
(2012) 05 AHC CK 0124
In the Allahabad High Court
Case No : Special Appeal No. 1089 of 2009

Prahlad	Vs	APPELLANT
Suraj Pal and Others		RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Citation : (2012) 8 ADJ 583

Hon'ble Judges : S.P. Mehrotra, J;Mahendra Dayal, J

Bench : Division Bench

Advocate : M.A. Abbasi and Hemant Kumar, for the Appellant; V.K. Singh, V.P.S. Kashyap and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. It appears that the licence of the petitioner-respondent No. 1 in respect of the Fair-Price Shop was cancelled by the order dated. 6.10.1998 passed by the Sub-Divisional Magistrate, Patiyali, Etah. The petitioner -respondent No. 1, thereupon, filed an Appeal before the Divisional Commissioner, Agra Region, Agra. By the order dated 10.8.2005, the said Divisional Commissioner dismissed the said Appeal. The petitioner-respondent No. 1 filed a Writ Petition being Civil Misc. Writ Petition No. 74096 of 2005 before this Court.

By the Judgment and Order dated 20.3.2009, the Learned Single Judge allowed the said Writ Petition, and quashed the said order dated 6.10.1998 and the said order dated 10.8.2005. The appellant, who was respondent No. 5 in the said Writ Petition, thereupon filed the present Special Appeal against the said Judgment and Order dated 20.3.2009 passed by the Learned Single Judge.

2. The case has been taken up in the revised cause-list. None is present for the appellant.

Learned Standing Counsel appearing for the respondent Nos. 2, 3 and 4 has raised a Preliminary Objection that the present Special Appeal filed by the appellant under Chapter VIII, Rule 5 of the Rules of the Court is not maintainable

in view of the Full Bench decision of this Court in Sheet Gupta v. State of U.P. and others, 2010 (1) ADJ 1 (FB).

3. In Sheet Gupta v. State of U.P. and others, 2010 (1) ADJ 1 (FB), the following question was referred for decision by a Larger Bench:

Whether a special appeal under the provisions of Rule 5 of Chapter VIII of the Rules of the Court lies in a case where the judgment has been given by a learned single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the U.P. Scheduled Commodities Distribution Order, 2004?

A Full Bench of this Court answered the question as under:

A special appeal would not lie under the provisions of Rule 5 of the Chapter VIII of the Rules where the judgment has been given by a learned single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the Distribution Order, 2004.

The Supreme Court has taken similar view in the case of State of U.P. and Others Vs. Madhav Prasad Sharma, .

As noted above, the present Special Appeal has been filed under Rule 5 of Chapter VIII of the Rules of the Court against the judgment and order dated 20.3.2009 passed by the learned Single Judge whereby, the learned Single Judge quashed the order dated 6.10.1998 whereby the licence of the petitioner - respondent No. 1 in respect of the Fair Price Shop was cancelled and the order dated 10.8.2005 passed by the Divisional Commissioner dismissing the Appeal filed by the appellant.

In view of the aforesaid facts, it is evident that the Full Bench Decision in Sheet Gupta case (supra) is applicable to the present Special Appeal, and the present Special Appeal is not maintainable.

The present Special Appeal is, therefore, liable to be dismissed as not maintainable, and the same is accordingly dismissed as not maintainable.

However, on the facts and in the circumstances of the case, there will be no order as to costs.