

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

101+203

(1)

CWP-476-2020 (O&M)

Hemant Kumar

... Petitioner

Versus

State of Haryana & others

... Respondents

(2)

CWP-562-2020 (O&M)

Naveen Kumar

... Petitioner

Versus

State of Haryana & others

... Respondents

(3)

CWP-649-2020

Pankaj Kumar

... Petitioner

Versus

State of Haryana & others

... Respondents

Decided on : 22.03.2021

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Ms.Saveta Sanghi, Advocate, for the petitioners.

Mr.Shivendra Swaroop, AAG, Haryana.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

CM-4663-CWP-2021 in CWP-476-2020

CM-4677-CWP-2021 in CWP-562-2002

Applications for placing on record Annexure R-1 & R-2, filed on behalf of the respondent-Department, are allowed, in view of the averments made in the applications, duly supported by affidavit. Said documents are taken on record, subject to just exceptions. Office to append the same at appropriate places.

CMs stand disposed of.

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CWP-476, 562 & 649-2020

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The present judgment shall dispose of CWP-476, 562 & 649-2020, since identical issues of law and facts are involved. However, for the purpose of dictating the judgment, facts have been taken from CWP-476-2020 titled *Hemant Kumar Vs. State of Haryana & others*.

Challenge in the present writ petitions, filed under Articles 226/227 of the Constitution of India, is to the order dated 05.11.2015 (Annexure P-2) passed by the District Food & Supplies Controller, Narnaul, whereby the licence of the depot holders has been cancelled illegally. The said order having been upheld on 31.10.2019 (Annexure P-6) in appeal by respondent No.2-Deputy Commissioner, is also subject matter of challenge.

The limited issue which has been projected by counsel for the petitioners is that though a finding was recorded in the impugned orders that show cause notices were issued and the depot holders did not come present for personal hearing and neither gave replies to the show cause notices, is not correct in as much as no opportunity of hearing was given since the show cause notices were not served upon the petitioners. Specific averments have also been made in this context in para No.6 of the writ petition that letters/show cause notices dated 10.10.2015 or second letter dated 23.10.2015, as mentioned in the impugned order of cancellation, was not received.

In the reply filed by the State, there is no categorical denial to this aspect of service of the show cause notices. However, reliance is again placed upon the show cause notices issued on 10.10.2015 and the reminder dated 23.10.2015 (Annexures R-1 & R-2) but it has nowhere been averred that the said notice was actually served upon the petitioners.

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It is also the case of counsel for the petitioners that in the appeal filed also, specific ground in para No.9 has been made that notice was not served but the Appellate order, in a stereotype method, without giving any reason, dismissed the appeal, without examining the record as to whether the show cause notices were served or not. It is, thus, the contention of counsel for the petitioners that in case the show cause notices itself were never served, therefore, the opportunity of hearing was never granted by the Competent Authority. Relevant part of the order of the Appellate Authority reads as under:

“After hearing both the parties and perusal of concerned file received from the office of respondents, it has been found that due to not distributing the wheat and kerosene oil to the Card Holders and by giving less kerosene oil than the prescribed quantity and by charging extra price and by closing the ration process, after issuing show cause notice and affording opportunity of personal hearing and after completing all the formalities, the District Food and Supply Controller, Narnaul has rightly cancelled the Depot of Depot Holder, Hemant Kumar, Village Ateli Mandi, Tehsil Ateli, District Mahendergarh in the public interest. Therefore, finding no force in the appeal of the appeal, the appeal is dismissed. Order pronounced. File be consigned to the record room after necessary compliance.”

A perusal of the above would go on to show that the order is bereft of any reason and the issue which was of burning consideration and raised by the petitioners was never touched. In such circumstances, this Court is of the opinion that rather than calling for the record and examine the issue by this Court, it would be appropriate if the Appellate Authority decides the issue firstly.

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Resultantly, the present writ petitions are allowed and the orders of the Appellate Authority dated 31.10.2019 (Annexure P-6) is set aside. The appeals be decided within a period of 2 months from the receipt of certified copy of this order, keeping in view the above observations.

MARCH 22, 2021

sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No