
(2015) 05 AHC CK 0056

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 57528 of 2013

Balveer Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Citation : (2015) 5 ADJ 87 : (2015) 5 ALJ 640 : (2015) 111 ALR 620 : (2015) 5 AWC 4877 : (2015) 129 RD 180

Hon'ble Judges : Tarun Agarwala, J; Amar Singh Chauhan, J

Bench : Division Bench

Advocate : Upendra Upadhyay, for the Appellant; Brij Kumar Yadav and Munna Babu, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amar Singh Chauhan, J—This writ petition has been filed for the quashing of the order dated 31.8.2013 passed by the Sub Divisional Magistrate, Kayamganj, District Farrukhabad, whereby respondent No. 4, Smt. Ramwati widow of late Saudan Singh, resident of village Kadiuli, Block Nawabganj, District Farrukhabad was selected as New Fair Price Shop dealer of Gram Sabha Kadiuli, Block Nawabganju, District Farrukhabad. Shorn of details, the facts of the matter are that vacancy of fair price shop dealer in village Kadiuli, Block Nawabganj, District Farrukhabad arose after the death of fair price shop dealer Sri Saudan Singh on 17.8.2013. The petitioner alongwith some other resident of the village were interested in getting the license of fair price shop and they approached the Gram Sabha for sending a proposal for allotment of a fresh dealer. The Gaon Sabha sent a fresh proposal to U.P. Zila Adhikari seeking permission for appointing a new fair price dealer on 23.8.2013, duly forwarded by the concerned B.D.O. On the same date.

2. The S.D.M./U.P. Zila Adhikari, Kayamganj, District Farrukhabad, vide order dated 31.8.2013 selected respondent No. 4, Smt. Ramwati widow of late Saudan Singh, a new fair price shop dealer of Gram Sabha Kadiuli, Nawabganj,

Farrukhabad.

3. By means of this writ petition the impugned order has been challenged on two grounds, firstly because respondent No. 4 is an illiterate lady and has got no required educational qualification, provided by the Government order dated 31.10.2002. Secondly, the Gram Sabha has not passed any resolution in favour of the respondent No. 4, Smt. Ramwati widow of Saudan Singh who died on 17.8.2013. Under the Government order dated 31.10.2002, there is provision for allotting the fair price shop to the heir of the deceased licensed dealer provided his reputation was otherwise not suspect.

4. It is argued by the learned counsel for the petitioner that the reputation of deceased dealer is disputed as is clear from the proposal proceedings of Gram Sabha which is marked as Annexure-1. In this respect, we do not agree with the proposal as it mentions only the reputation of the family members of fair price shop dealer whereas reputation of dealer is to be taken into account as per Government order dated 17.8.2002 which has not been done.

5. Sri Upendra Upadhyaya, learned counsel for the petitioner contended that the impugned order is unjust, illegal, improper and against the provisions of Government order, because respondent No. 4, Smt. Ramwati is an illiterate lady and is not eligible in any manner for getting the fair price shop license. In support of his argument, he has placed reliance on the certified copy of Pariwar register, as well as certificate of Gram Pradhan and certificate of education department, in which Smt. Ram Wati has been shown as illiterate.

6. Sri Ram Murat Singh, the learned counsel appearing for respondent No. 3 and the learned Standing counsel, submitted that as per provisions of Government order of 2002:

"GRAMEEN KSHETRON MAI RATION KI DUKANO KA CHAYAN NIMMANLIKHIT ARHATAYA EVAM SHARTON KO DRASHTIGAT RAKHTE HUYE KIYAJA YEGA:

(Ka)

(Kha)

(Ga) SHIKSHIT HO TAAKI who DUKAN KA HISAB KITAB SAHI ROOP SE RAKH SAKE."

7. On the basis of the above provision, it has been argued on behalf of respondent No. 3 that Smt. Ramwati is a literate lady as she has made her signatures on the papers and affidavit submitted by her before the S.D.M. Thereafter the then U.P. Zila Adhikari considering the fact that she is a literate lady, appointed Smt. Ramwati as fair price shop dealer on 31.8.2013. In our opinion word "SHIKSHIT" has been used in the provision with a view that the person concern so appointed as dealer can maintain the accounts properly.

8. Secondly, the learned counsel for the petitioner has laid much emphasis on the point that the Gram Sabha has not passed any resolution in favour of the

respondent No. 4, Smt. Ramwati till date and the respondent No. 3 has suo moto appointed the respondent No. 4 as fair price shop dealer of the Gram Sabha. Therefore, there is violation of provision of meeting of Gram Sabha. He has therefore, argued that the respondent No. 2 is not justified in bypassing the Gram Sabha and directly appointing the respondent No. 4 as new fair price shop dealer of Gram Sabha.

9. As per record the Gaon Sabha sent a proposal to U.P. Zila Adhikari seeking permission for appointing a new fair price shop dealer on 23.8.2013, but on record there does not appear to be any open meeting of the Gaon Sabha having been held. The learned counsel for the respondent No. 3 has submitted that the inquiry has been conducted on the complaint of the Gaon Sabha and it was found that the conduct of the dealer was otherwise not suspect. Therefore, after completing the formalities by Smt. Ramawati, heir/widow of dealer Saudan Singh, she was appointed as new fair price shop dealer. He further submits that there is no requirement of any open meeting of the Gaon Sabha for the said purpose as the respondent No. 4 falls within a different category of compassionate claim, hence there is no requirement of the formalities of the meeting of the Gaon Sabha. In this connection case law of Shiv Kumar v. U.P. Zila Adhikari Chakiya, 2014 (8) ADJ 593 (DB) 693, has been cited.

10. So far as the second issue of taking a decision in the open meeting of the Gaon Sabha is concerned, we are unable to agree with the proposition of the learned Standing counsel and the counsel for the contesting respondent that no such meeting is necessary.

11. It has been observed by the Division Bench of this Court in the case of Shiv Kumar v. U.P. Zila Adhikari Chandauli, that;

"A bare perusal of Clause 4.4. of the Government order dated 3.7.1990, it is evident that any fair price shop license would be opened only after a resolution is passed in the open meeting of the Gaon Sabha. It is only on the collective opinion of such a meeting that such allotment can be made. After such a resolution is passed, the same has to be processed through the Tehsil Level Committee for rural area as defined in Clause 5 of the G.O. Dated 17.8.2002.... The allotment has to be made as per the terms and conditions contained in Clause 10 of the said G.O. which also envisages the grant of license on compassionate basis."

12. Therefore, even in the matter of an individual consideration of compassionate grant of license under clause 10 of G.O. of 2002, it is necessary to hold an open meeting of the Gaon Sabha. It is only after such a resolution is passed that the same has to be considered by the Tehsil Level Committee and then a decision to be taken by the Sub Divisional Magistrate.

13. Thus, in view of the aforesaid factual aspects and also the law and settled legal propositions discussed above, we are of the view that the order impugned dated 31.8.2013 passed by the Sub Divisional Magistrate, Kayamganj, District

Farrukhabad, respondent No. 4 is not sustainable in nature and the present writ petition deserves to be allowed.

14. Hence, the writ petition succeeds and is allowed and the order dated 31.8.2013 is hereby quashed. It is directed that an open meeting of the Gram Sabha be convened and the proposal given by the Gram Sabha be considered by the Tehsil Level Committee whereafter considering the reputation of the deceased license holder as desirable and also the disqualification, the S.D.M. shall proceed to get the matter processed in accordance with the law. It is also directed that the aforesaid exercise be completed expeditiously, preferably within a period of one month from today so that the villagers may not be put to any inconvenience for distribution of fair price ration. No order is passed as to cost.