

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:14705

Court No. - 5

Case :- WRIT - C No. - 8449 of 2022

Petitioner :- Ray Sahab

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

Counsel for Petitioner :- Anurag Shukla, Satish Kumar Sharma

Counsel for Respondent :- C.S.C., Anurag Srivastava, Manoj Kumar Rai

Hon'ble Abdul Moin, J.

1. Personal affidavit of Principal Secretary, Food & Civil Supplies, Lucknow dated 19.02.2024 filed today in Court by the learned Additional Chief Standing Counsel be kept on record.

2. Personal affidavit was required by this Court in terms of the order dated 16.01.2024 which for the sake of convenience is reproduced below:-

"1. Heard.

2. In pursuance to the orders dated 14.02.2023 and 23.02.2023, a supplementary counter affidavit has been filed on 02.03.2023. By placing reliance on the said affidavit, the contention of learned Standing counsel is that the District Magistrate, on an application moved by the petitioner, passed an order dated 06.05.2022, a copy of which is annexure SCA-1 to the said affidavit, per which the Additional District Magistrate was required to examine the explanation of the petitioner and submit a report.

3. In pursuance thereof, the Additional District Magistrate examined the explanation of the petitioner in presence of the Naib Tehsildar, Salon and five other officers and in respect of which an order dated 18.05.2022, a copy of which is annexure SCA-2 to the said affidavit, was also passed.

4. It is contended that the inquiry report was not submitted by the six officers along with the Additional District Magistrate rather the Additional District Magistrate required the other six officers only for the purpose of helping out in the inquiry for examining the statements and not that the inquiry was conducted by the other six officials and hence, the report submitted by the Additional District Magistrate does

not bear the signatures of the other six officials who helped out in the said inquiry.

5. Considering the aforesaid, the explanation is found satisfactory by this Court of the inquiry report only bearing the signatures of the Additional District Magistrate.

6. The contention of learned counsel for the petitioner is that though from the inquiry report dated 21.05.2022, the shortage of supply of ration vis-a-vis the N.I.S. report and also from the statements of ration card holders, it emerged that less ration has been supplied to the ration card holders, yet in the F.I.R. lodged against the petitioner under Section 3/7 of The Essential Commodities Act wherein final report has been submitted on 25.01.2022, a copy of which is annexure 15 to the petition (page 112), per which the Investigating Officer has indicated about the suspicious conduct of the Lekpal Shri Ram Sumer Maurya and Shri Vivek Kumar, Supply Inspector and also indicated that all the witnesses have resiled from their statements that have been given earlier to the authorities, and as such, no case under Section 3/7 of Essential Commodities Act is found against the petitioner. He further contends that the said report was approved by the District Magistrate, Raebareli.

7. The argument is that when the police in the final report has specifically concluded that no case is made out against the petitioner of giving supply of lesser food grains to the ration card holders, consequently no cognizance can be given to the inquiry report which has been conducted behind the back of the petitioner and in which the witnesses have indicated of lesser supply of food grains / ration by the petitioner.

8. Responding to that, the contention of learned Standing counsel, on the basis of averments contained in the counter affidavit are (a) that the Investigating Officer never visited the Gram Panchayat and never verified the stock of fair price license holder and also never recorded the statements of card holders and (b) that the District Magistrate has taken cognizance of the report of the Investigating Officer wherein the approval of the District Magistrate has been alleged to have been accorded by indicating that it is only the District Magistrate himself who is to accord the approval and no other officer and thus, the approval appears to be fake and not genuine. Specific averment to the said effect has been made in paragraph 25 of the counter affidavit dated 25.01.2023.

9. From perusal of the aforesaid facts, it is prima facie apparent that it is only the ration card holders who have not been supplied the full ration to which they are entitled to, as emerges from the inquiry report dated 21.05.2022, who are the ultimate sufferers and who would fall within the ambit of being "collateral damage" in the entire episode that has occurred. The ultimate beneficiary in the entire episode, prima facie, appear to be the fair price shop license holder, the Lekpal Shri Ram Sumer Maurya, the Supply Inspector Shri Vivek Kumar and the Investigating Officer who submitted his report dated 25.01.2022.

10. The Court while exercising jurisdiction under Article 226 of the Constitution of India cannot shut its eyes to the aforesaid sorry state of affairs which, prima facie, emerge from the perusal of record. The Court is also conscious and aware that the District Magistrate has himself indicated that the approval of the report of the Investigating Officer is only to be accorded by the District Magistrate himself and no other officer and as such the approval appears to be fake, yet the further action that may have been taken on the basis of the said averments, as contained in the counter affidavit filed way back on 25.01.2023 i.e. almost a year back, has still not been indicated.

11. Considering the aforesaid, the Court requires the Principal Secretary, Food & Civil Supplies, Civil Secretariat, Uttar Pradesh, Lucknow i.e. respondent No.1 to file his personal affidavit in the matter addressing all the aforesaid issues and indicating the action which has been taken / is proposed to be taken against the guilty officials in the entire episode and, thus, to ensure that at least the ration card holders get the due amount of food grains to which they are entitled to and the same is not defeated at the behest of either the fair price shop license holder or the other officials who are required to ensure that due food grains are received by the ration card holders.

12. Let the personal affidavit be filed within four weeks.

13. List this case for further hearing on 19.02.2024 at 02:15 P.M.

14. Interim order, if any, shall continue till the next date of listing."

3. Sri Anurag Shukla, learned counsel for the petitioner states that he does not intend to file any reply to the same.

4. From a perusal of the aforesaid order dated 16.01.2024, it emerges that the contention of learned counsel for the petitioner was that when the police in the final report has concluded that no case is made out against the petitioner of giving lesser supply of food grains to the ration card holders consequently, no cognizance can be given to the inquiry report dated 21.05.2022 which enquiry has been conducted behind the back of the petitioner and that despite the inquiry report having indicated the connivance of the lekhpal, the Supply Inspector Investigating Officer, no action has been taken against them.

5. In the supplementary counter affidavit filed today, a

specific averment has been made in paragraph 23 that the then Investigating Officer, Sri Praveen Gautam and the then Judicial Assistant, Sri Balaji Vidayarthi have been prima facie found guilty and a preliminary departmental inquiry has been directed to be conducted against Sri Praveen Gautam. As Sri Balaji Vidayarthi has retired as such, a letter dated 02.02.2024 has been sent to Secretary, Government of U.P for according sanction to initiate departmental proceedings against him as per CSR 351-A.

6. So far as the final report is concerned, it has been specifically averred in paragraph 21 of the affidavit that against the said report, a protest has been filed by the Supply Inspector before the learned Additional Chief Judicial Magistrate-I, Raibareilly on 05.12.2023 which is pending before the competent Court.

7. So far as distribution of food grains is concerned, it is contended that the same are being distributed by the shop with which the card holders have been attached.

8. Considering the aforesaid personal affidavit of the Principal Secretary, Food and Supply it is apparent that the action has been taken in pursuance to the order of this Court dated 16.01.2024 which action is found satisfactory.

9. As the pleadings are completed accordingly the Court proceeds to hear and decide the matter finally.

10. Heard Sri Anurag Shukla, learned counsel for the petitioner and Sri Rahul Shukla, learned Additional Chief Standing counsel appearing on behalf of the State-respondents.

11. Instant writ petition has been filed praying for the following main reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 19.11.2022 passed by opposite party no. 2, Joint Commissioner (Food), Lucknow Division, Lucknow in Appeal No. 2576 of 2022, Ray Sahab Singh Vs. State of U.P U/S 13 (3) of Essential Commodities (Regulation of sale and Distribution Control) Order, 2016 and impugned order dated 24.05.2022 passed by the Opposite Party No. 3, Upziladhikari, Tehsil- Salon District Raibareilly, contained as Annexure No. 1 & 2 to this writ petition.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the opposite party no. 3 to permit the petitioner to run the fair price shop of Village Panchayat Bishaiya, Block & Tehsil Salon, District Raibareilly during pendency of the present writ petition before this Hon'ble Court

12. The facts set forth by the learned counsel for the petitioner are that the petitioner was having a license of the fair price shop of Village Panchayat- Bisaiya Block & Tehsil- Salon District- Raibareilly and had been running the said shop without any complaint since long. On 03.09.2020, a complaint was made against the distribution of food grains by the petitioner on the public hearing portal. An inquiry was conducted by the Regional Supply Inspector, Salon who submitted his report on 07.09.2020. On the basis of the said report, the license of the petitioner was suspended vide order dated 10.09.2020, a copy of which is annexure 4 to the writ petition. Being aggrieved, the petitioner filed an appeal and the learned appellate authority vide order dated 05.12.2020, a copy of which is annexure 5 to the writ petition remanded back the matter to the competent authority to pass a fresh order after considering the explanation of the petitioner. In pursuance thereof, the petitioner submitted his explanation which was examined by the inquiry committee which submitted its report on 04.03.2021. The petitioner preferred an application for re-inquiry which was also directed and after considering the explanation of the petitioner, the license of the petitioner was cancelled vide order dated 08.07.2021, a copy of which is annexure 9 to the writ petition.

13. The petitioner being aggrieved with the order dated 08.07.2021 filed an appeal. Vide order dated 31.08.2021, a copy of which is annexure 10 to the writ petition, the appeal was allowed and the matter was remitted to the competent authority to pass a fresh order.

14. In pursuance thereof, an inquiry was again conducted and a report was submitted on 04.05.2022. The petitioner being dissatisfied with the said inquiry requested for re-inquiry and again the inquiry report dated 21.05.2022 was submitted, a copy of which is part of annexure 12 to the writ petition.

15. After considering the inquiry report, the competent authority vide order dated 24.05.2022, a copy of which is annexure 2 to the writ petition cancelled the license of the petitioner. Being aggrieved, the petitioner filed an appeal which has been rejected vide order dated 19.11.2022, a copy of which is annexure 1 to the writ petition. Being aggrieved by both the orders, the instant writ petition has been filed.

16. Learned counsel for the petitioner has raised following arguments in order to challenge the orders impugned namely (a) the appellate authority has decided the appeal without hearing the petitioner (b) copy of the inquiry report has not been supplied to the petitioner on the basis of which the cancellation of license order dated 24.05.2022 has been passed (c) when the final report had been submitted by the police in the case filed against the petitioner under the provisions of Section 3/7 of the Essential Commodities Act which was approved by the District Magistrate, Raibareilly consequently, in the summary proceedings against the petitioner conducted by the respondents it could not be said that the petitioner has not supplied the food

grains or has made lesser supply of the food grains (d) the District Magistrate had directed for formation of a six member committee, as stands recorded in the report dated 21.05.2022 (Page 87 & 88 of the writ petition) but the report has been submitted only by one person i.e. the Additional Magistrate as per annexure 12 of the writ petition (e) that there is difference in the statements recorded of the complainants & (f) the Government order dated 05.08.2019 which has been issued subsequent to the Control Order, 2016 gives the detailed procedure for cancellation of the fair price shop license has not been adhered to.

17. No other ground has been urged.

18. Elaborating his arguments, Sri Shukla argues that when the appeal was listed on 08.11.2022, the petitioner or his counsel could not appear and the appellate authority reserved the orders on the appeal and thereafter dismissed the appeal of the petitioner vide order dated 19.11.2022 and as the said order has been passed without hearing the petitioner the same would thus render the order to be in gross violation of the rules of natural justice and as such, the appellate order merits to be quashed on this ground alone.

19. The further argument is that the inquiry report on the basis of which the license of the petitioner has been cancelled, was never supplied to him and thus the order impugned merits to be set aside on account of the report with which the petitioner was never confronted with having been relied upon while passing the order impugned. Placing reliance on the Government order dated 05.08.2019, a copy of which is annexure 17 to the writ petition , the contention is that the said Government order contains a

detailed procedure for holding of an inquiry against the license holder and as the petitioner was never accorded an opportunity of cross examining the complainants whose statements have been recorded neither the inquiry report was supplied to him as such, the order of cancellation of license of the petitioner would run foul to the provisions of rules of natural justice and accordingly, merits be quashed on this ground.

20. Reliance has been placed on the judgment of this Court in the cases of **Amar Nath Vs. Commissioner, Lucknow Division and Ors** passed in **Writ-C No. 1001443 of 2007** decided on **19.12.2022**, **Writ-C No. 3407 of 2022 Inre: Amodnath Mishra Vs. State of U.P and ors** decided on **30.11.2023** as well as a judgment of this Court in the case of **Manoj Kumar Pathak Vs. State of U.P and Ors** passed in **Misc. Single No. 3739 of 2012** decided on **11.11.2014**.

21. On the other hand, Sri Rahul Shukla, learned Additional Chief Standing counsel on the basis of averments contained in the counter affidavit has argued that an inquiry report had been submitted by the Inquiry Officer wherein the statements of the witnesses were examined and the details given by the petitioner regarding supply were also examined as per the details available on the public portal through the MIS report. All the witnesses specifically indicated about less supply of food grains having been made by the petitioner despite the petitioner having taken their thumb impression on the e-pass machine which thus prevailed upon the competent authority to cancel the license of the petitioner. It is also contended that the appeal was required to be decided in terms of the directions issued by the writ Court but as the appeal was not decided, a contempt petition had also been filed indicating that despite expiry of the time prescribed by the

writ Court, the appeal has not been decided. It is also contended that the appeal was listed on 18.11.2022 but neither the petitioner nor his counsel were present nor was there any request for adjournment and accordingly, the appellate authority, after considering the order passed in the writ Court dated 06.09.2022 as well as a contempt petition having been filed, reserved the orders on the appeal on 18.11.2022 and upon finding no merits in the appeal, dismissed the appeal vide order dated 19.11.2022.

22. The further argument of Sri Shukla is that a perusal of the inquiry report dated 21.05.2022 would indicate the gross irregularities carried out by the petitioner in supply of food grains to the ration cards holder and he not having made the complete supply rather has given lesser supply to the ration card holders and based on the said report, the competent authority has cancelled the license of the petitioner.

23. Reliance has also been placed on the Division Bench judgment of this Court in the case of **Shankar Prasad Vs. State of U.P and Ors** passed in **Misc. Single No. 32679 of 2019** decided on **08.12.2021** on a reference made by the learned Single Judge of this Court noticing a cleavage of opinion in various decisions to contend that the Division Bench has categorically held that the inquiry envisaged for cancellation of a license in terms of a relevant Government orders is only summary in nature and not a detailed inquiry.

24. Placing reliance on the aforesaid judgment, Sri Shukla argues that as the charges against the petitioner have been proved after a summary enquiry consequently, there was no occasion to either supply of the inquiry report or for cross examination of the witnesses and as such, the orders impugned have correctly been

passed in the eyes of law.

25. Heard the learned counsel appearing on behalf of the contesting parties and having perused the records.

26. From a perusal of records it emerges that the petitioner was having the license of a fair price shop. Initially, the license of the petitioner had been suspended on 10.09.2020. An FIR had also been lodged against the petitioner under Section 3/7 of the Essential Commodities Act. The petitioner had preferred an appeal aggrieved against the suspension order which was allowed vide order dated 05.12.2020 and the matter had been remitted to the competent authority to pass a fresh order. After considering the explanation of the petitioner and the inquiry report, the license of the petitioner was cancelled vide order dated 08.07.2021. The appeal filed by the petitioner against the said order was partly allowed vide order dated 31.08.2021 and the matter was remitted to the competent authority to pass a fresh order. While remitting the matter to the competent authority, the appellate authority has specifically required the competent authority to do two things namely to consider the distribution made by the petitioner as per the MIS report available on the public portal along with statements of the complainants and to pass a reasoned and speaking order after considering the same. Thus, the scope before the Prescribed Authority to pass a fresh order was only confined to the directions as had been given by the appellate authority vide its order dated 31.08.2021. Incidentally, the order dated 31.08.2021 has not been challenged by the petitioner at any stage and as such, the directions issued by the appellate authority have attained finality.

27. Considering the order of the appellate authority , the

competent authority called for an inquiry report which was sent on 04.05.2022 against which the petitioner submitted his objections which occasioned another inquiry report to be submitted which was submitted on 21.05.2022 by the Additional Magistrate, Raibareilly. The said report specifically indicates about the statements of the witnesses being seen in the context of the supply as per MIS report available on the public portal from which the Inquiry Officer specifically concluded of lesser ration or in some cases no ration being made available to quite a large number of ration card holders. Incidentally, the report also indicates about the statement of the petitioner being recorded. The report also concluded that the petitioner made the ration card holders put their thumb on the e-pass machine for the purpose of showing the distribution but physically, lesser ration was distributed to the ration card holders. Based on the said report, the license of the petitioner was cancelled vide order dated 24.05.2022 which order has been upheld with the dismissal of the appeal vide order dated 19.11.2022.

28. The grounds taken by the learned counsel for the petitioner while raising a challenge to the orders impugned have already been indicated above. Prior to considering the grounds as raised by the learned counsel for the petitioner while raising a challenge to the order impugned, the Court may indicate the procedure which is required to be followed for the purpose of cancellation of a fair price shop license.

29. In this regard, it would be suffice to refer to the Division Bench judgment of this Court in the case of **Shankar Prasad (supra)** wherein this Court after referring to various Government orders that have been issued in this regard including the Uttar Pradesh Essential Commodities (Regulation of Sale and

Distribution Control) Order, 2016 has held as under:-

"47. Thus, we answer the reference as under:-

*(i) It is held that the parameters for an enquiry to be conducted against the licensee for the irregularities committed by the licensee in terms of the Distribution of Essential Commodities is on broad principles of natural justice where the competent authority shall provide a show cause notice to the licensee indicating the violations and irregularities committed by the licensee with sufficient particularity to enable him to respond to the same and after affording an opportunity of hearing, the decision can be taken by the competent authority by a reasoned and a speaking order. **The enquiry envisaged is summary in nature and does not entail a detailed hearing, akin to a departmental enquiry;***

(ii) It is held that the words "full fledged enquiry" as used by the Full Bench of this Court in the decision of Puran Singh (supra) has to be read in context with paras 4 and 5 of the Government Order of July 2004 and the scheme therein which merely requires adherence to the principles of natural justice and does not provide for a detailed enquiry involving various stages and steps as are required to be met in disciplinary enquiry against a government servant."

30. From a perusal of the aforesaid judgment it is apparent that the Division Bench has categorically held that the parameters for an inquiry to be conducted against the license holder for the irregularities committed by the licensee is on broad principles of natural justice where a show cause Notice has to be issued to enable the licensee to respond to the same and after affording an opportunity of hearing, the decision has to be taken by the competent authority by a reasoned and speaking order and that the inquiry envisaged is summary in nature and does not entail a detailed hearing akin to a departmental inquiry.

31. The question which arises is as what is a summary inquiry or summary proceedings or an inquiry summary in nature.

32. In this regard, it would be apt to refer to the definition of summary proceedings as given in the **Black's Law Dictionary, Ninth Edition** which defines summary proceeding as under:-

"Summary Proceeding:- A nonjury proceeding that settles a controversy or dispose of a case in a relatively prompt and simple manner."

33. "Summary" has been defined in the **Black's Law Dictionary, Ninth Edition** as under:-

*Summary:- 1. Short;concise <a summary account of the events on March 6 > 2. **Without the usual formalities**;esp. without a jury <a summary trial>. 3. Immediate; done without delay <the new weapon was put to summary use by the Military.*

34. From a perusal of the meaning of 'summary' and 'summary proceeding' as per the Black's Law Dictionary, it is apparent that summary proceedings would be proceedings without the usual formalities i.e proceedings to be done without any delay so as to settle a controversy or dispose of a case in a relatively prompt and simple manner and without the usual formalities.

35. Armed with the meaning of summary proceeding as per Black's Law Dictionary and the summary procedure required to be adopted as held by this Court in the case of **Shankar Prasad (supra)** it is apparent that there is no requirement while cancelling the license of a fair price shop holder to go in for a detailed inquiry i.e for cross examination of the complainants or the witnesses or for giving a copy of the inquiry report to the licensee for in case such a view is taken, the procedure prescribed would no longer remain summary and would be akin to a detailed inquiry which is clearly not contemplated under the Control Order, 2016 as interpreted and held by this Court in the case of **Shankar Prasad (supra)** .

36. Subsequent to the Division Bench judgment of this Court in the case of **Shankar Prasad (supra)** this aspect of the matter has also been considered by a co-ordinate bench of this Court in the case of Radhey Shyam Vs. State of U.P and Ors passed in

Writ-C No. 22891 of 2019 decided on 16.02.2022 wherein this Court has held as under:-

"26. In the case of Smt. Meena Devi (supra), a coordinate Bench of this Court specifically held after considering the Full Bench decision of this Court in the case of Puran Singh (supra) that the licensee of a fair price shop is only an agent of the Government engaged for ensuring the equitable distribution and availability of the essential commodities at fair prices. The agent having signed the license/agreement is bound by the conditions mentioned therein including all such conditions which the Government chooses to impose during the currency of such license. A need for fairness in procedure adopted for suspension and cancellation of such license/agreement would not mean that these licenses fall within the category of a fundamental right to carry on the business as provided under Article 19(i)(g) of the Constitution of India. In the said judgment, judgments passed in the case of Ashok Kumari Tiwari (supra) and Sanjay Kumar (supra) have been distinguished in paragraphs 19 to 21, which read as under:-

"19. It is this observation of the Hon'ble Full Bench regarding the "fullfledged inquiry" after suspension order and show cause notice is issued, which has been interpreted by the Co-ordinate Benches of this Court to include giving a copy of inquiry report, copies of the statements of witnesses/villagers fixing date, time and place of hearing for such cross-examination as the licensee wishes to carryout of such villagers, besides examination of documentary evidence submitted by him, before the Licensing Authority can pass the order of cancellation.

20. The judgment rendered by the Full Bench of this Court was in reference to the questions referred to it. All observations made by the Full Bench in the aforecited judgments in Puran Singh (supra) are therefore to be taken into consideration in the context in which the reference was made and decided. The Full Bench decision of this Court had examined paragraphs-4 and 5 of the government order dated 29.07.2004 in the context of the reference made to it. The language of paragraph - 4 refers to full opportunity of hearing being given to the licensee in the inquiry to be conducted after suspension order is passed. The inquiry is to be completed within a maximum period of one month necessarily. The final order was to be passed by the Licensing Authority on merits after making a clear mention therein that the concerned licensee had been given opportunity of hearing and in case he did not co-operate in the inquiry, a mention was to be made of the notices served upon him including the notice giving the final opportunity in case he avoided the inquiry.

21. The Hon'ble Full Bench had referred to the object of issuing affair price shop license and appointing agents for distribution of essential commodities and had emphasized that a license is given for the benefit of ordinary citizens, the beneficiaries of the Public Distribution System."

27. In the aforesaid case, this Court has held that observation in paragraph 35 of the judgment in the case of Puran Singh (supra) that a full-fledged inquiry in the matter of misconduct of a licensee in distribution of scheduled commodities should be held, does not mean that full-fledged opportunity to the licensee to cross-examine the witnesses fixing, date, time and place of the inquiry etc. as provided in respect of disciplinary inquiry against Government servants.

28. Learned Single Judge in paragraph 50 of the aforesaid judgment had held that judgments rendered by a coordinate Bench of this Court in the case of Gyan Singh Vs. State of U.P. and others, decided on 12.9.2012, Ashok Kumar Pandey Vs. State of U.P. and others, decided on 13.12.2012 and Abu Baker Vs. State of U.P. and others, 2010 (6) ADJ 339 were clearly per incuriam as no such provision exists in the Government Order dated 29.7.2004 for fixing date, place and time for inquiry/oral hearing and giving opportunity to the licensee to cross-examine the witnesses. Paragraphs 50 and 51 of the said judgment are extracted herein-below:-

"50. The judgment rendered by Coordinate Benches before the issuance of this order dated 16th October, 2014 Viz. Gyan Singh Vs. State of U.P. and others decided on 12.09.2012, in Ashok Kumar Pandey Vs. State of U.P. and others decided on 13.12.2012 on the basis of the judgment in Abu Baker Vs. State of U.P. and others, reported in 2010 (6) ADJ 339 decided on 23rd of February, 2010, which is the first judgment wherein relying upon D.K. Yadav Vs. J.M.A. Industries, (1999) 3 SCC 259 and National Building Construction Corporation Vs. S. Raghunathan: (1998) 7 SCC 66, the observation was made that the inquiry was vitiated because the statements of Cardholders were recorded behind the back of licensee and neither copies of the statements of the aforesaid witnesses was furnished to the petitioner nor he was given any opportunity to cross-examine the witness so examined, were clearly per incuriam as no such provision existed in the government order dated 29.07.2004 at the time for fixing date, place and time of inquiry/oral hearing and giving opportunity for the licensee to cross examine the witnesses/ complainants.

51. This Court is of the considered opinion that a fair price shop licence is only an agent for distribution of scheduled commodities under the Public Distribution System. Such a licensee being only an agent acts for the principal i.e. the Government with a fixed rate of commission on the amount of allocation of essential commodities and their distribution by weight. The Public Distribution System has been envisaged by the government only to help the poor and needy. It is honest tax-payer's money which is used to subsidize the price of such essential commodities so that they come within the reach of poor and needy and they are able to feed themselves and their family in a respectable fashion and are not led to mendicancy and starvation. The principal remaining the State Government, and the licensee being only an agent, the principal is entitled to take away the licence in case of irregularity in distribution. Of course, there should exist valid reasons for taking away of such licence and some

opportunity of hearing is required to be given to the agent in case of complaints being received against him. However, there is no fundamental right nor any Constitutional right for such a licensee akin to Article 311 of the Constitution of India. Even in the case of government servants protected under Article 311 of the Constitution of India the degree of proof required for establishment of guilt is that of "preponderance of probability."

33. A coordinate Bench of this Court in the case of Najakat Ali (supra) has held that after issuance of the Control Order, 2016, the earlier Government Orders of 2004, 2014 and 2015 stood repealed and would not occupy the field of laying down the procedure with respect to suspension and cancellation of the fair price shop. The entire procedure has been prescribed in the Control Order, 2016. Now, the inquiry is to be conducted by the designated officer regarding irregularities/malpractices of the dealer as per the provisions of sub-clause (7) of Clause 8 of the Control Order, 2016, which provides that if the license of the fair price shop is suspended, he has to be issued show cause notice and explanation/reply of the show cause notice is to be examined by an officer one rank above the inquiry officer. It has been further held that Puran Singh's (supra) judgment was delivered considering the Government Order dated 29.7.2004, which since has been repealed. In paragraphs 94 to 96, a coordinate Bench of this Court in the aforesaid case held as under:-

"94. As the existence of agent/dealer arise from the agreement executed between them and the State, any failure on their part or term of license being violated, the matter has to be dealt with by the authority within the scope and ambit of the Act/Control Order under which the same has been executed. The argument advanced that the petitioners have vested right is not correct as the license granted to a dealer/agent does not fall within the ambit of fundamental right to carry on their business, as provided under Article 19(1)(g) of the Constitution.

95. While dealing with the matter of suspension or cancellation of a license, the authority have to confine themselves to the violation of the condition of license and sub-clause (7) of Clause 8 of Control Order, 2016 protects the interest of agent/dealer by affording an opportunity once an inquiry is conducted and any material coming on record against the term of condition of license, the same being suspended and a show cause notice is to be issued seeking reply/explanation.

96. The principle of audi alteram partem is complied once the notice is issued and an opportunity is provided to a dealer/agent to submit his reply and the same being considered by the authorities. The claim that a full fledged inquiry be conducted providing opportunity of cross-examination of witness, copy of documents, complaint and consideration of subsequent affidavits, if filed in favour of the dealer, by the authorities cannot be accepted, as it is not a departmental or regular inquiry under Article 311 of the Constitution of India and is only a inquiry of summary nature

where in case of violation of terms of conditions of license, action is initiated and opportunity, as provided under the Control Order, 2016, is given before the license is cancelled."

34. It has been further held that under the Control Order, 2016, specific provision having been made for consideration of reply/explanation pursuant to the suspension, the requirement of audi alteram partem having been afforded to a dealer appointed under an agreement, can not claim that a regular inquiry to be conducted giving opportunity for examination of documents, cross-examination of witnesses, providing copy of the inquiry report and taking of affidavits, as provided under the departmental inquiry.

35. Thus, this Court does not find substance in the submission of learned counsel for the petitioner that petitioner was not afforded full-fledged inquiry and opportunity of cross-examination etc. was not provided to him and, therefore, the order passed by the licensing authority and the appellate authority are bad in law. The authorities have to act in accordance with the provisions contained in sub-clause (7) of Clause 8 of the Control Order, 2016. The dealer does not have a vested right to carry on the license of fair price shop. The licensee is an agent of the Government and the distribution of the essential commodities from the fair price shop should be strictly in accordance with the terms and conditions of the license. Any violation of conditions, would result in proceedings for suspension and revocation of such license.

37. Now the Court proceeds to consider the arguments as raised by the learned counsel for the petitioner.

38. So far as the ground that the appellate authority has decided the appeal without hearing the petitioner is concerned, suffice it to state that the appellate authority while deciding the appeal had reserved the order on 18.11.2022. The order sheet of the said date is on record as annexure 21 to the writ petition which indicates that the case was repeatedly called out but no body appeared on behalf of the appellant, the petitioner herein. The appellate authority specifically made note of the order passed by the writ Court dated 06.09.2022 and of a contempt application being filed for compliance of the said order and as nobody appeared on behalf of the appellant, consequently, reserved the order in the appeal which has subsequently been pronounced on 19.11.2022. There is no endorsement in the order

sheet dated 18.11.2022 of any request having been made by the junior colleague of the learned counsel for the appellant as specifically stated in paragraph 48 of the writ petition. Although it has been indicated that an application to argue the matter had been sent on 19.11.2022 through registered post yet by the said date the order had already been pronounced by the appellate authority. Thus, the said ground is rejected as the appellate authority under the order of the writ Court decided the matter within the specified time and in case the learned counsel for the appellant or the appellant himself failed to appear on the said date consequently, no error is found in the appellate authority having reserved the order on the said date in the absence of the appellant or his counsel.

39. So far as the copy of the inquiry report not having been supplied to the petitioner, this aspect of the matter has also been considered threadbare above. Once a summary procedure is to be adopted consequently, there is no occasion for supply of inquiry report to the license holder. Thus, the said ground is rejected.

40. So far as the ground that a final report had been submitted by the police in the case filed by the petitioner under the provisions of Section 3/7 of the Essential Commodities Act which was approved by the District Magistrate which fact should have been considered by the authorities while cancelling the license of the petitioner and while considering the appeal, the said ground may not detain the Court keeping in view the personal affidavit filed by the Principal Secretary, Food and Civil Supply, Lucknow dated 19.02.2024 wherein in paragraph 21 of the said affidavit it has been indicated that a protest has been filed by the Supply Inspector before the learned Additional Chief Judicial Magistrate-I, Raibareilly which is pending before the

competent Court. Thus, the said ground is also rejected.

41. So far as the ground that the District Magistrate had directed for formation of six member committee, as stands recorded in the report dated 21.05.2022 but the report has only been submitted by one person i.e the Additional District Magistrate, the ground may also not detain the Court keeping in view the order dated 16.01.2024 passed by this Court wherein the aforesaid contention of the learned counsel for the petitioner had been recorded and in pursuance thereof, the supplementary counter affidavit has been filed on 02.03.2023 indicating that the inquiry report was not submitted by the six officers rather the Additional District Magistrate required the six officers only for the purpose of helping out in the inquiry for examining the statements and not that the inquiry was required to be conducted by the other six officials and thus, the report submitted by the Additional District Magistrate did not bear the signatures of other six officials which explanation was found satisfactory as recorded by this Court in its order dated 16.01.2024. No objections having been filed to the said factum consequently, the ground raised by the learned counsel for the petitioner in this regard is also rejected.

42. So far as there being difference in the statements as recorded of the complainants, the Court is of the considered view that although the complaint of even one ration card holder would suffice where requisite food grains have not been made available to the citizens belonging to the bottom rung of the society yet the Court, as an abundant precaution, has painstakingly gone through the statements as find placed in the inquiry report dated 21.05.2022. A perusal of the said report would indicate that the statements of 32 complainants/witnesses have been seen wherein

all have deposed of lesser supply of food grains, misbehavior by the license holder Sri Ray Sahab with various women card holders and despite the card holders putting their thumb on e-pass machine for supply of requisite food grains as per the number of units indicated in the ration card, lesser food grains were supplied. Thus, the said ground is also rejected.

43. So far as non adherence to the Government order dated 05.08.2019 is concerned, the Court has itself gone through the Government order which is filed as annexure 17 to the writ petition. The said Government order gives the procedure to be followed while cancelling or suspending the license. The said Government order nowhere provides for supply of the inquiry report to the license holder or for that matter cross examining all the complainants or the witnesses rather it provides for strict adherence to the time schedule of one month for completion of an inquiry against the license holder and for passing of a speaking order.

44. Perusal of the impugned order of cancellation dated 24.05.2022 would indicate that there has been strict adherence to the Government order dated 05.08.2019 inasmuch as the petitioner has been heard, the statements of the witnesses have been recorded as per inquiry report dated 21.05.2022 which have also been considered while cancelling the license of the petitioner by a speaking order. The competent authority has concluded that the petitioner has indulged in the irregularities and in this view of the matter, the license of the petitioner has been cancelled. Thus, when the order impugned dated 21.05.2022 is seen in the light of the Government order dated 05.08.2019, the Court records that there has been strict adherence to the said Government order.

45. So far as the judgments over which reliance has been placed by the learned counsel for the petitioner i.e **Amodnath (supra) & Manoj Kumar Pathak (supra)**, suffice it to state that all the judgments have been rendered by the Single Judges of this Court which judgments would obviously have to give way to the Division Bench judgment of this Court in the case of **Shanker Prasad (supra)**.

46. So far as the judgment of this Court in the case of **Amar Nath (supra)** is concerned per which **Shanker Prasad (supra)** has also been considered, suffice it to state that in the said case this Court had specifically concluded that the order of cancellation and rejection of appeal were orders based on extraneous grounds alien to the charges levelled against the petitioner and in this view of the matter the Court interfered. As already indicated above, this Court has examined all the grounds as have been raised by the learned counsel for the petitioner but none of the grounds have been found to be legally tenable in the eyes of law. The orders impugned, both of cancellation of the license and rejection of the appeal, are speaking order having been passed after considering in detail the inquiry report and reply of the petitioner after giving due opportunity of hearing to him.

47. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is **dismissed**.

Order Date :- 19.2.2024
Pachhere/-

(Abdul Moin,J.)

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