
(2011) 02 AHC CK 0125

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44526 of 2009

Madan Mohan Sharma

APPELLANT

Vs

S.D.M. Jasrana and Others

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0125

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—In the present case Petitioner has approached this Court questioning the validity of the order dated 25.07.2008 passed by Licensing Authority and order of its affirmance dated 19.08.2009 passed by Deputy Commissioner, Food and Civil Supplies, Agra Circle, Agra.

2. Brief background of the case is that Petitioner is fair price shop agent and qua the distribution made by him complaint had been made on 12.05.2008. A joint team of three members was constituted to make inquiry. The said join team conducted inquiry and pointed out 5 major illegalities being committed by the Petitioner in distribution of essential commodities. Based on the said report so submitted, the Licensing Authority proceeded to pass an order of suspension and simultaneously asked the Petitioner to submit his explanation. The Petitioner thereafter submitted his reply contending therein that no illegality whatsoever has been committed by him and entire action taken against him is purely motivated. The Licensing Authority after receiving said reply asked the Supply Inspector to re-verify the contents of the reply. Thereafter, the record in question reflects that adverse report has been submitted against the Petitioner and based on the said report, order of cancellation has been passed. Petitioner preferred an appeal and the said appeal has also been dismissed. At this juncture present writ petition in question has been filed.

3. Pleadings inter se parties have been exchanged and Supplementary Affidavit has been filed appended therein the copy of the order framing charges and copy of the reply so submitted by the Petitioner. Apart from this one Shiv Kumar Sharma has also approached this Court for impleading him as opposite party No. 5 to the writ petition. He is also being heard. Present writ petition has been taken up for hearing and disposal with the consent of the parties.

4. Learned Counsel for the Petitioner, Shri Ranjeet Saxena contended with vehemence that in the present case procedure adopted is not free and fair, inasmuch as, reply submitted by the Petitioner has not been considered in correct perspective. Coupled with this after reply had been submitted by the Petitioner, further investigation was carried out by Senior Supply Inspector and copy of the said report had never been supplied to the Petitioner and the same had been made foundation and basis for passing the order of cancellation. In such a situation and in this background, Petitioner submits that decision making process, is bad as such writ petition deserves to be allowed.

5. Countering the said submission learned Standing Counsel as well as Shri Arun Srivastava, learned Counsel for the Respondent No. 5 contended that rightful view has been taken in the matter and no interference should be made.

6. After respective argument has been advanced, factual position which emerges in the present case that a show-cause notice was issued to the Petitioner asking the Petitioner to submit his reply. The Petitioner in his turn submitted detailed elaborate reply, copy of the same is filed as Annexure-SA-2 and therein each and every charge which have been levelled against the Petitioner qua the same rebuttal has been filed. After the said reply in question has been submitted, the record in question reflects that Licensing Authority in his turn directed further investigation by Senior Supply Inspector, who submitted his reply on 19.07.2008, copy of the said report at no point of time had ever been supplied to the Petitioner and straightway order has been passed on 25.07.2008. Once the reply has been submitted by the Petitioner and for the said reply so submitted further investigation has been carried out and material adverse to the Petitioner had been submitted by the Senior Supply Inspector on 19.07.2008, then rule of fair play demands that copy of the said report ought to have been supplied to the Petitioner and further opportunity of hearing be given to the Petitioner. In the present case procedure which has been adopted for cancellation of fair price shop agency of the Petitioner cannot be approved of for the simple reason that before proceedings to pass order dated 25.07.2008 opportunity of hearing has not at all been provided to the Petitioner and copy of the report dated 19.07.2008 has also not been supplied to the Petitioner. Once principle of natural justice has not at all been complied with and copy of inquiry report has not been supplied, in such a situation and in this background order dated 25.07.2008 passed by Licensing Authority and order dated 19.08.2009 passed by Deputy Commissioner, Food and Civil Supplies, Agra Circle, Agra are not approved of.

7. As far as the right of Shiv Kumar Sharma is concerned, this is accepted

position in the present case that his right had been created for grant of fair price shop agency, after fair price shop agency of Petitioner has been cancelled. It is settled law that once third party right had been created during pendency of appeal, and in the event of appeal being allowed, the incumbent in whose favour third party right had been created, cease to have any right or authority to carry on the fair price shop agency in view of judgment of this Court in the case of Smt. Mithilesh Kumar v. State of U.P. and Ors. Civil Misc. Writ Petition No. 45893 of 2008 decided 18.11.2010) and the judgment of Division Bench of this Court in the case of Mahendra Singh v. State of U.P. and Ors. Civil Misc. Writ Petition No. 54498 of 2009 decided on 16.11.2009.

8. Consequently, order dated 25.07.2008 passed by Licensing Authority and order dated 19.08.2009 passed by Deputy Commissioner, Food and Civil Supplies, Agra Circle, Agra are hereby quashed. Licensing Authority is directed to supply copy of the inquiry report dated 19.07.2008 to the Petitioner within two weeks from the date of receipt of certified copy of the order passed by this Court and Petitioner is given liberty to file objection to the same and thereafter Licensing Authority is directed to take fresh decision in accordance of law after providing opportunity of hearing to the parties preferably within next two months.

9. With the above direction present writ petition is allowed.