
(2019) 07 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1305 Of 2016

Neeraj Kumar

APPELLANT

Vs

District Supply Officer, Dehradun & Another

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0002

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Piyush Garg, Anjali Bhargava, T.P.S. Takuli

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. The petitioner before this Court was given a licence to run a fair price shop at Village Central Hope Town Selaqui, Development Block Sahaspur, District Dehradun in the year 2001. The genesis for grant of a fair price shop or its cancellation/suspension starts from the resolution of the concerned Gram Sabha. Gram Sabha in its resolution dated 17.06.2015 resolved that there are complaints against the petitioner, and therefore, the licence of the petitioner's shop should be taken away from him and given to another member of the Gram Sabha i.e. present respondent no. 2 Puran Singh. Consequent to that, the District Supply Officer vide its order dated 19.06.2015 attached the ration cards of the fair price shop of the petitioner to the fair price shop of one Pravesh Kumar. This order dated 19.06.2015 was challenged by the petitioner before this Court in a writ petition being WPMS No.1688 of 2015, where he was asked to file an appeal before the Divisional Commissioner. Consequently, the petitioner filed an appeal before the Divisional Commissioner which was allowed by the Commissioner vide order dated 03.12.2015 with the directions that the petitioner shall be given an opportunity of hearing by the District Supply Officer and the District Supply Officer shall then pass a speaking order. Consequent to that, the

District Supply Officer passed its order on 13.04.2016, whereby the fair price shop of the petitioner ostensibly restored but some of the consumers, i.e. some of the units were given to one Puran Singh i.e. respondent no. 2 before this Court. This order was challenged by the petitioner before this Court in the present writ petition.

2. A learned Single Judge of this Court vide order dated 01.04.2019 dismissed the writ petition of the petitioner. The learned Single Judge was of the opinion that the impugned order dated 13.04.2016, whereby ultimately the cards were distributed between two fair price shop dealers instead of one, the order was passed with the consent of the petitioner, therefore, no interference was liable to be made.

3. Aggrieved by the order dated 01.04.2019, the petitioner filed a special appeal being SPA No. 447 of 2019 before a Division Bench of this Court, which was allowed by the Division Bench of this Court on 17.05.2019. The relevant portion of the order dated 17.05.2019 passed by the Division Bench reads as under:-

"7. While we were initially inclined to admit the appeal and grant stay, since the findings recording in the order under appeal, that the appellant-writ petitioner had voluntarily agreed for division of the cards attached to his shop with the second respondent, does not appear to be supported by any material on record, Mr. T.P.S. Takuli, learned counsel for the second respondent, would submit that since the second respondent's contention, that failure of the appellant-writ petitioner to challenge the order dated 08.04.2016, which is referred to in the proceedings dated 13.04.2016, should be construed as the appellant-writ petitioner having voluntarily agreed to distribute cards with the second respondent, has also not been considered by the learned Single Judge, it would suffice, instead of keeping the appeal pending on the file of this Court, to set-aside the order under appeal and restore the Writ Petition to file.

8. As Mr. C.S. Rawat, learned Addl. C.S.C. appearing for the State, would also agree for such a course of action, we set-aside the order under appeal and restore the Writ Petition to file.

9. Needless to state that, since the order under appeal has been set-aside and the Writ Petition has been restored to file, the interim order passed earlier in the Writ Petition would revive, and would continue till it is either vacated by the learned Single Judge, or the Writ Petition is finally decided, whichever is earlier.

10. The Special Appeal is, accordingly, disposed of. No costs."

4. With this background, the matter has come up before this Court again.

5. As far as "consent" aspect is concerned, the learned State Counsel as well as the learned counsel for respondent no. 2 have not been able to show as to what is the consent for the distribution of the cards between the petitioner and the private respondent no. 2.

6. Learned counsel for respondent no. 2 Sri T.P.S. Takuli, however, argues that since the order dated 08.04.2016 has never been challenged so far it allots certain consumers to him and thereby impliedly the petitioner has agreed to distribute ration cards with respondent no. 2.

7. However, this argument is not sustainable for the simple reason that ultimately the petitioner is aggrieved by the splitting of the consumers between him and the private respondent no. 2. Vide order dated 13.04.2016 which was passed by the District Supply Officer, under the directions of the Commissioner, the District Supply Officer has actually restored the possession of the petitioner but this cannot be called as complete restoration and i.e. what the petitioner is aggrieved with.

8. Since there was no consent of the petitioner, the order dated 13.04.2016 is hereby set aside as far as it splits into two the number of consumers of the earlier shop, which earlier was all with the petitioner. When the order was restored, the entire units were liable to be given to the petitioner. This has not been done. However, if the Gram Sabha and the District Supply Officer come to the conclusion that number of units are large and another fair price shop is needed, then a fresh decision be taken, in accordance with law.

9. The writ petition stands disposed accordingly.