

(2015) 05 AHC CK 0122
In the Allahabad High Court
Case No : C.M.W.P. No. 65561 of 2013

Nagendra Kumar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 5 ADJ 638 : (2015) 5 ALJ 596 : (2015) 111 ALR 179 : (2015) 6 AWC 5720 : (2015) 128 RD 609

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

Bench : Division Bench

Advocate : Girja Shankar and Siddharth Jaiswal, for the Appellant; Rajiv Dwivedi and Shyam Sunder Mishra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala and Amar Singh Chauhan, JJ.—The petitioner is a member of the gram panchayat and has questioned the order dated 3rd September, 2013 passed by the Sub-Divisional Magistrate allotting the fair price shop in favour of respondent No. 7. Two grounds have been raised in the writ petition, namely, that the resolution was passed in a closed room without any agenda and it was not an open meeting. The second ground is that respondent No. 7 is the sister-in-law of the Pradhan and, consequently, was barred under the Government Order of 1990.

2. A counter-affidavit has been filed by the District Supply Officer on behalf of respondent Nos. 3, 4 and 5 indicating in paragraph 4 that an open meeting of the gram panchayat was held on 24th August, 2013 as per the agenda, which was presided over by the Pradhan and the meeting was held in the presence of the Assistant Development Officer. Further, the gram panchayat passed a unanimous resolution recommending the name of respondent No. 7. Based on this resolution, the Sub-Divisional Magistrate after considering the entire record passed an order dated 3rd September, 2013 allotting the fair price shop in favour of respondent No. 7.

3. The contents of paragraph 4 have been partly admitted by the petitioner paragraph 5 of the rejoinder affidavit. What is partly admitted and what is denied has not been specified. No proof or evidence has been filed to indicate that the resolution was passed in a closed room or that the Assistant Development Officer was not present and that the meeting was held without any agenda.

4. In the light of the aforesaid, the contention of the petitioner cannot be accepted.

5. On the question as to whether respondent No. 7 is a family member, the Government order of 1990 is clear. The Full Bench of this Court in Indrapal Singh Vs. State of U.P. and Others, (2013) 10 ADJ 612 : AIR 2014 All 50 : (2014) 2 ALJ 553 : (2014) 2 AWC 1455 : (2014) 123 RD 504 : (2014) 1 UPLBEC 379 have considered the definition of "family" in the Government Order dated 3rd July, 1990 and has divided the said definition into two parts. The first is the prohibitive part, which defines the family as self, wife, son, unmarried daughter, mother, father and brother, who are prohibited from holding a fair price shop, in the event, one of such persons is a Pradhan.

6. In the instant case, respondent No. 7 does not come in this prohibitive list as she is the wife of the brother-in-law of respondent No. 7. The Government Order dated 3rd July, 1990 further defines "family" as those members, who have been taken within the fold of family by staying together and mess in a common kitchen. There is nothing to indicate that respondent No. 7 is dining in the same mess. On the other hand, the State in their counter-affidavit has categorically held that respondent No. 7 is not a family member of the Pradhan as she is residing and cooking food separately on the basis of family partition. In the light of the aforesaid, we do not find any error in the impugned order. The writ petition fails and is dismissed.