
(2010) 07 AHC CK 0284
In the Allahabad High Court
Case No : Writ Petition No. 6947 of 2010

Ambika Singh

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2010) 07 AHC CK 0284

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Allowed

Judgement

1. Notice on behalf of respondents 1 to 4 has been accepted by the learned Chief Standing Counsel.
2. We do not find it necessary to issue notice to respondents 5 and 6, who are the complainants.
3. The petitioner is a sitting fair price shop dealer. It appears that certain complaints were made against the petitioner, on which, the Sub Divisional Magistrate had made an enquiry, in which it was found that the complaints were not genuine, but on finding that there were some mistakes in the books, he forfeited the security amount to the extent of Rs. 500/, and allowed the petitioner to continue with the functioning of the shop. Not being satisfied with the said action, the complainants approached the Commissioner, and the Commissioner of the Division straightaway issued a direction on 3.7.2010 to the Sub Divisional Magistrate, Kaiserganj, saying that in continuance of his letter dated 26.5.2010 and the order dated 20.5.2010, the supply to the petitioner be stopped and enquiry be got conducted after constituting a team.
4. This Court had an occasion to consider the power of the Commissioner in issuing any such direction or taking any action straightaway, of his own in a matter where certain complaints have been raised against the sitting fair price shop dealer. The Court in the case of Lav Kush Yadav vs. Commissioner, Devi

Patan Mandal, Gonda and others (Writ Petition No. 6758 (MB) of 2010), decided on 20.7.2010 observed as under:

"So far the order of Commissioner restraining the petitioner from functioning as a dealer and stopping the supply is concerned, it is very obvious that unless the agreement is under suspension or stands terminated, no such power can be exercised nor the dealer can be restrained from distributing the essential commodities.

We also take note of the fact that the Commissioner has no authority or jurisdiction to entertain any such complaint and to order for restraining the dealer from functioning as such and for stopping the supply."

5. Learned counsel for the respondentState has not been able to show any rule or government order under which, the appellate authority, namely, the Commissioner of the Division can exercise the power of the Sub Divisional Magistrate or the District Supply Officer, as the case may be.

6. The Commissioner being the appellate authority has the appellate jurisdiction where, in an appeal preferred against any order passed by the Sub Divisional Magistrate or the District Supply Officer, he can interfere, on being satisfied that the order cannot be sustained, but there is no authority with him to issue any direction for taking any action and much less to restrain or prohibit the fair price shop dealer from functioning as such by stopping the supply.

7. In case the Commissioner gets any report or a complaint against the functioning of a fair price shop, may be that, he can forward the said complaint to the concerned authority, who, as per his own wisdom, after being satisfied, would exercise his jurisdiction, if the complaint is, prima facie, found genuine by him. In such a case, further action can be taken either by suspending or without suspending the agreement of the fair price shop dealer, but in case the Sub Divisional Magistrate finds that it is not a genuine complaint, he may drop the proceedings. It means that if there is any complaint, the Sub Divisional Magistrate would not be at liberty to ignore such a complaint and allow the defaulting dealer to continue with the functioning of the shop, who is not working in the interest of the card holders, but such a discretion has to be exercised on objective consideration.

8. We also take notice of the fact that the petitioner's agreement is neither under suspension nor it has been terminated.

9. That being so, neither the Commissioner nor the Sub Divisional Magistrate can issue any direction for restraining the petitioner from lifting the quota and distributing the essential commodities.

10. We, therefore, set aside the impugned orders dated 3.7.2010 and 17.7.2010 and direct that the petitioner shall be allowed to continue with the discharge of functions of fair price shop dealer.

11. The writ petition is allowed. No order as to costs.

12. This order will not come in the way of the concerned authority, in case any complaint is received and is found, prima facie, genuine to take action, as per the rules.