



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 9508/2023**

NAVEEN KUMAR SHARMA

..... Petitioner

Through: Mr. Kamal Chauhan, Mr. Deepak Chauhan, Advocates with Petitioner-in-person

versus

ASST. COMMISSIONER FOOD AND CIVIL SUPPLY AND ORS

..... Respondents

Through: Mr. Mohit Agarwal, Advocate for R-1 to R-6
Mr. Nipun Arora, Ms. Annanya Mehan, Ms. Sanya Kalsi, Advocates for R-7

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition has been filed with the following prayers:-

“(a) May this Hon'ble court be pleased to allow pre Petition and accordingly allow the applicant to be petitioner in the matter and also be allowed to assist the Hon'ble Court;

(b) May the Hon'ble court be pleased to issue the direction for investigation matter through C. B. I and higher authorities constitute a team because scam in food and supply department above approx 230 rasan shop has been illegal change in constitution food and supply department.



(c) May the Hon'ble court be pleased to revoke and allotment of shop in the favour of the petitioner said FPS 6721 issued by the department.

(d) May the Hon'ble court to issue the direction investigate the matter in the scam of food and supply department and registered FIR against the respondent.

(e) May the Hon'ble court to issue the direction food and supply department kindly stay and stop the renewal said FPS licenses in the year of 2024 for pending the present writ petition.

(f) May the Hon'ble court to issue the direction for UIDAI consideration/verify of adhar number 223369738091 for current/previous status in the present writ petition.

(g) Pass such other order/orders as this Hon'ble Court may deem fit and appropriate in the given facts of the ' case, in the interest of justice;''

2. The Petitioner seeks a direction for investigation through CBI and higher authorities and to constitute a team to look into the scam in the Food and Supply Department regarding 230 ration shops wherein there has been illegal change in the constitution of fair price shops. The Petitioner also seeks revocation of allotment of fair price shop No. 6721. The Petitioner further seeks a direction for investigation in the matter of scam in the Food and Supply Department and for registration of FIR against the Respondent.

3. The Petitioner also prays for a direction to stop the Respondent from renewal of the licences for the fair price shops in the year 2024 pending the writ petition.

4. Shorn of unnecessary details, the facts leading to the instant writ petition are as follows:-



- i. It is stated that father of the Petitioner herein, Late Sushil Kumar, was granted a licence to run the fair price shop being FPS No.6721.
- ii. It is stated that the fair price shop was run as a proprietorship firm named M/s Prabha Store at C-7/264, Sultanpuri, Delhi.
- iii. It is stated that Late Sushil Kumar had six children, i.e., four daughters and two sons, however, one of the siblings was murdered leaving behind five children, i.e., one son and four daughters.
- iv. It is stated that Petitioner's mother pre-deceased Petitioner's father in the year 2010 and since the Petitioner's father was not keeping well, he had employed Sanjay Gupta (Respondent No.7 herein) to help him run the fair price shop. It is stated that Petitioner's father also passed away in the year 2010.
- v. It is stated that Respondent No.7 informed the Petitioner and his other siblings that the licence to the fair price shop has been cancelled due to death of his father.
- vi. It is stated that Petitioner came to know Respondent No.7 in connivance with the officials of Respondent No.1 had approached the authorities representing that he is the adopted son of Late Sushil Kumar and got the fair price shop allotted in his favour. It is also stated that Respondent No.7 had also forged the signatures of Petitioner's sister and had reflected her as a partner of the firm and later on he showed as if Petitioner's sister has resigned from the firm and thereby Respondent No.7 is running the fair price shop on his own.



- vii. It is stated that the Petitioner has filed applications under Section 190/200 CrPC and under Section 156(3) CrPC before the Chief Metropolitan Magistrate, Rohini Courts making allegations of forgery, criminal intimidation, cheating etc. against Respondent No.7 and other officials of the Food and Supply Department.
- viii. After more than one year of filing of the said complaint, the Petitioner has now approached this Court by filing the instant writ petition.
5. Material on record discloses that the Petitioner had filed applications before the Chief Metropolitan Magistrate, Rohini Courts on the very same allegations which have been made in the instant writ petition.
6. The issues raised by the Petitioner in the present writ petition and in the criminal proceedings pending before the Chief Metropolitan Magistrate, Rohini Courts are in respect of the same subject matter.
7. It is settled law that writ courts while exercising jurisdiction under Article 226 of the Constitution of India do not direct for registration of FIR and for conducting fishing and roving inquiry and the forums open to a person under criminal law must be invoked. The Apex Court in Sakiri Vasu v. State of UP, (2008) 2 SCC 409, has observed as under:-

“17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.



18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

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25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).”

8. The question as to whether Respondent No.7 has misrepresented himself as the adopted son of the Father of the Petitioner and in connivance with the authorities he has got the shop allotted in his name or that he has forged the signatures of Petitioner's sister showing her as the partner of the shop and later got the shop in his name are all issued pending before the Magistrate. It is well settled that Courts must not proceed parallel proceedings on the very same subject matter. If it is found that Respondent No.7 has committed offence and has misrepresented himself as the adopted

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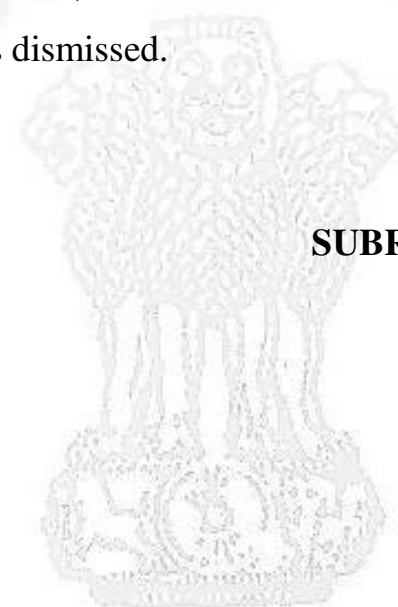
son of the father of the Petitioner to get the shop allotted in his name then the allocation of the shop will automatically get cancelled. No useful purpose would be served in proceeding with this Writ Petition. This Court while exercising its jurisdiction cannot go into the disputed questions of facts or direct the respondents to conduct a roving inquiry to investigate as to whether Respondent No.7 has misrepresented himself as the adopted son of the father of the Petitioner or not and more so when there are criminal proceedings pending on the subject matter.

9. In view of the above, this Court is not inclined to entertain the writ petition. The petition is dismissed.

SUBRAMONIUM PRASAD, J

JULY 25, 2023

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