub Divisional Magistrate, Milkipur, District Faizabad as well as the order dated 07.06.2012 passed by the Additional Commissioner (Food), Faizabad Division Faizabad by filing Writ Petition No. 5081 (M/S) of 2012, which was allowed by means of a judgment and order dated 07.02.2013, whereby this Court quashed the appellate order dated 07.06.2012 and remanded the matter to the appellate authority for being decided in accordance with law, considering the order dated 20.02.2007 passed by the Sub Divisional Magistrate.

10. It is recorded in the aforesaid judgment dated 07.02.2013 passed by this Court that the petitioner's contention was not properly considered by the appellate authority and the appeal had been rejected merely on the ground that the petitioner did not produce the relevant record at the time of inquiry. This Court held that the Sub Divisional Magistrate had himself passed an order dated 20.02.2007 whereby the complainants had been attached with the fair price shop run by one Kedar Nath and they were not entitled to purchase commodities from the petitioner's fair price shop. This fact was a relevant fact which was required to be considered by the authorities. The appellate authority could have summoned the record to verify the order dated 20.02.2007 but he decided the appeal without doing so. The appellate order dated 07.06.2012 was quashed for the aforesaid reason and the matter was remanded to the appellate authority for reconsideration in light of the order dated 20.02.2007.

11. After remand, the appellate authority has passed the impugned order dated 04.06.2013 wherein the appellate authority has proceeded to scrutinize all the allegations levelled against the petitioner. The appellate authority has mentioned in the impugned order that this Court has emphasized in its order dated 07.02.2013 that Sri Shobhnath, Sudhdev, Ram Anjor and Hridai Ram had been attached with the fair price shop of Kedar Nath on 20.02.2007, therefore, it was not proper on the part of the petitioner to supply commodities to the aforesaid persons.

12. This Court has merely held in the order dated 07.02.2013 that the complainants had been attached with the fair price shop of Kedar Nath by means of an order dated 20.02.2007 and this fact has not been considered by the appellate authority in its proper perspective. This Court has not held that the complainants had been attached with another shop and, therefore, the petitioner has committed any illegality by supplying commodities to those persons. This Court has not even made any mention of commodities having been sold by the petitioner to the aforesaid four persons. The aforesaid narration made in the impugned order indicates that the appellate authority has misread the order dated 07.02.2013 passed by this Court and has proceeded to decide the appeal afresh after examining all the allegations levelled against the petitioner and after ignoring the effect of the order dated 20.02.2007 whereby the complainants had been attached to another fair price shop.

13. The purport to the order dated 07.02.2013 passed by this Court was that when the complainants had been attached with another fair price shop being run by one Kedar Nath, they had no occasion to be aggrieved by any act committed by the petitioner and their complaint did not apparently give rise to a

ground for cancellation of the fair price shop agreement of the petitioner.

14. The learned Standing Counsel submitted that a perusal of the appellate order indicates that the complaint had been submitted on 14.10.2006 whereas the complainants were attached with another fair price shop on 20.02.2007 and, therefore, on the date of the complaint, the complainants were attached to the petitioner's fair price shop. However, a perusal of the impugned order indicates that it is stated in the order dated on 14.10.2006, an application was given to the Sub Divisional Magistrate that the aforesaid four ration card holders were not taking essential commodities since November, 2006. In furtherance of this application, the four ration card holders were attached to the Fair Price Shop of Kedar Nath. The order does not make any mention that the ration card holders had given any complaint against the petitioner on 14.12.2009. There is no pleadings to this effect made in the counter affidavit filed by the State. The opposite party no. 4 has not filed any counter affidavit controverting the pleadings made in the writ petition.

15. Therefore, the aforesaid plea raised by the learned Standing Counsel is not supported by the pleadings made by the documents brought on record.

16. Accordingly, this Court is of the considered view that the impugned order dated 04.06.2013 has been passed by the Additional Commissioner (Administration) ignoring the scope of inquiry as per the order dated 07.02.2013 passed by this Court in Writ Petition No. 5081 (M/S) of 2012.

17. Accordingly, the writ petition is ***allowed***. The impugned judgment and order dated 04.06.2013 passed by the Additional Commissioner (Administration), Faizabad Division, Faizabad

in Appeal No. 218/2009-10/Faizabad is quashed and the matter is remanded to the appellate authority for being decided afresh keeping in view the observations made in this judgment.

18. Parties shall appear before the appellate authority on 05.11.2024. As the matter is quite old, it is expected that the appellate authority shall proceed to decide the appeal expeditiously without granting unnecessary adjournment to either of the parties.

Order Date :- 15.10.2024

Pradeep/-