

(2006) 09 AHC CK 0019
In the Allahabad High Court

Battu Lal	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Citation : (2007) 1 AWC 545

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Judgement

S.K. Singh, J.—Heard learned Counsel for the petitioner and learned standing counsel.

2. Challenge in this petition is to the order passed by the appellate authority dated 10.8.2006 by which appeal filed by the petitioner against the cancellation of the fair price shop licence was admitted but prayer for grant of stay has been rejected.

3. Learned Counsel for the petitioner submits that appellate authority in not granting stay to the petitioner has committed a manifest error as licensing authority while passing order of cancellation has not examined the merits in the explanation so given by the petitioner against the show-cause notice/charge-sheet and in a cryptic and arbitrary manner order has been passed. Submission is that petitioner by giving details and by placing documents before licensing authority has fully proved that charges against him are false, motivated and superfluous and therefore, as that was not considered, it was for appellate authority to have applied his mind to the facts and detail and then he should have rejected / allowed petitioner's application.

4. Learned standing counsel in response to above, submits that it was in discretion of appellate authority to grant stay or not and therefore, if on facts he was not satisfied that it is case for stay then no exception can be taken to rejection of stay application.

5. In view of the aforesaid the matter was examined in presence of the learned

standing counsel and order of the licensing authority was also read in presence of all concerned besides the impugned order of appellate authority.

6. On perusal of the order of licensing authority this Court finds that there is mention of service of the charge-sheet on the petitioner and thereafter his reply dated 18.5.2006 and then there is just a mention that "matter was examined and explanation has not been found to be satisfactory" and thereafter all kind of irregularities, i.e., non-opening of shop in time, unfair distribution, charging the higher rate and unsatisfactory behavior of the petitioner has been just mentioned. Thus, it is clear that no reason has been given and no analysis has been made not to accept the explanation which is said to have been filed by the petitioner. Needless to say that satisfaction of the Court/authority is to be Judged on perusal of the analysis of the explanation/arguments, the record and then reasons so given in the order to accept/not to accept the same. Higher forum may not be in position to go into the reasons which remains recorded in the mind of the concerned authority unless it comes out in writing in the order. Here is the case in which this Court finds that satisfaction so recorded by the licensing authority for holding explanation given by the petitioner not to be satisfactory remains his personal satisfaction as no analysis and reason appears in the order. The licensing authority was required to mention the charges and then explanation given by the petitioner and then evidence and thereafter the reasons on which the explanation given by the petitioner is not being accepted.

7. As this has not been done, this Court is of the view that keeping the matter pending even before the appellate authority may be just a futile exercise as appellate authority may not be in a position to record findings in detail in respect to factual aspects which was required to be recorded by the first authority first and it is only thereafter appellate authority can be in a position to examine the merits in those findings in the light of the record. It is not the job of the appellate authority to go into the record and straightly proceed to record findings as that may cause prejudice to either of the two sides. A party has a right to get a finding on question of facts in his favour first by first court/authority and then by second court/authority so that if matter goes to higher forum there may be concurrent finding of two courts in his favour, if it is in his favour. It is in exceptional cases, the appellate authority is to be permitted to act like a first court for the purpose of recording of finding by going into record and evidence. Power of appellate court/authority may be the same as of trial court but that do not mean that trial court/first authority will not discharge his job/part and deprive a party of getting a finding in his favour by that Court. Thus, it is clear that it is the first concern and the duty of first court/authority to critically examine the evidence/record and by assigning reason to agree or not to agree with the submission of a party and then to pass order. If this is not there then exercise can be safely said to be faulty.

8. Accordingly, this Court is of the view that instead of keeping the matter pending before the appellate authority this Court straightway may intervene by

exercising its extraordinary powers which will save time of everybody and thus the order of the Sub-Divisional Office/Licensing authority dated 7.6.2006, by which fair price shop licence has been cancelled is to be kept in abeyance. The matter has to go back to the concerned licensing authority again to revive the proceedings for cancellation of fair price shop licence and he is to proceed to deal the same by undertaking the process of evaluation as indicated. It is for the petitioner to co-operate in the proceedings and in the event there is non-cooperation the licensing authority will be free to proceed without waiting for cooperation from the petitioner. The proceeding is to be concluded within a period of three months from the date of receipt of certified copy of this order which petitioner undertakes to produce before the licensing authority within a period of two weeks from today. In case the copy of order is not produced within two weeks then the effect of this order will remain in abeyance and the order of the licensing authority will become operative. As and when final order is passed by concerned authority that will prevail and it will be for the party feeling aggrieved to take recourse as permissible in law.

9. In view of the direction as given in this order the appeal filed before appellate authority becomes infructuous and thus now that is not to be proceeded any more.

10. With the aforesaid, this writ petition stands allowed/disposed of.