Court No. - 33

Case :- WRIT - C No. - 30880 of 2019

Petitioner :- Nafisurahman
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Bhuvnesh Kumar Singh,Vishal Tandon
Counsel for Respondent :- C.S.C.

Hon'ble Prakash Padia,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. The question of law involved in the present petition is that whether the fair price shop license/agreement could be cancelled/suspended on the ground of registration of F.I.R. under Section 3/7 Essential Commodities Act.

3. Facts in brief as contained in the petition is that the petitioner was fair price shop license holder and his license of fair price shop was cancelled by the respondent No. 3/District Supply Officer, Bijnor vide its order dated 19/11.01.2019 only on the ground that the petitioner misused the Aadhar Card many times and manipulated the Food Grains for which an F.I.R. under Section 3/7 of Essential Commodities Act has been lodged against him. Aggrieved with the aforesaid order, statutory appeal as provided under Section Section 13(1) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was filed by the petitioner before the respondent No.2/Commissioner, Moradabad, Division Moradabad which had been rejected by him vide order dated 27.05.2019.

4. It is argued by learned counsel for the petitioner that statement of ration card holders were not recorded by the Inquiry Officer in the presence of the petitioner nor opportunity of hearing was provided to him to cross-examine the aforesaid witnesses. It is further stated in the writ petition that no full-fledged enquiry has been conducted against the petitioner (Fair Price Shop Dealer) and no charge sheet has been served upon the petitioner and no date and place of hearing has been

informed to the petitioner in respect of the enquiry conducted against him prior passing the impugned termination order. It is further stated that the license of the fair price shop could not be cancelled only on the ground that the F.I.R. has been lodged against the petitioner under Section 3/7 Essential Commodities Act. It is argued that the controversy involved in the present writ petition has already been settled by the Full Bench of this Court in the case of Misc. Single No. 8033 of 2013 delivered on 26.10.2017 Bajrangi Tiwari Vs. The Commissioner Devi Patan Mandal Gonda And Another in which following questions were referred to the larger Bench which reads as follows:-

> *"1. Whether the fair price shop licence can be cancelled merely on lodging of a criminal case against the licencee?; and*
>
> *2. Whether, while passing any such order the Government Order dated 17.8.2002, particularly para-10 of said Government Order would be applicable/considered or not?"*

5. The answers of the aforesaid questions have been given by the Full Bench which reads as follows:-

> *(i) The answer is no. Licence of a fair price shop cannot be cancelled merely on lodging of FIR against the licencee.*
>
> *(ii) The answer is no. The Government order dated 17.8.2002 relates to allotment of a fair price shop and hence the same cannot be referred to in suspension/cancellation of licence. It is the Government order dated 29.7.2014 according to which the suspension/cancellation of a fair price shop licence can take place.*

6. It is further argued that the provisions contained in the Government Order dated 05.08.2019 should be complied with by the respondents before passing the aforesaid orders but the same was not complied with. Hence the order is bad in the eyes of law and the same is liable to be set aside. It is argued that a writ petition was filed by one Amit Kumar being Writ C No.2029 of 2022 (Amit Kumar Vs. State of U.P. and others) before this Court and this Court taking into consideration the order passed by Full Bench of this Court in the case of Bajrangi Tiwari (supra) allowed the writ petition vide order dated 11.09.2024 holding therein that fair price shop license could not be cancelled merely on the ground of lodging of F.I.R. under Section 3/7 Essential Commodities Act. The order dated 11.09.2024 reads as

follows:-

1. Heard Sri Vishal Tandon, learned counsel for the petitioner and Sri Ravindra Kumar Tripathi, learned Standing Counsel for the State.

2. Brief facts of the case are that petitioner was granted a licence for fair price shop and petitioner was running the fair price shop since long. Proceeding against the petitioner was initiated and the licence of the petitioner was cancelled vide order dated 26.12.2018. Appeal filed by petitioner against the cancellation order dated 26.12.2018 was also dismissed vide order dated 4.3.2021. Hence, this writ petition is filed for following reliefs:-

"i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 04.03.2021 passed by Joint Commissioner Food Saharanpur in appeal no.93/2020-21 and 94/2020-21 and order dated 26.12.2018 and 1.9.2018 passed by District Supply Inspector Muzaffar Nagar.

ii) Issue a writ, order or direction in the nature of mandamus directing to the respondent authorities to restore the fare price shop license in favour of the petitioner.

iii) Issue a writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. This Court vide order dated 11.02.2022 entertained the matter and directed the State to file counter affidavit.

4. In pursuance of the order dated 11.02.2022 the pleadings have been exchanged between the parties.

5. Learned counsel for the petitioner submitted that fair price shop licence of the petitioner has been cancelled in violation of the provisions contained under the Government Order dated 05.08.2019 as well as provisions contained under the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016. He next submitted that no preliminary enquiry has been conducted in the matter and the licence of the petitioner has been cancelled on mis-conceived grounds. He submitted that lodging of First Information Report under Section 3/7 of the U.P. Essential Commodities Act 1955 can not be a ground for the suspension or cancellation of the fair price shop licence unless there is proper enquiry in the matter He placed the reliance on the Full Bench Judgment of this Court passed in Misc. Single No. 8033 of 2013. D/d. 26.10.2017 Bajrangi Tiwari Vs. The Commissioner Devi Patan Mandal Gonda And Another in order to demonstrate that on the ground of lodging first information report, fair price shop licence cannot be cancelled. He submitted that in view of the violation of the mandatory provisions contained under the Government Order dated 05.08.2019 and the Control Order, 2016 the impugned orders can not be sustained and are liable to be set aside by this Court.

6. Learned Standing Counsel for the State submitted that proceedings were initiated against the petitioner and it has been found that there was irregularity on the part of the petitioner regarding distribution of essential commodities to the cardholders, as such licence of the petitioner has rightly been cancelled. He submitted that criminal proceeding was also initiated against the petitioner and the First Information Report has been lodged under Section 3/7 of the Essential Commodities Act and Section 420

of Indian Penal Code as such no interference is required in the matter and the writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. There is no dispute about the fact that petitioner was granted fair price shop licence by the Authorities. There is also no dispute about the fact that under the impugned order, the petitioner's licence has been cancelled and the appeal has also been dismissed.

9. In order to appreciate the controversy involved in the matter a perusal of the Government Order dated 05.08.2019, which is applicable to Rural and Urban Area in respect to the suspension/cancellation of the fair price shop licence will be necessary which is as under:

प्रेषक,

ओम प्रकाश वर्मा,

विशेष सचिव,

उत्तर प्रदेश शासन।

सेवा में,

1- आयुक्त, खाद्य एवं रसद विभाग, उ०प्र०।

2- समस्त जिलाधिकारी, उत्तर प्रदेश।

3- समस्त जिला पूर्ति अधिकारी,

उत्तर प्रदेश।

खाद्य एवं रसद अनुभाग-6

लखनऊः दिनांक 05 अगस्त, 2019

विषयः ग्रामीण एवं शहरी क्षेत्र की उचित दर की दुकानों के निलम्बन/निरस्तीकरण एवं सम्बद्धीकरण के सम्बन्ध में प्रक्रिया का निर्धारण।

महोदय,

उपर्युक्त विषयक लक्षित सार्वजनिक वितरण प्रणाली के अन्तर्गत कार्यरत उचित दर दुकानों के विरूद्ध प्राप्त शिकायतों की जांच एवं तत्क्रम में उनके विरुद्ध संपादित की जाने वाली कार्यवाहियों यथा निलम्बन, निरस्तीकरण एवं सम्बद्धीकरण के सम्बन्ध में समय-समय पर विभिन्न शासनादेशों के माध्यम से निर्देश प्रसारित किये गये हैं। वर्तमान में लागू राष्ट्रीय खाद्य सुरक्षा अधिनियम -2013 एवं तत्क्रम में जारी उत्तर प्रदेश आवश्यक वस्तु (विक्रय एवं वितरण नियंत्रण का विनियमन) आदेश-2016 तथा उत्तर प्रदेश खाद्य सुरक्षा नियमावली-2015 के प्रख्यापन तथा लाभार्थियों को आवश्यक वस्तुओं के वितरण में तकनीकी अनुप्रयोग (पब्लिक पोर्टल पर सम्बद्ध लाभार्थियों का ऑनलाइन प्रदर्शन एवं तद्नुसार आवंटन का सृजन तथा ई०पी०ओ०एस० मशीनों के माध्यम से कराये जा रहे वितरण) तथा डोर स्टेप डिलीवरी का कार्य प्रचलित होने के दृष्टिगत पूर्व में निर्गत समस्त शासनादेशों को अवक्रमित करते हुये वर्तमान परिदृश्य में निम्नवत व्यवस्था निर्दिष्ट किये जाने का मुझे निदेश हुआ है:-

1- उचित दर दुकानों के विरूद्ध प्राप्त शिकायतों की जांच-

(1) उचित दर विक्रेताओं के विरूद्ध सामान्यतया आवश्यक वस्तुएँ प्राप्त न होने , विक्रेता द्वारा घटतौली किये जाने, अधिक मूल्य लिये जाने, एवं सूची में नाम न होने का बहाना बनाकर खाद्यान्न न देने, ई-पॉस मशीन में नेटवर्क न आने सर्वर डाउन होने का बहाना बनाकर खाद्यान्न वितरण के पूर्व ही बायोमेट्रिक प्रमाणीकरण कराकर लाभार्थियों को वास्तव में खाद्यान्न न देकर कालाबाजारी कर लेने तथा यूनिट के सापेक्ष कम खाद्यान्न देने, कार्ड में दर्ज यूनिटों के सापेक्ष कम यूनिट के आधार फीड होने का आधार लेकर शेष यूनिटों का खाद्यान्न न देने, उपभोक्ताओं से दुर्व्यवहार करने, समय से दुकान न खोलने, आवश्यक सूचनाओं का प्रदर्शन न करने, आदि शिकायतें प्राप्त होती है। शिकायत मुख्यतः मा० मुख्यमंत्री हेल्प लाइन , विभागीय टोल फ्री नम्बर कॉल सेन्टर, आई०जी०आर०एस०, तहसील दिवस, उप जिलाधिकारी, जिला पूर्ति अधिकारी, जिलाधिकारी, मण्डलायुक्त, खाद्यायुक्त एवं शासन पर लिखित में डाक द्वारा, व्यक्तिगत रूप से एवं दूरभाष पर प्राप्त होती हैं। शिकायतकर्ता मुख्यतः तीन प्रकार के हो सकते हैं, यथा विशिष्ट व्यक्ति, सम्बन्धित उचित दर विक्रेता से सम्बद्ध कार्डधारक एवं सम्बन्धित उचित दर विक्रेता से सम्बद्ध लाभार्थियों से भिन्न अन्य श्रोत/व्यक्तियों के स्तर से प्राप्त शिकायतें।

(2) उपरोक्तानुसार प्राप्त होने वाली शिकायतों पर कार्यवाही जाँच के सम्बन्ध में निम्नवत प्रक्रिया अपनायी जाये-

(क) विशिष्ट व्यक्तियों से प्राप्त शिकायती पत्रों के सम्बन्ध में कार्यवाही आरम्भ करने से पूर्व सम्बन्धित विशिष्ट व्यक्ति को पत्र भेजकर यह पुष्टि कर ली जाय कि पत्र उन्हीं के द्वारा हस्ताक्षरित है और शिकायतों के सम्बन्ध में उनको समाधान हो गया कि शिकायतें तथ्यों पर आधारित हैं।

(ख) सम्बन्धित उचित दर विक्रेता से सम्बद्ध कार्डधारकों के स्तर से प्राप्त शिकायतों पर कार्यवाही से पूर्व शिकायतों की प्रारम्भिक जाँच की जाए। उचित दर दुकानों के विरूद्ध जाँच प्रक्रिया के दौरान विक्रेता द्वारा ई-पॉस के माध्यम से किये गये वितरण का विवरण (एम०आई०एस० रिपोर्ट) जो पब्लिक पोर्टल पर उपलब्ध है, का संज्ञान अवश्य लिया जाय। विक्रेता द्वारा प्रदर्शित वितरण का मिलान कार्डधारकों के राशन कार्ड में दुकानदारों द्वारा की गयी प्रविष्टियों से भी किया जा सकता है। साथ ही शिकायतकर्ता व अन्य सम्बन्धित पक्षों का कथन अंकित करते समय उनका प्रतिपरीक्षण भी अवश्य किया जाये ताकि जाँच कार्यवाही की निष्पक्षता प्रथम दृष्टया स्थापित हो एवं अनावश्यक लिटिगेशन की स्थिति उत्पन्न न हो। (ग) अन्य स्रोतों/व्यक्तियों से प्राप्त शिकायतों के सम्बन्ध में यदि शिकायती पत्र शपथ पत्र से समर्थित नहीं है, तो शिकायतकर्ता से इस बारे में एक शपथ पत्र उपलब्ध कराने को कहा जाए और शपथ पत्र प्राप्त होने के उपरान्त ही आगे की कार्यवाही की जाए।

(घ) उचित दर विक्रेता के विरूद्ध किसी एक या अत्यन्त अल्प संख्या में उपभोक्ताओं द्वारा उचित दर विक्रेता की दुकान पर जाने के बावजूद अपना अनुमन्य खाद्यान्न प्राप्त न होने की स्थिति में वे अपनी शिकायत जिला शिकायत निवारण अधिकारी के समक्ष भी दर्ज करा सकते हैं , जो निर्धारित प्रक्रिया का पालन करते हुए प्रकरण के परीक्षणोपरान्त उसकी नियमानुसार हकदारी /खाद्य सुरक्षा भत्ता दिलाया जाना सुनिश्चित करेंगे।"

10. A perusal of the Government Order as quoted above fully demonstrates that preliminary inquiry is to be conducted by the Authorities before suspension/cancellation of the fair price shop licence of the licence holder.

11. Perusal of the aforesaid Government Order dated 05.08.2019 as well as impugned orders and other evidence on record reveals that procedure prescribed under the Government Order has not been followed by the authority and the licence of the petitioner has been cancelled on the ground that first information report has been lodged against the petitioner under Section 3/7 of the U.P. Essential Commodities Act and Section 420 of Indian Penal Code. In full Bench judgment of this Court in Bajrangi Tiwari (Supra) it has been clearly held that fair price shop can not be cancelled merely on the ground of lodging criminal case.

12. Considering the entire facts and circumstances of the case as well as the ratio of law laid down by the Full Bench of this Court in Bajrangi Tiwari (Supra) impugned order dated 26.12.2018 passed by the respondent no. 3 and appellate order dated 4.3.2021 passed by the respondent no. 2 are liable to be set aside and the same are hereby set aside.

13. The writ petition stands allowed and the respondents are directed to restore the fair price shop licence of the petitioner forthwith.

14. No order as to costs.

7. The aforesaid order was challenged before the Hon'ble Supreme Court by one Mohd. Amir by filing Special Leave Petition (Civil) No.25501 of 2024 (Mohd.

Amir Vs. State of U.P. and others) and the aforesaid S.LP. was dismissed by the Honble Supreme Court vide order dated 21.04.2025. The order dated 21.04.2025 reads as follows:-

> *1. We are not inclined to interfere with the impugned judgement and order of the High Court; hence, the special leave petitions are dismissed.*
>
> *2. Pending application(s), if any, shall stand disposed of.*

8. On the other hand, it is argued by learned Standing Counsel for the respondents that proper enquiry was conducted wherein it was found that petitioner has misused Aadhar card for withdrawing food grains illegally from various ration cards through FPS Automation System through E-POS machine and black marketed them pursuant to the aforesaid offence committed by the petitioner and the F.I.R. has already been registered. In this view of the matter, it is argued that the action was rightly taken by the respondents against the petitioner. Insofar as the law laid down by this Court in the case of Bajrangi (supra) and Amit Kumar (supra) is concerned, learned Standing Counsel has admitted that the controversy involved in the present petition has also been settled up to the Honble Supreme Court and law has been laid down that the fair price shop license could not be cancelled only on the ground of registration of F.I.R. under Section 3/7 Essential Commodities Act.

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

10. There is no dispute about the fact that petitioner was granted fair price shop licence by the Authorities and by the impugned order, the petitioner's licence of fair price shop has been cancelled on the ground that the F.I.R. has been lodged under Section 3/7 of Essential Commodities Act for misusing the Aadhar Card and malpractice in distribution of food grains and the appeal filed against the aforesaid order has also been dismissed.

11. From perusal of the Government Order dated 05.08.2019 which is quoted above in the judgement of Amit Kumar (supra) fully demonstrates that preliminary inquiry is to be conducted by the Authorities before suspension/cancellation of the fair price shop licence of the licence holder. But from perusal of the impugned orders and other evidence on record reveals that procedure prescribed under the

aforesaid Government Order has not been followed by the authority and the licence of the petitioner has been cancelled on the ground that first information report has been lodged against the petitioner under Section 3/7 of the U.P. Essential Commodities Act and Section 60/43 of I.T. Act.

12. The Full Bench judgment of this Court in the case of Bajrangi Tiwari (Supra) held that license of fair price shop cannot be cancelled merely on the ground of lodging criminal case. The aforesaid law has been again reaffirmed by this Court in the case of Amit Kumar (supra) which has also been affirmed by the Honble Supreme Court in the case of Mohd. Amir (supra).

13. In view of the above discussion, the Court is of the opinion that the fair price shop licence/agreement could not be cancelled on the ground of registration of F.I.R. under Section 3/7 Essential Commodities Act.

14. In this view of the matter, impugned order dated 19/11.01.2019 passed by the District Supply Officer & order dated 27.05.2019 passed by the Appellate Authority are liable to be set aside and the same are hereby set aside.

15. The writ petition is allowed and the concerned-respondents are directed to restore the fair price shop licence of the petitioner forthwith.

Order Date :- 1.7.2025

Arti

Digitally signed by :-
ARTI SHARMA
High Court of Judicature at Allahabad