

(2019) 04 UK CK 0005

In the Uttarakhand High Court

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

Neeraj Kumar

APPELLANT

Vs

District Supply Officer Dehradun & Another

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g)

Citation : (2019) 04 UK CK 0005

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Tapan Singh, Dinesh Ghildiyal, Shankar Agarwal, Ramji Srivastava

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The petitioner was allotted a fair price shop licence for distribution of essential commodities in Village Central Hope Town Selaqui, Development Block Sahaspur, District Dehradun, as back as in the year 2001. On account of certain anomalies committed by the petitioner with regards to the closure of fair price shop licenced to the petitioner, the members of the village who were the card holders attached to the shop of petitioner were suffering there were various complaints too lodged against petitioner. The Gram Sabha conducted meeting on various resolutions, including the resolution in relation to the fair price shop of the petitioner, a resolution and its meeting was held on 17.06.2015, in its Resolution No. 6 it was decided that the fair price shop of licence granted to the petitioner deserved to be cancelled for the reason assigned in it. The Resolution No. 6 is quoted hereunder:

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2. In continuation to the resolution dated 17.06.2015 the District Supply Officer of District Dehradun had proceeded to pass an order on 19.06.2015 and attached the card holders of the petitioner's shop with the another fair price shop dealer, i.e. of one Mr. Parvesh Kumar and it was also directed by the said resolution to consider the allotment of shop to respondent no. 2. As against the decision of the District Supply Officer dated 19.06.2015, the petitioner had preferred a writ petition before this Court being Writ Petition No. 1688 of 2015 'Neeraj Kumar vs. District Supply Officer'. The said writ petition was dismissed as withdrawn with the liberty to the petitioner to prefer an appeal against the order of 19.06.2015. The petitioner had thereafter the judgment in writ petition of 20.07.2015 of this Court preferred an appeal before the Commissioner Garhwal Division, which was numbered as Appeal No. 9 of 2014-15 'Neeraj Kumar vs. District Magistrate, Dehradun & Others', in which initially there was an interim order granted on 01.08.2015 and later on the appeal preferred by the petitioner was allowed directing the reconsideration of the entire controversy by the District Supply Officer afresh. The operative portion of the commissioner's order dated 03.12.2015 is quoted hereunder:

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3. On revival of the proceedings before the District Supply Officer the District Supply Officer has proceeded to pass the impugned order dated 13.04.2016 afresh, the petitioner partially challenges only that part of the impugned order dated 13.04.2016, so far it relates to attachment of the card/unit holders in the newly allotted fair price shop to respondent no. 2. When this writ petition was argued as against the impugned order dated 13.04.2016, there was an interim order granted by this Court on 18.05.2016, and a counter affidavit was called for. In response to it the State has filed the counter affidavit and in paragraph 11 of the counter affidavit the following pleading has been raised:

"11. That the contents of para 9 of the writ petition is not admitted as stated, hence denied. However, it is submitted that a penalty of `2,000/- was imposed to the petitioner by giving him a warning that if he will not distribute the ration in time then his licence will be cancelled. Thereafter, the ration cards of the petitioner's shop were divided partly by Pooran Singh and the petitioner for the

proper management of the ration distribution."

4. On reading of the paragraph under reply rather it goes to show that as a consequence of the revival of the licence of the petitioner in pursuance to the part of the order dated 13.04.2016, the petitioner as well as the newly appointed fair price shop dealer, i.e. respondent no. 2, had themselves voluntarily agreed for division of the cards attached to the shop of the petitioner with the respondent no. 2 for proper management of the public distribution system.

5. It is contended by the learned counsel for the petitioner that the pleading raised in the counter affidavit in its paragraph to the effect that it was decision and division of card holders on a consensus arrived at between Pooran Singh, respondent no. 2 and the petitioner, for division of the card holders attached to the petitioner's shop on the decision being rendered on 13.04.2016 is absolutely a misstatement which has been made by the Standing Counsel, because the petitioner has never extended any such consent of division of cards. Besides this, he has also submitted in paragraph 8 of the rejoinder affidavit in response to the counter affidavit that the division of the card holders between the fair price shop of Pooran Singh and the petitioner in fact is contrary to the Government Order dated 05.10.2005, wherein, the upper limit for maintaining the maximum number of cards which could be attached to a fair price shop has been fixed to 4,000 card holders and since the village in question there are only 2,387 card holders are there then the attachment of card holders to the petitioner's shop, it is lesser than the specified number as provided under the said Government Order dated 05.10.2005. However, in the concluding paragraph of para-8 of rejoinder affidavit filed by the petitioner the following pleading has been raised

8. Since there are less than 4000 units with the shop of the petitioner and new shop cannot be opened therefore ration cards of the petitioner's shop can not be divided partly by Pooran Singh and the petitioner.

6. Even with the Government order dated 15.10.2005, laying down the new arrangements for allocation of card holders, it has been exclusively left at the prerogative of gaon sabha to take an independent decision in this regard looking to the convenience of the card holders. The issue of card holders as raised by the petitioner in the light of clause of G.O., which reads as under:

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7. Thus the manner in which the petitioner has interpreted clause-I is just contrary to its intention and purpose and hence is not acceptable by this Court. It was simply a managerial policy decision it was neither arbitrary or violative of article 14 and 19 (1) (g) of the Constitution of India.

8. In fact, if the pleading raised in paragraph 8 of the rejoinder affidavit in response to the pleadings of paragraph 11 of the counter affidavit of the respondent no. 1 has taken into consideration one aspect which is quite apparent, is that the factum of an arrangement being made on the basis of consensus between the petitioner and the respondent no. 2 with regards to the division of the card holders attached to the fair price shops of the petitioner and of respondent no. 2 is not disputed by the petitioner but only with a rider which is added that he wants to qualify the said embargo imposed by the impugned order under challenge in the writ petition with a rider that it runs contrary to the Government Order No. 1609/XIX/2005 dated 15.10.2005.

9. Even as per the records which are available and in accordance with the finding which has been recorded in the impugned order itself it has to be read in relation to the resolution passed by the Gram Sabha on 17.06.2015, the respondent no. 2 had been allotted with a new fair price shop licence and he too was operating his fair price shop on the date of the passing of the impugned order passed by the District Supply Officer partially impugned in the present writ petition only upto the following extent:

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10. Since the petitioner had on the basis of his own consent and consensus extended has permitted the division of the card holders between the two fair price shops, i.e. one which is licenced to the petitioner with other licenced to respondent no. 2 as a consequence of the revival of the order passed by the commissioner and the second fair price shop allotted to respondent no. 2, which is allotted in pursuance to the resolution of Gram Sabha, this Court is of the view that since it was an arrangement which was voluntarily arrived at by the petitioner for distribution of the card units to the newly appointed fair price shop of the respondent no. 2, he cannot question a decision or a part of it when the same has been rendered by the competent authority on the basis of the consent extended by the petitioner.

11. In that view of the matter, the division of card holders into the two fair price shops of petitioner no. 1 and the respondent no.2 cannot be faulted with.

12. Thus, this writ petition fails and is, accordingly, dismissed.

13. However, there will be no order as to cost.