
(2015) 05 AHC CK 0054

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 38150 of 2014

Kamta Prasad

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Citation : (2015) 5 ADJ 81 : (2015) 111 ALR 643 : (2015) 5 AWC 4840 : (2015) 129 RD 183

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

Bench : Division Bench

Advocate : Sanjay Kumar Dubey, for the Appellant; Vatsala, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amar Singh Chauhan, J—Heard Sri Sanjay Kumar Dubey, learned counsel for the petitioner, learned Standing Counsel for the State and Mrs. Vatsala for the respondent No. 4. By means of the present writ petition, Kamta Prasad son of Netra Pal, resident of village and Gram Panchayat Jarinpur Bhurraka, Block Hasayan, District Hathras, has challenged the order dated 17.7.2014 passed by the Sub-Divisional Magistrate, Sikandrara Hathras appointing Respondent No. 4, Arvind Kumar as the fair price shop dealer under dying in harness in village Jarinpur Bhurraka, Block Hasayan, District Hathras.

2. Sri Vijay Singh, licensee of fair price shop of village Jarinpur Bhurraka, Block Hasayan, District Hathras died on 30.4.2014. Thereafter, petitioner moved an application before S.D.M. Sikandrara, District Hathras on 22.5.2014, with a prayer to call an open meeting of Gram Sabha and elect a person for operating fair price shop of the Village. On 26.5.2014 Arvind Kumar son of late Vijay Singh moved an application before S.D.M. Sikandrara praying that the allotment of fair price shop may be made in his name under the dying in harness.

3. From the record, it appears that the erstwhile dealer of the fair price shop left

behind him five sons and wife. There are separate ration cards in the name of all the sons. They all are married and living separately since the life time of their father. It has also been alleged that wife of the deceased dealer is illiterate and an old lady. Further the villagers of Gram Sabha are not satisfied with the behavior of the respondent No. 4 and his brothers.

4. On the application/complaint of Pradhan of Gram Sabha, the District Magistrate, vide order dated 1.7.2014 called a report from concerned S.D.M., who directed the Block Development Officer concerned to enquire into the matter and submit a report within 3 days.

5. When the petitioner came to know that without making an enquiry in the matter, the administration is going to allot the license of fair price shop in favour of respondent No. 4 under political pressure, then he filed Writ Petition No. 35671 of 2014, which was dismissed by this Court, as there was no cause of action to file that writ petition. After dismissal of the said writ petition on 14.7.2014, the respondent No. 3 vide order dated 17.7.2014 allotted the fair price shop of the Village in question in favour of the respondent No. 4, under clause 10(JH) of Government Order dated 17.8.2002.

6. The petitioner prayed for quashing of the impugned order dated 17.7.2014 passed by S.D.M. Sikandrara, District Hathras and further to issue a direction to take fresh steps for allotment of license of fair price shop of village Jarinpur Bhurraka, Block Hasayan, Tehsil Sikandrara, District Hathras.

7. The learned counsel for the petitioner, firstly argued that Vijay Singh dealer expired leaving behind five sons and his widow. It is on record that all the five sons have separate ration cards and it is said that they are living separately since the time of their father. They all are married. The widow is an illiterate and old lady hence she is not eligible to act as dealer of the fair price shop.

8. Learned counsel for the petitioner has placed reliance upon the judgment of this Court in case of Shiv Kumar v. U.P. Ziladhikari Chakiya, District Chandauli and others, 2014 (8) ADJ 693 (DB). The relevant paras 46, 49 and 51 are as under:

"46. In its ordinary and primary sense the word family" signifies the collective body of persons living in one house or under one head or manager or one domestic Government. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio-religious customs of the community to which such persons may belong.

49. The term family" and "house-hold" are capable of wide and varying meaning and same cannot be left to be assigned a meaning in its general terms and same has to be interpreted in reference to the context it has been used keeping in view the overall object and purpose sought to be achieved.

51. Accordingly, this Court is of the view that there is no conflict whatsoever in

between the provisions of Clause 2(o) Clauses 30 and 31 of U.P. Scheduled Commodities Distribution Order, 2004 vis-a-vis with the definition of "family" as given in Government Order dated 3rd July, 1990 paragraph 4.7 and the Division Bench in Ram Murat Vs. Commissioner, Azamgarh Division, Sub-Divisional Magistrate, Block Development Officer and State of U.P., (2006) 5 ADJ 396 : (2006) 4 AWC 3419 , defining the word "fatally" as given in Government Order dated 3rd July, 1990, Paragraph 4.7 lays down the correct law, even after enforcement of Control Order 2004, except to the extent of introducing concept of joint residence and joint kitchen in reference of Brother, whereas the definition of family is clearly inclusive of brother also and the definition of family as given in Clause 2(o) of U.P. Scheduled Commodities Distribution Order, 2004 in no way would override the definition of family given in Paragraph 4.7 of the Government Order dated 3rd July, 1990 and the said definition has to be read in the context of issuance of ration cards and nothing beyond the same."

9. In the case of Indra Pal Singh and Others Vs. State of U.P. and Others, (2012) 1 ADJ 701 , this Court has discussed in detail the definition of "family" and "household". It has been held that "family" is inclusive of himself, wife, son, unmarried daughter, mother, brother or any other member who stays together and dines together. In the case in hand, it may be that all the sons with their wives etc. were living with their father and mother in one house, but at the same time it is established from record that they had separate ration cards. Therefore, their kitchen was certainly not a common one. So they cannot be said to be dependents of the deceased dealer. The widow of the deceased can only be the dependent of the deceased. Since she is said to be an old and infirm lady and not interested in the appointment as dealer of fair price shop of the village, therefore, the only course open to Gram Sabha was to pass a resolution for selecting a fair price shop dealer and send the same to the competent authority for taking appropriate action in the matter.

10. The next issue in the present writ petition is that the application/complaint dated 22.5.2014 moved to the S.D.M. Sikandrara, District Hathras has not been considered before allotment of license of fair price shop of village Jarinpur Bhurraka, Block Hasayan, Tehsil Sikandrara, District Hathras in favour of the respondent No. 4.

11. In this connection, the learned Standing Counsel has argued that all the objections have been considered and decided by the competent authority before passing of the allotment orders.

12. To our mind there is no exception of the procedure carved out for consideration of grant of licence on compassionate basis founded on the strength of the reputation of the deceased licence holder. This assessment as to the reputation of the deceased licence holder and his goodwill has to be gathered only from the resolution of the open meeting of the Gaon Sabha. It has to be the collective opinion of the Gaon Sabha, and not the individual opinion of any authority or the Tehsil Level Committee. We are of the considered opinion that

even in a matter of an individual consideration of compassionate grant of licence under Clause 10 of the Government Order 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 Deputy District Magistrate.

13. It is established from the record that Civil Misc. Writ Petition No. 35671 of 2014 was filed by the present petitioner Kamta Prasad against the State of U.P. and 3 others for issuing directions to the Sub-Divisional Magistrate, Sikandrara, District Hathras to take steps for fresh allotment of the fair price shop of Village Jarinpur Bhurraka, Block Hasayan, District Hathras. This petition has been dismissed by this Court on 14.7.2014 as the petitioner had no cause of action to file this writ petition at this stage. On 17.7.2014 the allotment order was passed by the S.D.M. Sikandrara but there is no order passed on the application/complaint of the petitioner on record. Therefore, the grievance of the petitioner appears to be genuine one. It was mandatory for the authority concerned to consider the complaints/application/objection of the petitioner before passing the allotment order, which does not appear to have been done. Further, the SDM could not have issued an allotment order in favour of Respondent No. 4 in the absence of a resolution of the Gram Sabha in favour of Respondent No. 4. Even for an appointment under dying in harness, a resolution of the Gram Sabha is a must.

14. Thus, in view of the aforesaid factual aspect and also the law and settled legal propositions discussed above, we are of the view the order impugned dated 17.7.2014, passed by the S.D.M. Sikandrara, District Hathras, respondent No. 3 is not sustainable in nature and the present writ petition deserves to be allowed.

15. Hence, the order of the SDM dated 17.7.2014 is quashed. The writ petition succeeds and is allowed. 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 the S.D.M. shall proceed to get the matter processed in accordance with the law. It is directed that the aforesaid exercise be completed expeditiously, preferably within a period of six weeks from the date of presentation of a certified copy of the order so that the villagers may not be put to any inconvenience for distribution of fair price essential commodities. No order is passed as to cost.