

**Court No. - 33**

**Case :-** WRIT - C No. - 7885 of 2025

**Petitioner :-** Nandani Mahila Svayam Sahayata Samooh, Garm Panchyat Parsauni And Another

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Gyanu Shukla

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

**Hon'ble Prakash Padia,J.**

1. The petitioners have preferred present writ petition inter-alia with the prayer to quash the impugned order dated 29.05.2024 passed by the respondent no.2 and the subsequent order dated 25.06.2024 passed by the respondent no.3 respectively.

2. The petitioners are subsequent allottee after the license of fair price shop of respondent no.4-Ganga Jali was cancelled on 10.04.2023. A resolution was passed by the Gram Sabha and thereafter vide order dated 13.10.2023 passed by the Gram Panchayat, a decision was taken by the Sub Divisional Magistrate, Kasya, Kushinagar on 28.11.2023 by which petitioners were appointed a new fair price shop dealer. Against the aforesaid order dated 10.04.2023, by which the fair price shop license of the respondent no.4-Smt. Ganga Jali has been cancelled, the respondent no.4 has preferred an appeal as provided under Clause 13 (1) U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 before the respondent no.2-Joint Commissioner (Food and Supply) Gorakhpur Division, Gorakhpur. The said appeal was allowed by him vide its judgment and order dated 29.12.2023. Aggrieved against the aforesaid petitioners approached this Court by filing a petition being Writ C No.4670 of 2024 which was partly allowed by this Court on 27.02.2024 only

on the ground that the opportunity of hearing was not provided by the appellate authority while allowing the appeal filed by the respondent no.4. The judgement and order dated 27.02.2024 reads as follows :-

*"1. Heard Sri Gyanu Shukla, learned counsel for the petitioner and learned Standing Counsel for the State as well as Sri Vishal Tandon, learned counsel for respondent no.4.*

*2. Through this writ petition, a challenge has been laid to the appellate order dated 29.12.2023 passed by respondent no.2 allowing the appeal of respondent no.4, the original allottee of the fair price shop on the ground that the appeal was heard by the appellate authority without impleading the petitioner who is a subsequent allottee and was required to be heard in view of the decision rendered in the case of Ram Kumar Vs. State of U.P., 2022 (11) ADJ 229 SC.*

*3. It is contended by learned counsel for the petitioner that licence of the fair price shop of respondent no.4 was cancelled and the Nandini Mahila Svayam Sahaita Samooch through its Secretary, Sarita Devi, the petitioner was appointed the subsequent allottee of the fair price shop.*

*4. Against the order passed by the licensing authority cancelling the licence of the fair price shop of respondent no.4, an appeal was preferred before the respondent no.2 which was allowed on 29.12.2023 without hearing the petitioner.*

*5. Sri Vishal Tandon, learned counsel for original allottee/respondent no.4 has submitted that the present petition is not maintainable on behalf of the petitioner as it has been filed in the name of Secretary and not in the name of Nandini Mahila Svayam Sahaita Samooch to which the subsequent allotment was made after the licence of the respondent no.4 was cancelled.*

*6. Sri Tandon, learned counsel has further contended that the matter at the appellate stage was contested by one Shanti Devi. He further contends that the subsequent allotment was made on 06.12.2023 and the appellate order was passed on 29.12.2023 and the respondent no.4 was not aware about the subsequent allotment, as such, the petitioner was not made a party. He further tried to distinguish the judgment rendered by Apex Court in case of Ram Kumar (supra).*

*7. Having heard learned counsel for respective parties and from perusal of record, I find that the present petition has been filed at the behest of the Secretary of Nandini Mahila Svayam Sahaita Samooch in her personal capacity and not through the Nandini Mahila Svayam Sahaita Samooch to whom the licence was granted. However, correspondence made by the Sub Divisional Magistrate, Kasaya, Kushinagar on 28.11.2023 demonstrates that the correspondence was made in the name of the Secretary.*

*8. The objections raised by respondent no.4 as to the petition having not been*

*filed on behalf of the Nandini Mahila Svayam Sahaita Samooh and by the Secretary in her personal name is a technical objection, but the root of the matter is that Nandini Mahila Svayam Sahaita Samooh was not made a party in the appeal filed by respondent no.4 before appellate authority, and was not heard before the final decision was taken. The matter is no more res integra and in the case of Ram Kumar (supra), the Apex Court clearly held that the subsequent allottee has a right of being heard before an order is passed.*

*9. This Court finds that to do justice between the parties, it is necessary that the Nandini Mahila Svayam Sahaita Samooh should be heard before an order is passed by the appellate authority and the petition cannot be thrown out merely on a technical issue that the Nandini Mahila Svayam Sahaita Samooh itself is not a party in the writ petition and the same has been preferred through its Secretary.*

*10. If the objections raised by the respondent is accepted it would be hyper technical and justice will be denied to petitioner who was not made party by respondent no.4 and was neither heard before decision was rendered by the appellate authority. Dismissing the writ petition on technical ground would be in defiance of the dictum of Apex Court which does justice between the parties giving an opportunity to the subsequent allottee to be heard before the judgment is rendered by appellate authority.*

*11. In view of the said fact, I find that the order dated 29.12.2023 is unsustainable in the eyes of law as the Nandini Mahila Svayam Sahaita Samooh has not been heard before the appeal was decided.*

*12. Thus, the matter is relegated back to the appellate authority i.e. respondent no.2 which shall after hearing all the affected parties as well as Nandini Mahila Svayam Sahaita Samooh pass necessary order within two months from the date of production of certified copy of this order, strictly in accordance with law.*

*13. Writ petition stands partly allowed."*

3. Pursuant to the aforesaid now fresh order has been passed by the respondent no.2-Joint Commissioner (Food and Supply), Gorakhpur Division, Gorakhpur in favour of the respondent no.4 on 29.05.2024 and an order dated 29.06.2024 was passed by the respondent no.3-Joint Magistrate/Deputy District Magistrate, Kasya, District Kushinagar by which respondent no.4 was granted license of fair price shop in question. Aggrieved against the aforesaid petitioners have preferred present writ petition.

4. It is argued by counsel for the petitioners that the petitioners challenges aforesaid orders on the ground that various

departmental evidence placed before the respondent no.2 was not taken into consideration by him. It is further argued that the order was passed in routine manner and without application of judicial mind.

5. On the other hand it is argued by learned Standing Counsel that the petitioners who are subsequent allottee has no right to challenge the orders passed by the authorities in favour of the respondent no.4. Apart from the same, it is argued that subsequent allottee does not have the independent right to challenge the validity of the orders passed by the authority in favour of fair price shop dealer.

6. Heard learned counsel for the parties and perused the record.

7. From perusal of the record it is clear that the petitioners are subsequent allottee. Earlier when the order was passed in appeal filed by the respondent no.2 in favour of the respondent no.4, the writ petition was filed by the petitioners, which was allowed only on the ground that the petitioners are subsequent allottee but the opportunity of hearing was not provided by the respondent no.2 before allowing the appeal in view of the law laid down by the Hon'ble Apex Court in the case of ***Ram Kumar Vs. State of Uttar Pradesh and others*** reported in ***2022 (11) ADJ 229***. Now opportunity of hearing has already been provided to the petitioners and thereafter an order has been passed by the respondent no.2 in favour of the respondent no.4 and subsequent to the same, fresh license was also granted in favour of the respondent no.4 by the respondent no.3 on 25.06.2024.

8. In this view of the matter, the Court is of the opinion that the petitioners being a subsequent allottee does not have any

independent right to challenge the order passed by the respondent no.2 in favour of the respondent no.4.

9. Accordingly, the petition being devoid of merit is hereby dismissed.

**Order Date :-** 19.3.2025

Pramod Tripathi