
(2009) 08 AHC CK 0283
In the Allahabad High Court

Jai Bhagwan Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 1 AWC 429

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—Rejoinder affidavit filed today be kept on record.

2. Heard learned Counsel for petitioner and learned standing counsel.

3. As counter and rejoinder affidavits have already been exchanged, therefore, with the consent of parties, the matter is being disposed of finally.

4. Petitioner who is a fair price shop holder, a show-cause notice was given to petitioner for levelling certain charges against him on the basis of complaint by card holder. On the basis of said complaint, Sub-Divisional Magistrate, who is Enquiry Officer has directed petitioner to submit relevant documents within a period of three days. After receipt of reply by petitioner, an order has been passed by competent authority on 24.3.2008 regarding a finding that charges levelled against petitioner has been proved and petitioner is not distributing essential food-grains as well as kerosene oil to various persons. The licensing authority while considering the case has discussed in detail the contentions and facts regarding non-distribution of articles to card holders. Finally, a finding has been recorded that from the background and from various statements of villagers it has clearly been proved that petitioner is not distributing the goods properly and without distributing the said goods, he is selling out the same in open market, which is in clear violation of the terms and conditions of the licence.

5. Aggrieved by the order passed by licensing authority, an appeal was filed before appellate authority. The appeal too has been dismissed vide its order dated 19.11.2008 holding therein that in 2006 and 2007 also complaints were made against petitioner and enquiry was done and security amount deposited by petitioner was forfeited in lieu of penalty imposed upon petitioner. Further a fact has also been brought to the notice of appellate authority that petitioner was involved in a criminal case u/s 302 of the Indian Penal Code and he has been convicted for life imprisonment, though the appeal has been filed before High Court but conviction and sentence have not been stayed. Hence, the present writ petition.

6. Learned Counsel for petitioner submits that the Committee headed by Gram Pradhan has given a report in favour of petitioner that there is no discrepancy in distribution of essential goods to card holders. It is due to political enmity, show-cause notice for cancellation of licence has been given. Further submission has been made that on pressure of local leaders, action has been taken against petitioner. Petitioner submits that in view of the fact that the appeal against conviction is pending, therefore, that cannot be taken into consideration either by the licensing authority or by the appellate authority. All the relevant documents were submitted but in spite of the aforesaid fact, licence of petitioner was cancelled.

7. On the other hand, Sri Ramanand Pandey, learned standing counsel has submitted that apart from the charges, proved against petitioner regarding non-distribution of essential goods to card holders, conviction of petitioner u/s 302 by the competent Court of law is sufficient for the purposes of cancellation of licence. Admittedly, petitioner has been convicted for life imprisonment, therefore, legally it will be treated that he is convicted accused of Section 302 of Indian Penal Code, unless and until he is acquitted from competent Court of law. The submission made by learned standing counsel has got force to this effect that a person who is already a criminal, convicted u/s 302 of the Indian Penal Code cannot have a right to run a fair price shop on the basis of licence issued by competent authority.

8. Apart from that the finding recorded by both the authorities are that the charges levelled against petitioner regarding non-distribution of essential goods as well as kerosene oil have been proved. The statements, of the villagers clearly goes to show that petitioner is not distributing essential goods properly and it is being sold in open market. Further, a finding has been recorded that in 2006 and 2007 there were complaints against petitioner and he was penalised by forfeiture of security deposited. Further finding has been recorded that in spite of time granted to petitioner to submit relevant documents, petitioner has not submitted the same.

9. Apart from illegalities committed by petitioner in distributing essential goods to card holders, it is to be noted that petitioner has been convicted in a crime u/s 302 of Indian Penal Code by competent criminal court and has been convicted

life imprisonment. Appeal filed by petitioner is still pending. There is no dispute to this effect that appeal is in continuation of the proceeding but unless and until conviction and sentence awarded to petitioner by the criminal court is set aside in appeal, petitioner will be treated to be an accused u/s 302 of Indian Penal Code. Therefore, in such situation whether petitioner is entitled to have a licence of fair price shop, who is a convicted accused of an offence of murder. In such situation, I am of opinion, the principle will be the same that if a person is not entitled to have a Government service on the ground that he has been convicted for criminal offence, the same principle will also be applicable in the present case that if a person has been convicted by the criminal court of law, unless and until the same is set aside by the higher Court, he will have no right to run a fair price shop being a convicted person.

10. In view of aforesaid fact and findings recorded by the licensing authority as well as the appellate authority, I see no justification to exercise jurisdiction under Article 226 of the Constitution of India.

11. The writ petition is devoid of merits and is hereby dismissed.

12. No order as to costs.

It is, however, open to petitioner to make an application for grant of licence, in case, petitioner is acquitted by the appellate court.