

Court No. - 17

Case :- WRIT - C No. - 4189 of 2023

Petitioner :- Naimuddin

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

Counsel for Petitioner :- Anoop Vajpayee, Satish Kumar Sharma

Counsel for Respondent :- C.S.C., Rakesh Kumar Srivastava, Veerendra Kumar Tiwari

Hon'ble Manish Mathur, J.

1. Heard Mr. S.K. Sharma, learned counsel for petitioner, learned State Counsel for opposite parties no. 1 to 4 and Mr. R.K. Srivastava, learned counsel for opposite party no. 5.

2. Counter affidavit filed on behalf of opposite party no. 5 is taken on record. Learned counsel for petitioner submits that he does not wish to file any rejoinder affidavit to the same.

3. Petition has been filed challenging order dated 04.11.2022 cancelling fair price shop agreement of petitioner. Also under challenge is the order dated 08.05.2023 passed in Appeal No. 3027/2022 preferred under Section 13 (3) of the Essential Commodities (Regulation of Sale & Distribution Control) Order, 2016 whereby petitioner's appeal has been rejected.

4. It has been submitted that earlier a show cause notice dated 02.07.2022 had been issued to petitioner allegedly on the basis of inspection of the fair price shop. Allegation pertaining to deficient supply of food items was levelled against him indicating statements of 29 persons which were recorded. Petitioner was granted time to file response to the show cause notice. In pursuance thereof, petitioner submitted his reply denying the allegations levelled against him whereafter inquiry proceedings ensued resulting in passing of order dated 09.09.2022 cancelling petitioner's fair price shop agreement. The said order was challenged in Writ-C No. 6465 of 2022 which was allowed vide judgment and order dated 19.09.2022 quashing the order dated 09.09.2022 while granting liberty to the authorities to proceed afresh from the stage of verification of reply submitted by petitioner by an officer one rank higher to the inquiry officer.

5. It is submitted that in pursuance of directions issued by this

Court, the impugned order dated 04.11.2022 was passed whereafter appeal was preferred, which has also been rejected.

6. Learned counsel for petitioner has placed reliance on the order dated 05.08.2019 issued by the State Government particularly paragraph no. 2 thereof to submit that principles of natural justice have not been adhered to in the inquiry proceedings inasmuch as no opportunity to cross-examine the card holders or complainants was afforded to petitioner at the time when the statements were being recorded. It is further submitted that in his support, petitioner had submitted affidavits of 15 persons, out of which verification was done only with regard to 5 persons and the impugned order has been passed on the basis of assumptions and surmises that petitioner had obtained the affidavits by misleading the card holders. Learned counsel for petitioner has placed reliance on judgment rendered by this Court in the cases of **Shatrohan Lal versus State of U.P. Thru. Princ. Secy. Food and Civil Supplies and Ors., Writ-C No. 18768 of 2020** and **Amodnath Mishra versus State of U.P. Thru. Princ. Secy. Food and Civil Supplies, Lko. and 2 Ors, Writ-C No. 3407 of 2022.**

7. Learned State Counsel as well as learned counsel for opposite party no. 5 have refuted submissions advanced by learned counsel for petitioner with the submission that a perusal of the impugned order dated 04.11.2022 will make it evident that the proceedings have commenced afresh from stage of examination of reply submitted by petitioner. It is submitted that the statements of card holders were thereafter recorded and petitioner had ample opportunity to cross-examine the card holders, which he himself did not avail of. It is also submitted that as a result of inquiry conducted by the Sub-Divisional Magistrate, the charges of irregularities in distribution of food grains were found established as also violation of the Essential Commodities (Regulation of Sale & Distribution Control) Order, 2016. It is also submitted that the card holders themselves at the time of recording of their statements indicated misdemeanors of the petitioner.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that the earlier order cancelling petitioner's fair price shop agreement dated 09.09.2022 was quashed vide judgment and order dated 19.09.2022 granting liberty to the authorities to proceed afresh from the stage of verification of reply submitted by petitioner. It is in pursuance thereof that the impugned order dated 04.11.2022 has been passed.

9. Learned counsel for petitioner has placed specific emphasis

on the order dated 05.08.2019. It is evident that such a ground has been taken by petitioner in memorandum of appeal submitted against the order dated 04.11.2022 and therefore the said aspect will require consideration.

10. A perusal of the order dated 05.08.2019 makes it evident that procedure regarding redressal of complaints made against fair price shop owners has been indicated. Paragraph 2 (Kha) indicates the procedure required to be followed inasmuch as the distribution indicated in the online E-Pos is required to be compared with the ration cards of the card holders. The provision also indicates that at the time of recording of statements of complainants and other persons, an opportunity of cross-examination is required to be provided in order for the procedure to remain fair and to avoid litigation.

11. Keeping the aforesaid concept in mind, upon examination of the impugned order dated 04.11.2022, it is evident that the order has placed reliance on statements recorded by card holders at the time of preliminary inquiry. The order does not indicate any opportunity whatsoever being provided to petitioner for cross-examination of such persons whose statements have been recorded and are relied upon in the aforesaid order. The order also indicates an assumption with regard to 9 card holders that affidavits provided by them in favour of petitioner may have been obtained in an under hand manner.

12. It is also evident that although affidavits of 15 card holders had been provided by petitioner in his support, verification of only five was conducted without any effort being made to record the statements of remaining card holders.

13. In the cases of **Shatrohan Lal** (supra) and particularly **Amodnath Misra**, the aspect of the order dated 05.08.2019 has been considered and it has been held that non-compliance on the order dated 05.08.2019 would render the cancellation order illegal.

14. In the memorandum of appeal, petitioner has taken specific ground for violation of order dated 05.08.2019. The appellate order while dealing with the aforesaid submission has rejected the same on the ground that at the time of inquiry, the ration cards of card holders were compared with the online portal and discrepancy there-against was found. It has also been held that the statements of card holders cannot be disbelieved and that procedure indicated in the order dated 05.08.2019 has been followed.

15. As has already been indicated hereinabove that the order

dated 04.09.2022 does not indicate affording any opportunity of cross-examination of the card holders whose statements recorded during the preliminary inquiry from the basis of impugned order.

16. In view of aforesaid, non-compliance of the specific provisions of order dated 05.08.2019 is evident.

17. Considering the aforesaid, the impugned orders dated 04.11.2022 and 08.05.2023 being against the specific provisions of order dated 05.08.2019 are hereby quashed by issuance of a writ in the nature of certiorari. Consequences to follow.

17 (a). Since earlier this Court had already provided an opportunity to opposite parties to correct lacunae in enquiry but such opportunity not having been availed of, this Court does not consider it appropriate to provide continuous opportunities to opposite parties to correct their failings by remanding the matter again.

18. Consequently, the writ petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 9.4.2024

Satish