
(2019) 05 UK CK 0195

In the Uttarakhand High Court

Case No : Special Appeal No. 447 Of 2019, Stay Application No. 5628 Of 2019

Neeraj Kumar

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0195

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Piyush Garg, C.S. Rawat, T.P.S. Takuli

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Piyush Garg, learned counsel for the appellant-writ petitioner, Mr. C.S. Rawat, learned Addl. Chief Standing Counsel appearing for the State of Uttarakhand and Mr. T.P.S. Takuli, learned counsel for the second respondent and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. The appellant herein was allotted a fair price shop license for distribution of essential commodities in Village Central Hope Town, Selaqui, Development Block Sahaspur, Dehradun district in the year 2001. The Gram Sabha passed a resolution on 17.06.2015 recommending cancellation of the license of the appellant-writ petitioner. The District Supply Officer passed the order on 19.06.2015 attaching the card holders of the appellant-writ petitioner's shop with another fair price shop dealer Mr. Parvesh Kumar. He also directed that allotment of the shop, to the second respondent, be considered. Aggrieved by the decision of the District Supply Officer dated 19.06.2015, the appellant-writ petitioner filed Writ Petition (M/S) No.1688 of 2015, which was dismissed as withdrawn with liberty to prefer an appeal against the order dated 19.06.2015.

3. The appellant-writ petitioner preferred an appeal to the Commission, Garhwal Division in Appeal No.09 of 2014-15 and, while an interim order was initially granted on 01.08.2015, the appeal preferred by the appellant-writ petitioner was allowed, and the matter was remanded to the District Supply Officer to consider the matter afresh. The District Supply Officer, thereafter, passed an order on 13.04.2016, which the appellant-writ petitioner questioned by way of Writ Petition (M/S) No.1305 of 2016, in so far as it related to the attachment of cards/unit holders, in the newly allotted fair price shop, to the second respondent. Initially, an interim order was passed by the learned Single Judge on 18.05.2016, which order continued to remain in force till the Writ Petition was dismissed by the order under appeal dated 01.04.2019. The learned Single Judge has, in the order under appeal, observed as under:-

"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."

4. Mr. Piyush Garg, learned counsel for the appellant-writ petitioner, would submit that there is no material on record to show that the appellant-writ petitioner had voluntarily agreed for division of the cards, attached to his shop with the shop of second respondent, for proper management of the public distribution system.

5. When we asked Mr. C.S. Rawat, learned Additional C.S.C. appearing for the State, to show us any document, forming part of the record in the Writ Petition filed before the learned Single Judge, which would show that the appellant-writ petitioner had voluntarily agreed to distribute cards along with the second respondent, learned Addl. C.S.C. for the State would fairly state that there is no such material on record in the Writ Petition.

6. Mr. T.P.S. Takuli, learned counsel for the second respondent, would, however, draw our attention to the proceedings issued by the District Supply Officer dated 13.04.2016 (Annexure No.1 of the Writ Petition Page No.78), to submit that failure of the appellant-writ petitioner to question the validity of the order referred to therein (i.e. the order dated 08.04.2016), whereby cards and units were allotted to the second respondent, would necessitate the inference that the appellant-writ petitioner had voluntarily agreed for the division of cards attached to his shop, with the shop of the second respondent, for the proper management of the public distribution system. No finding has, admittedly, been recorded by the learned Single Judge faulting the appellant-writ petitioner for not challenging the proceedings dated 08.04.2016.

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.