
(2012) 04 AHC CK 0119
In the Allahabad High Court
Case No : Special Appeal No. 1686 of 2009

Madan Mishra

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Citation : (2012) 04 AHC CK 0119

Hon'ble Judges : Satya Poot Mehrotra, J and Virendra Vikram Singh, J

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Virendra Vikram Singh, JJ.—It appears that the fair price shop licence of the petitioner was cancelled by the SubDivisional Magistrate, Sadar, District Deoria by the order dated 26.10.2004. The petitionerappellant, thereupon, filed an appeal before the Divisional Commissioner, which was dismissed by the order dated 17.1.2005.

2. The petitioner, thereafter, filed a writ petition, being Civil Misc. Writ Petition No. 3066 of 2005 before this Court impugning the said orders dated 17.1.2005 and 26.1.2004. The learned Single Judge by the judgment dated 16.9.2009 dismissed the said writ petition.

3. Thereupon, the petitionerappellant has filed the present special appeal under Rule 5 of Chapter VIII of the Rules of the Court.

4. We have heard the learned Counsel for the parties.

5. In Sheet Gupta v. State of U.P. and others, 2010 (82) ALR 209 (FB) the following question was referred for decision by a Larger Bench :

"Whether a special appeal under the provisions of Rule 5 of Chapter VIII of the Rules of the Court lies in a case where the judgment has been given by a learned Single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the U.P. Scheduled Commodities District Order, 2004?" A Full Bench of this Court answered the question as under :

"A special appeal would not lie under the provisions of Rule 5 of the Chapter VIII of the Rules where the judgment has been given by a learned Single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the Distribution Order, 2004."

6. The Supreme Court has taken similar view in the case of State of U.P. and others v. Madhav Prasad Sharma., (2011) 2 SCC 212.

As noted above, the present special appeal has been filed under Rule 5 of the Chapter VIII of the Rules of the Court against the judgment of the learned Single Judge in the aforementioned writ petition. The said writ petition had been filed by the petitionerappellant against the order dated 17.1.2005 passed by the Divisional Commissioner dismissing the appeal filed by the petitionerappellant against the order dated 26.10.2004 passed by the SubDivisional Magistrate; Sadar, Deoria cancelling the fair price shop license of the petitionerappellant.

7. In view of the aforesaid facts, it is evident that the full decision in Sheet Gupta case (supra) is applicable to the present special appeal, and the present special appeal is not maintainable.

8. The present special appeal is, therefore, liable to be dismissed as not maintainable, and the same is accordingly dismissed as not maintainable.

9. However, on the facts and in the circumstances of the case, there will be no order as to costs.

Special Appeal Dismissed.