2025:AHC:174594-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL DEFECTIVE No. - 788 of 2025

Fayyaz Ahmad

.....Appellant(s)

Versus

State of U.P. and 4 others

.....Respondent(s)

Counsel for Appellant(s)	:	Indu Shekhar Tripathi
Counsel for Respondent(s)	:	C.S.C., Vishal Tandon

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. This appeal is directed against order dated 04.07.2025 passed by learned Single Judge in Writ-C No. 33425 of 2024 whereby the writ petition filed by respondent no.5 against orders dated 26.12.2018 passed by District Supply Officer, Muzaffarnagar and 04.03.2021 passed by Deputy Commissioner (Food), Saharanpur Division, Saharanpur has been allowed and the orders have been set aside. Further direction has been granted to restore the fair price shop licence of respondent no.5 forthwith.

2. A leave to appeal application has been filed by the appellant-applicant *inter alia* with the submissions that after cancellation of the fair price in question, the same was allotted to the appellant-applicant and during pendency of the writ petition, the applicant had filed an application seeking intervention and impleadment. While the said application was not decided, the writ petition has been decided, though it has been laid down by Hon’ble Supreme Court in **Ram Kumar Vs. State of U.P and others: (2023) 16 SCC 691** that a subsequent allottee is a necessary party and therefore, the appellant-applicant may be permitted to file appeal against the order impugned.

3. Learned counsel for the respondent contested the submissions only on the ground that the special appeal itself is not maintainable. Reliance has been place on judgment in **Sheet Gupta Vs. State of U.P. and others: Special Appeal No. 1942 of 2008**, decided on 11.12.2009 by the Larger Bench and order of this Court in **Uma Shankar Bharti Vs. Dev Nath Giri and others: Special Appeal Defective No. 763 of 2025**, decided on 24.09.2025.

4. We have considered the submissions made and have perused the

material available on record.

5. In the case of **Uma Shankar Bharti (supra)**, this Court in identical circumstances, wherein despite pendency of an impleadment application, the writ petition was decided by the learned Single Judge, came to the following conclusion:

"5. We have considered the submissions made by counsel for the parties and have perused the material available on record.

6. It is not in dispute that the orders impugned in Writ-C No. 10110 of 2023 inter alia was that of the appellate authority and during pendency of the writ petition, an application seeking impleadment had been moved by the appellant which apparently has escaped the attention of the Court as no order has been passed on the said application and consequently, the appellant-applicant has not been heard. Irrespective of the said status, in view of the specific provisions of Chapter VIII Rule 5 of the Rules and judgment in the case of Sheet Gupta (supra), the appeal as filed by the appellant, is not maintainable and the same therefore, cannot be entertained.

7. So far as the judgment of this Court in the case of Hiramani Yadav (supra) is concerned, in the said case, the challenge in the writ petition was against the order passed by the original authority i.e. it was not against the order passed by the appellate authority which fact has specifically been noticed in paragraph 12 of the order passed by this Court. In view thereof, the order passed in the case of Hiramani Yadav (supra) to the extent of maintainability of the appeal, has no application.

8. In that view of the matter, the appeal filed by the appellant and the application seeking leave to appeal is dismissed as not maintainable.

9. However, looking to the fact that the application filed by the appellant-applicant remained pending before the learned Single Judge in the writ petition, it is always open for the appellant to seek review of the order passed by learned Single Judge."

6. In view of the order in the case of **Uma Shankar Bharti (supra)**, the present special appeal is **dismissed** as not maintainable with the similar observations as made in the case of **Uma Shankar Bharti (supra)**.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

September 26, 2025
AHA/AKshukla

Digitally signed by :-
AFZAL HUSAIN ABBASI
High Court of Judicature at Allahabad