

Court No. - 7

1. Case :- WRIT - C No. - 5643 of 2022

Petitioner :- Swami Nath Tiwari

Respondent :- State Of U.P. Thru Prin Secy Food And Supply Lko. And 13 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Ajay Kumar Gupta,Pankaj Gupta,Verender Kumar Tiwari

With

2. Case :- WRIT - C No. - 5342 of 2022

Petitioner :- Nirmla Devi (Fair Price Shop Dealer),

Respondent :- State Of U.P. Thru. The Prin. Secy. Food And Supply. Civil Secr. Lko. And Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Ajay Kumar Gupta,Pankaj Gupta

With

3. Case :- WRIT - C No. - 7509 of 2022

Petitioner :- Smt. Mithlesh Tripathi

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Pankaj Gupta

With

4. Case :- WRIT - C No. - 7557 of 2022

Petitioner :- Khedu Ram

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply,Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Pankaj Gupta

With

5. Case :- WRIT - C No. - 7559 of 2022

Petitioner :- Smt. Laxmi Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 9

Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

6. Case :- WRIT - C No. - 7568 of 2022

Petitioner :- Lal Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Civil Secrett. Lko. U.P. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

7. Case :- WRIT - C No. - 7595 of 2022

Petitioner :- Ram Baran Shukla

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

8. Case :- WRIT - C No. - 7608 of 2022

Petitioner :- Smt. Reena Rani

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Civil Secrett. Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

9. Case :- WRIT - C No. - 7637 of 2022

Petitioner :- Vidha @ Vidya Prakash Tiwari

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

10. Case :- WRIT - C No. - 7712 of 2022

Petitioner :- Chhail Behari Mishra

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 9

Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

11. Case :- WRIT - C No. - 7713 of 2022

Petitioner :- Narsingh Narayan Bajpai

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Civil Supply Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

12. Case :- WRIT - C No. - 7715 of 2022

Petitioner :- Smt. Mamta Sen

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Civil Sectt. Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

12. With

13. Case :- WRIT - C No. - 7717 of 2022

Petitioner :- Smt. Shyam Kumari

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

14. Case :- WRIT - C No. - 7768 of 2022

Petitioner :- Fauzdar

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

15. Case :- WRIT - C No. - 7784 of 2022

Petitioner :- Om Prakash

Respondent :- State Of U.P. Thru. Prin. Secy Food And Supply Civil Sectt. Lko. And 8 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

16. Case :- WRIT - C No. - 7826 of 2022

Petitioner :- Munir Ahamad

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 8 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Pankaj Gupta

With

17. Case :- WRIT - C No. - 7828 of 2022

Petitioner :- Dharmendra Pratap Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 9 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Pankaj Gupta

With

18. Case :- WRIT - C No. - 7856 of 2022

Petitioner :- Hari Ram

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Civil Sectt. Up Lko. And 5 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

19. Case :- WRIT - C No. - 7858 of 2022

Petitioner :- Smt. Kanchi Devi

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

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Pankaj Gupta

With

20. Case :- WRIT - C No. - 7860 of 2022

Petitioner :- Smt. Meena Devi

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

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Pankaj Gupta

With

21. Case :- WRIT - C No. - 7919 of 2022

Petitioner :- Doodhnath

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Lko. And 5

Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

22. Case :- WRIT - C No. - 8242 of 2022

Petitioner :- Narayan @ Deep Narayan Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lko. And 7 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

23. Case :- WRIT - C No. - 8245 of 2022

Petitioner :- Ajay Kumar Tiwari Alias Jai Prakash

Respondent :- State Of U.P. Thru Prin Secy Food And Supply Civil Sectt Lko. And 7 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

24. Case :- WRIT - C No. - 8357 of 2022

Petitioner :- Changur Prasad

Respondent :- State Of U.P. Thru. Prin. Secy Food And Supply Civil Sectt. Lko. And 9 Others

Counsel for Petitioner :- Animesh Upadhyay, Vineesh Bhalla

Counsel for Respondent :- C.S.C., Pankaj Gupta

With

25. Case :- WRIT - C No. - 8445 of 2022

Petitioner :- Smt. Kauslya Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Civil Sectt. Lko. And 7 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

26. Case :- WRIT - C No. - 8446 of 2022

Petitioner :- Asgar Ali

Respondent :- State Of Up Thru. Prin. Secy. Food And Supply Lko And 7 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

27. Case :- WRIT - C No. - 9559 of 2022

Petitioner :- Smt. Madhura Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply U.P. Civil Sectt. Lko. And 6 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

28. Case :- WRIT - C No. - 1623 of 2023

Petitioner :- Rakesh Kumar Yadav

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

Counsel for Petitioner :- Vijay Kumar Tiwari, Verender Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

29. Case :- WRIT - C No. - 2447 of 2023

Petitioner :- Smt. Sudha Gupta

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Civil Sectt. Lko. U.P. And 6 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

30. Case :- WRIT - C No. - 2926 of 2023

Petitioner :- Ram Swaroop Chaudhry

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply, Lucknow And Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

31. Case :- WRIT - C No. - 2998 of 2023

Petitioner :- Vijendra Kumar

Respondent :- State Of U.P. Thru. The Prin. Secy. Food And Supply Lko. And 6 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

With

32. Case :- WRIT - C No. - 6282 of 2023

Petitioner :- Shyam Bihari

Respondent :- State Of U.P. Thru. Prin. Secy. Food And Supply Lko. And 6

Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Vijay Kumar Tiwari, learned counsel for the petitioner as well as learned Chief Standing Counsel, Sri Pankaj Gupta, learned counsel on behalf of respondent No. 10 and Sri Veerender Kumar Tiwari, learned counsel for respondent Nos. 11 to 14.
2. With the consent of learned counsel for the parties, all the aforesaid writ petitions are being heard and decided by this common judgment.
3. Petitioners in the present bunch of writ petitioners are fair price shop licensees against whom complaints have been received by the authorities and a decision has been taken to proceed against them and to that effect have sought to initiate inquiry against the fair price shop licensees.
4. The grievance of the petitioners are that the food cell created by the State Government under the administrative control of the Commissioner, Food and Civil Supplies, Uttar Pradesh would have no jurisdiction to conduct such an inquiry and the orders by which the inquiry has been initiated have been assailed in all the writ petitions.
5. It has been submitted by learned counsel for petitioners that by means of Government Order dated 05.08.2019, the entire procedure for grant of the fair price shop license and also with regard to procedure to be adopted whenever complaints are received against a licensee have been provided for in great detail. It was stated that on promulgation of Government Order dated 05.08.2019 all the previous Government Orders in this regard were superseded.
6. Clause -1 of the Government Order dated 05.08.2019 provides for inquiry when the complaints are received against a fair price shop licensee which may be with regard non-issue of the food-grains, not using e-posh machines in respect of giving essential food-grains to the beneficiaries, and black-marketing being done by the licensee by selling the said food-grains in the open market and misusing the licenses. The complaints can be registered on the help-line/toll free number, call centre, I.G.R.S., to the SDM and other authorities stated therein. According to

Sub-Clause 2 of Clause 1, the procedure to be adopted on receipt of the complaints is provided. The complaints would be got verified and a preliminary inquiry would be conducted. At the stage of conducting preliminary inquiries, the details of the e-posh machines and the transactions undertaken through the help of e-posh machine which are available in the portal shall be looked into. It has been provided that the statements of all the persons concerned should be recorded at the preliminary stage so that preliminary inquiry is also conducted in the fair and impartial manner. It was further provided that even if there is a solitary complaint or complaints by few members still such a complaint would be registered and looked into.

7. The second clause relates to the authority who can pass penalty orders including suspension and cancellation. In this regard, it has been stated that for rural areas, the Sub-Divisional Magistrate would be entitled to conduct an inspection but penal action can be taken only by the District Magistrate on the report submitted by the Sub-Divisional Magistrate. It has been provided that Sub-Divisional Magistrate can also pass penalty orders against the licensees after seeking approval of the District Magistrate.

8. In Sub-Clause 3 of Clause 2, it has further been provided that if on inspection conducted by the officers of the Food Department, District Administration or other prescribed authorities of the shop run by the fair price shop licensee, it is found that he is committing irregularities or black-marketing, his fair price shop license can be suspended by the Sub-Divisional Magistrate after approval of the District Magistrate and this exercise can also be done by the District Supply Officer. The only condition which has been prescribed is that the suspension order would be a speaking order.

9. A perusal of the aforesaid Government Order clearly indicates that the procedure for proceeding against a fair price shop licensee has been prescribed where it has been envisaged that a preliminary inquiry would preceed, any penal action against a licensee. The report of the preliminary inquiry has to be submitted to the prescribed authority who can suspend the fair price shop license and order for a regular inquiry to be conducted in the matter. The order of the suspension should be a speaking order and at the stage of the preliminary inquiry, in case the

allegations pertain to shop for supply of essential commodities then the data of e-pos maintained on the portal has to be taken into consideration.

10. The aspect pertaining to conduct of an inquiry and passing penalty orders in case complaints are found to be correct are also provided in the Uttar Pradesh Essential Commodities (Regulation of Sale and Distribution) Control Order, 2016 (hereinafter referred to as the Control Order, 2016), it has been passed in pursuant of provisions of Clause (3) of Article 348 of the Constitution of India.

11. Clause 12 of the Control Order, 2016, provides that Commissioner, Food Officer, the competent authority and designated officer may within his jurisdiction require the owner, occupier or any other person in charge of any place, premises in which he has reason to believe any contravention of the provisions of this order has been or is being, or about to be made, to produce any book, account or other documents showing transaction relating to such contravention. The aforesaid authority may also enter, inspect or break open and search any place or premises, vehicle or vessel in which he has reason to believe that any contravention of the provisions of this order has been or is being or is about to be made.

12. In light of the above provisions, this Court has considered whether the Inspector, Food Cell / Police Cell has any jurisdiction or authority to inquiry into the complaints related to fair price shop licencees. The Police Cell was created by means of Government Order dated 22/02/1974 under the Food and Civil Supplies Department, and 17 post was sanctioned initially drawn initially from the police department. It was clearly provided that the Operational Incharge of the Police Cell would be the Commissioner Food and Civil Supplies Department, while that the Administrative control will remain with the DIG of police. Another government order dated 07/01/1975 as well as 21/05/1987 provides that the Police Cell shall be responsible for enforcement of various control orders to prevent black-marketing and profiteering and will also be responsible for conducting raids after informing the police. Another Government Order dated 14/10/1996 was issued to further strengthening the working of the Police Cell so that there could be more effective campaign against black marketing and profiteering of the essential commodities where it was found that the police cell was not very effective in the big KAVAL towns of the state, and therefore it was provided that

the mobile squads available in the KAVAL towns will assist the police cell in conducting raids and other enforcement work. It is incorrect to state that the government order dated 14/10/1996 in any manner restricted the operation of the police cell only to urban areas of the state, and restraining them from taking action in the rural areas.

13. It is in the aforesaid factual scenario that it has been vehemently submitted by the petitioner that there cannot be any inquiry or even a preliminary enquiry against the fair price shop licensees by the food cell or police cell.

14. To consider the nature of right sought to be protected by the petitioner, it would be relevant to consider the observations of this Court, in the case of **Gopi Vs State of U.P, (2007) 5 ALJ 367**, this High Court has held as under:-

"24. Realising the importance of the Public Distribution System, Parliament while bringing about the 73rd constitutional amendment included the Public Distribution System as one of the primary , functions of the gram panchayat and it has been incorporated in Article 243G of Part 9 of the Constitution. The Public Distribution System is obviously an avowed function of the State in order to ensure the distribution of essential commodities fairly. The object is clearly to provide benefit to the public at large in order to ensure supply of essential commodities which is necessary for the sustenance of daily life. The aforesaid object, therefore, has to be fulfilled keeping in view the intention of the Legislature which is to promote public awareness and ensure distribution of essential commodities. In essence, the object is to provide benefit to the public at large. As a necessary corollary to the same, the object is not to set up any trade for the benefit of any individual. It may be that by virtue of this licensing system, an individual also gets the opportunity to benefit himself by setting up a fair price distribution unit. However, such a licence does not fall within the category of a fundamental right to carry on trade and business as understood under Article 19(1)(g) of the Constitution of India. The Government Order which has been issued under the provisions of the Essential Commodities Act, is to regulate the supply and distribution of essential commodities fairly."

15. From the aforesaid provisions, the Police Cell created in the Office of Commissioner, Food and Civil Supply Department has been created with the

object of preventing black-marketing and profiteering by the fair price shop licensees distributing essential commodities. In this regard, it is already noticed that the Police Cell was formed only with a view to conduct the inquiry and it was responsible for enforcement of various control orders to prevent black-marketing and profiteering and was also responsible for conducting raids after informing the police. Accordingly, clearly it is noticed that the Police Cell was assigned with a task of conducting the inquiries against the fair price shop licensees and also undertake of search and seizure and there is no denying the fact that is the special domain of the police force.

16. Accordingly, we do not find any provision which may indicate that such Police Cell cannot inquiry into the matters pertaining to the black-marketing and other complaints against fair price shop licensees. A perusal of the Government Order dated 22.02.1974, 07.01.1975 and 21.05.1987 on the contrary indicate that an effective mechanism has been sought to be created to enforce the provisions of Essential Commodities Act and to prevent back-marketing and profiteering of essential commodities.

17. This Court is of the considered view that any allegation pertaining to black-marketing or profiteering by the fair price shop licensees has to be dealt with swiftness and effectiveness inasmuch as the common man is effected to a great extent. Therefore, the onus on the authorities is also great and they must inquire into the allegations in a fair manner in accordance to the provision provided. The grievance if any of the licensees can be considered by the authorities before whom the appeal can be filed as no fundamental right vests in the licensees to continue with the licensee and therefore ordinarily no writ petition would be maintainable challenging the inquiry proceedings. The licensees cannot stall the inquiry against the allegations levelled against him and he can vent his grievance if any⁷ only at the appellate stage.

18. The other aspect of the matter is that at the stage of conducting a preliminary inquiry the issue is only with regard to the determining the veracity of the allegations levelled against the fair price shop licensees. It is only when any merit is found in the allegations levelled in the complaint that a regular inquiry is undertaken at which stage the licensee is involved in the process of inquiry and

also given an opportunity of hearing alongwith a copy of the show cause notice and all the material which may substantiate the allegations against such licensee. Therefore, at the stage of fact finding inquiry, no right of the licensee is involved and the State Government in any case is under a mandate to take cognizance of complaints made against the fair price shop licensees and immediately conduct an inquiry so as to stem any irregularities being conducted by the fair price shop licensee inasmuch as such action may be adverse to public at large who are the beneficiaries of the liberal policies of food distribution by the Government.

19. The licensees cannot be seem to dictate the manner of inquiry being conducted against or and also the authority who may conduct such an inquiry. As already noticed, no right is vested in the licensees to continue with the fair price shop license and all these aspects are provided for in various statutes / rules and in case there is any grievance in this regard, there is provision for an appeal which may be utilized by the aggrieved licensees.

20. In light of the above, this Court does not find any infirmity in the preliminary inquiry being conducted against the petitioners and according the writ petitions are bereft of merits and **all writ petitions are dismissed.**

21. Considering that much time has lapsed during pendency of the present writ petitions, an interim protection is granted to the petitioners and authorities are directed to immediately commenced proceeding of inquiry against the fair price shop licensees in accordance with law and proceed further in the matter.

(Alok Mathur, J.)

Order Date :- 6.8.2024

Ravi/