
(2009) 12 AHC CK 0366
In the Allahabad High Court
Case No : C.M.W.P. No. 283 of 2009

Gaya Prasad Kushwaha

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Citation : (2011) 1 RCR(Civil) 465

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The Petitioner has sought the quashing of the order dated 15th December, 2005 passed by the Sub-Divisional Magistrate by which the fair price shop licence of the Petitioner was cancelled. The Petitioner has also sought the quashing of the order dated 14th November, 2008 passed by the Commissioner, Chitrakoot by which the appeal filed by the Petitioner for setting aside the aforesaid order dated 15th December, 2005 was dismissed.

2. The records indicate that earlier the fair price shop licence of the Petitioner was cancelled by the Sub-Divisional Magistrate by the order dated 22nd July, 1998. The Petitioner filed an appeal against the said order before the Commissioner. In the appeal this order dated 22nd July, 1998 was initially stayed but subsequently, the appeal was dismissed on 17th September, 1999. This order was challenged by the Petitioner by filing Writ Petition No. 54910 of 1999 in which an interim order was passed on 6th January, 2000 that the orders dated 17th September, 1999 and 22nd July, 1998 shall remain stayed. This petition was ultimately disposed of by this Court by the judgment and order dated 21st November, 2005 with the following observations:

Notice were issued and the Respondents were granted time to file counter affidavit. In the counter affidavit it has been stated that there were various complaints against the Petitioner and the goods were not being distributed to the

card holders and extra prices were being charged from the villagers. Both the authorities after considering the relevant records have come to the conclusion that the license of the Petitioner has rightly been cancelled.

Petitioner submits that now on the basis of the interim order, the Petitioner is operating and distributing the goods to the villagers and there are no complaints against the Petitioner.

In view of the aforesaid fact, the matter is remanded to the Sub Divisional Magistrate, licensing authority to consider the case of the Petitioner as a fresh and pass appropriate order after affording opportunity to the Petitioner.

The writ petition is disposed of accordingly.

3. After the aforesaid petition was disposed of by this Court, a notice dated 29th November, 2005 was issued by the Sub-Divisional Magistrate asking the Petitioner to appear on 6th December, 2005 and submit evidence. The Petitioner appeared before the Sub-Divisional Magistrate and submitted affidavits of various persons that no irregularity had been committed by the Petitioner. On 15th December, 2005, the Sub-Divisional Magistrate directed the Naib Tehsildar to examine the last five years' distribution records of the Petitioner and submit a report within three days. However, on the same date, the Sub-Divisional Magistrate passed an order dated 15th December, 2005 cancelling the fair price shop licence of the Petitioner. This order was challenged by the Petitioner by filing Writ Petition No. 7050 of 2006 in which an interim order was passed by this Court on 6th February, 2006 staying the operation of the order dated 15th December, 2005. Subsequently, this petition was dismissed on 29th April, 2008 with liberty to the Petitioner to avail of the alternative remedy of appeal before the Commissioner. The Commissioner by the order dated 14th November, 2008 has dismissed the appeal.

4. Sri Arvind Srivastava, learned Counsel appearing for the Petitioner submitted that a perusal of the order dated 15th December, 2005 would indicate that the order is based on the inspection made by the Tehsildar on 15th December, 2005. He submits that the Petitioner was not given any opportunity to controvert the allegations made in the report submitted by the Tehsildar. His submission is that if these irregularities were to form the basis for cancellation of the licence then a show cause notice was required to be given to the Petitioner in respect of these charges but that was not done. He further submitted that on 15th December, 2005, the Sub-Divisional Magistrate directed the Tehsildar to submit a report within three days but on the same date enquiry is said to have been made and a report was submitted and an order was also passed on the same date by the Sub-Divisional Magistrate. According to him, the Commissioner has also failed to consider these submissions.

5. Learned Standing Counsel appearing for the Respondents as well as Sri M.N. Singh, learned Counsel appearing for Respondent No. 4-Sant Saran who is now running the fair price shop have submitted that there is no infirmity in the order

passed by the Sub-Divisional Magistrate or the Appellate Court. They submitted that the Petitioner has committed many irregularities in the supply of essential commodities and in view of the report submitted by the Tehsildar on 15th December, 2005, the Sub-Divisional Magistrate was justified in passing the impugned order.

6. I have carefully considered the submissions advanced by the learned Counsel for the parties.

7. The Respondents have not stated that any show cause notice was issued to the Petitioner in respect of the allegations of irregularities of 2005 which have been mentioned in the impugned order dated 15th December, 2005. In fact what they contend is that the order is based on the report of the Tehsildar and, therefore, no opportunity was required to be given to the Petitioner. The submission of the learned Counsel for the Respondents cannot be accepted. The order dated 15th December, 2005 is based on certain irregularities said to have been committed in 2005. The Petitioner was, therefore, required to be given a show cause notice and in the absence of any opportunity having been given to the Petitioner to controvert the allegations made in the report dated 15th December, 2005 made by the Tehsildar, it is difficult to sustain the order dated 15th December, 2005 passed by the Sub-Divisional Magistrate for cancellation of the fair price shop of the Petitioner. The Commissioner has also failed to consider this aspect of the matter.

8. In view of the aforesaid, the impugned order dated 15th December, 2005 passed by the Sub-Divisional Magistrate and the order dated 14th November, 2008 passed by the Commissioner are set aside. It shall, however, be open to the Sub-Divisional Magistrate to hold an enquiry against the Petitioner and pass a fresh order in accordance with law.

9. The writ petition is allowed to the extent indicated above.