

(2012) 08 AHC CK 0150

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13249 of 1999

Consumer Co-Operative Society

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 AHC CK 0150

Hon'ble Judges : B.Amit Sthalekar, J

Final Decision : Allowed

Judgement

B. Amit Sthalekar,J.

In this writ petition, the petitioner is challenging the order dated 16.2.1999 passed by the Commissioner, Meerut Division, Meerut and the order dated 2.11.1992 passed by the District Supply Officer, Meerut.

The facts of the case in brief are that the petitioner is a valid fair price shop owner. A show cause notice was given to the petitioner on 28.8.1992. By the impugned orders dated 30.7.1988, the licence of the fair price shop was suspended and again on 10.4.1991 the licence of the fair price shop was suspended. The reasons for cancelling the fair price shop as given in the impugned order is that the petitioner was imposed fine for keeping his shop closed and often closed his shop early, and for not properly distributing the food grains and "other irregularities". It is stated that on 3.12.1987, a fine of Rs. 50/ was imposed against him; on 13.9.1988, a fine of Rs. 200/ was imposed against him and again on 28.12.1991, a fine of Rs. 100/was imposed against him and the same were realized from him. The allegation in the impugned order is that the fines were imposed on the petitioner for keeping his shop closed without valid reason and for not distributing food grains properly and for "other irregularities". A showcausenotice is stated to have been given to the petitioner on 8.9.1992 calling for his explanation. The petitioner is stated to have submitted a reply but the same was not to the satisfaction of the District Supply Officer. Accordingly, the impugned order dated 2.11.1992 was passed cancelling

the licence of his fair price shop.

I have heard Sri B.D. Mandhyan, learned Senior Counsel duly assisted by Sri Anuj Mandhyan as well as learned Standing Counsel appearing for the respondents. The order is being dictated in open Court.

Sri Anuj Mandhyan submitted that the action in terms of the the order dated 2.11.1992 is being taken against the petitioner in respect of certain acts of omission and commission committed by him during the period from 1988 up to 1991 and in any case the last penalty imposed against the petitioner of Rs. 100/ was on 28.12.1991 and thereafter, there was neither any inspection by any authority nor any adverse report against him and therefore, there was no occasion to suddenly send one fine morning a show cause notice dated 28.8.1992 tracing the past track record of the petitioner.

Per contra, learned Standing Counsel submitted that a show cause notice dated 28.8.1992 was issued to the petitioner in view of his past track record as he was habitual defaulter so far as regular supply of food grains is concerned and he would also at times close the shop before the regular closing hours.

In the order of the District Supply Officer, dated 2.11.1992, there is no discussion which might indicate that merely, because the petitioner closed his shop early it resulted in deprival of the food grains to the unit holders. At least, no such complaint of any of the unitholders has been referred to in the impugned order. It can hardly be expected that if the supply of food grain by the petitioner has been made satisfactorily to the unitholders, he should still be expected to keep his shop open.

The revisional authority, Commissioner, Meerut Division, Meerut has also dittoed the order of the District Supply Officer.

At the time of admission of this writ petition, this Court was pleased to direct that "the operation of the impugned order shall remain in abeyance provided no other person had been inducted to run the fair price shop in the absence of the petitioner".

Sri Anuj Mandhyan, learned counsel for the petitioner very fairly pointed out that after the cancellation of the licence of the fair price shop of the petitioner, the shop was allotted to one M/s Manoj Garg, Thatherwada, but subsequently, the said order was withdrawn and the petitioner has continued to operate the fair price shop.

In the facts and circumstances of this case, the impugned orders dated 2.11.1992 and 16.2.199 are therefore quashed. The writ petition is allowed. There shall be no order as to cost.

However, it is not to be understood that if in future, the petitioner is found to be guilty of any lapses in the matter of distribution of food grains or otherwise no action can be taken by the District Supply Officer but it is expected that any

action which may be taken, shall be taken only after getting an appropriate report regarding the irregularities and lapses conducted by the petitioner.