
(2005) 08 AHC CK 0270
In the Allahabad High Court
Case No : C.M.W.P. No. 19054 of 2004

Raj Kumari Gautam

APPELLANT

Vs

Commissioner, Meerut Division and Others

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 1 AWC 196

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Vijaya Prakash, for the Appellant; V.S. Shukla and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—The petitioner-Raj Kumari Gautam has filed this writ petition challenging the impugned orders dated 16.3.2004 passed by the Commissioner, Meerut Division, Meerut-respondent No. 1 dismissing the appeal of the petitioner, and dated 18.7.2003, passed by District Supply Officer, Bulandshahr-respondent No. 3 cancelling the licence of the fair price shop of the petitioner, contained in Annexures-1 and 2 respectively to the writ petition.

2. The petitioner was owner of a fair price shop in Mohalla Gandhi Nagar Satha, District Bulandshahr. On 24.4.2003, a thela containing a drum was detained by the Supply Inspector. Om Giri who was walking with the aforesaid thela alleged that he had purchased 200 litres of kerosene oil from the petitioner for black marketing. On enquiry, it was found that the colour of kerosene oil was blue and the drum contained the name of Raj Kumar and not the name of Raj Kumari--the petitioner.

3. A first information report was lodged against the aforesaid Om Giri and the licence of fair price shop of the petitioner was suspended vide order dated 30.4.2003 and a show cause notice was issued to the petitioner.

4. The petitioner, in her reply, took the plea that since the concerned Supply Inspector was ill and was not available, due to pressure of card holders, the kerosene oil was distributed. She also pleaded that the stock was checked by one Sri Prem Singh, Supply Inspector and the same was found correct. The District Supply Officer did not find the report of Sri Prem Singh to be genuine and cancelled the licence of fair price shop of the petitioner vide impugned order dated 18.7.2003. The appeal preferred by the petitioner was also dismissed by the Commissioner, Meerut Division, Meerut and hence this petition.

5. Counsel for the petitioner attacked the impugned orders on the ground that they are based on surmises and conjectures; they have been passed ignoring the report of Sri Prem Singh, Supply Inspector ; the authorities below have failed to consider that there is nothing on record to establish that kerosene oil recovered from Sri Om Giri actually belonged to the petitioner ; the appellate authority has relied upon enquiry report, which was submitted without affording opportunity of hearing to the petitioner ; the appellate authority has not considered the grounds pleaded in the memorandum of appeal and the impugned orders have been passed without considering the admitted fact that the Supply Inspector was on leave and the stock could not be verified.

6. The standing counsel, on the other hand, defended the impugned orders and submitted that the material available on record clearly established that the petitioner was involved in black marketing and his licence has rightly been cancelled.

7. Having heard counsel for the parties and gone through the record, I find that District Supply Officer in his order dated 18.7.2003, has recorded a finding of fact to the following effect :

^&&&&&fodzsrk us vius Li"Vhdj.k esa ifjfLFkfr;ksa ds dkj.k forj.k fd;s tkus dk mYys[k rks fd;k gS ysfdu feVVh rsy dk tks forj.k fd;k gS] mldh izijfEHkd tkWap iwfrZ fujh{kdksa }kjk fd;s tius ij gh feVVh rsy dk forj.k QthZ ik;k x;k] ftlds IEcU/k esa fodzsrk }kjk viuk dkbZ Li"Vhdj.k izLrqr ugha fd;k x;k tcfd mUgSa bl dk;kZy; ds i= la[k;k 956@ft?iw?v?&vuq?@2003 fnukad 9-6-2003 }kjk dkj.k crkvks uksfVI tkjh dj vius cpko ds fy, fodzsrk dks i;kZIr volj fn;k x;kA bl izdkj fodzsrk }kjk fd;k x;k QthZ forj.k mUgSa Lohdkj gS] tkgWa rd forj.k ls iwoZ feVVh rsy dh vken ds IR;kiu dk iz"u gS mlds IEcU/k esa iwfrZ fujh{kd dh vleFkZrk dk rks mYys[k fd;k gS ysfdu fodzsrk }kjk fyf[kr :i ls dk;kZy; dks lwpu fn;s tkus dk dksbZ lk{; izLrqr ugha fd;k gS ftlls ;g izekf.kr gksrk gS fd fodzsrk us forj.k ls iwoZ feVVh rsy dh vken dk Ir;kiu tkucw> dj ugha dj;k gS vkSj futh LokFkZ o uktk;t uQk dekus rFkk pksjctkj fd;s tkus gsrq feVVh rsy dh QthZ fcdzh n"kZk;h x;h gS tks iwfrZ fujh{kdksa dh vk[;kvksa ls izekf.kr gksrk gSA&&&&bl izdkj fodzsrk ij yxk;k x;k vkjksi iw.kZr;k izekf.kr gksrk gSA&&&&fodzsrk ds Li"Vhdj.k ds vk/kkj ij gh fodzsrk }kjk feVVh rsy ds forj.k dh tkWap dj;k tkus ij feVVh rsy dk forj.k QthZ ik;k x;kA Jh izse flag ,oa Jh v"ouh dqekj "kekZ {ks=h; iwfrZ fujh{kdx.k uxj cqyUn"kgj }kjk izLrqr tkWap vk[;k fnukad 14-3-03 esa ;g mYys[k fd;k x;k gs fd fodzsrk dh nwdku ij 580 dkMZ IEc? Fks] ftlesa ls ekg ekpZ 03 esa

fodzsrk ds }kjk 2440 yhVj feVVh ds rsy dk mBku fd;k x;k ftlesa ls dsoy 108 dkMZs ij 540 yhVj feVVh rsy dk forj.k IR;kfir gqvkJ ekg vizSy 03 esa 106 dkMksZ ij fodzsrk ds }kjk feVVh rsy dk forj.k fd;k tkuk IR;kfir fd;k x;k] bl izdkj fodzsrk ds }kjk izfrekg 500 dkMksZ esa ls yxHkXk 470 dkMksZ dk QthZ fcdzh n"kkZdj fe? h rsy dh pksjcktkjh dh tkrh jgh gSA?

8. Thus, it is amply clear from the aforesaid findings recorded by District Supply Officer-respondent No. 3 that the petitioner was making false entries of 470 forged card holders while kerosene oil was not being supplied to the valid card holders. The plea of the petitioner that report of Sri Prem Singh, Supply Inspector was ignored by the authorities below is absolutely false as the District Supply Officer has specifically recorded a finding that from the reports dated. 14.3.2003 of Sri Prem Singh and Sri Aswani Kumar, Supply Inspectors, it reveals that 580 card holders were attached to the fair price shop of the petitioner. In the month of March, 2003, the petitioner lifted 2440 litres of kerosene oil and distribution of only 540 litres of kerosene oil to the 108 card holders in March, 2003 and 106 card holders in April, 2003 could be verified. The District Supply Officer after considering the reports of Sri Prem Singh and Sri Aswani Kumar, Supply Inspectos, arrived at a conclusion that the petitioner was up to the throat in black marketing of food grains/kerosene oil from her fair price shop.

9. The petitioner was afforded sufficient opportunity to show cause but she did not furnish any explanation. The assertion that the petitioner was not afforded opportunity to defend is incorrect.

10. The plea of the petitioner that kerosene oil recovered from Sri Om Giri did not belong to her is also untenable. In this regard, averments made in paragraphs 4 and 5 of the counter-affidavit are relevant which are quoted below :

^^4- ;g fd ;kfpdk ds izLrj 4 dk dFku ftl izdkj of.kZr gS Lohdkj ugha gSA vihykfFkZuhZ ljdkjh lLrk xYyk fodzrk jgh gS vkSj mudh nqdku ls ,?ih?,y? ;kstuk ds gh dkMZ lEc? FksA ;kfpuh dk ;g dguk xyr gS fd mlds fo:? dksbZ f"kd;k;r ugha jgh gSA ;kfpuh ds o:? fujUrj f"kd;k;rsa izkIr gksrh jgh gSaA ;kfpuh ds fo:? dkMZ / kkjdxsa us rsy u forj.k djusa vkSj dkMZ /kkjdxsa ls ekjihV fd;s tkus dh Hkh f"kd;k;rsa jgh gS ftlds fy, mudh nqdku i= la[;k 1492@ft?iw?v?&vuq? 02 fnukad 16-11-2002 }kjk fuyafcr dh x;h rFkk Hkfo"; esa bl izdkj dh vfu;ferrk;sa u fd;s tkus dh dBksj psrkouh ds lkFk mudh nqdku cgky dj muesa xq.kkRed lq/kkj yk;s tkus dk volj fn;k x;kA bls iwoZ Hkh vkns"k la[;k 1806 fnukad 20-12-99 }kjk mUgsa vfu;ferrkvksa ds vk/kkj ij nf.Mr fd;k x;k Fkk ,slh fLFkfr esa vfHkys[kh; lk{;ksa ls ;g Li"B gS fd ;kfpuh }kjk ek? U;k;ky; dks Hkzfer fd;k gSA

5- ;g fd ;kfpdk ds izLrj 5 esa dFku Lohdkj ugha gSA fnukad 24-4-2003 dks Jh jktiky flag ;kno iwfrZ fujh{kd }kjk 200 yhVj fe?h rsy ds M?e dks idM+k x;k Fkk] og ;kfpuh dh nqdku ls gh nqXxh pkyd Jh ckcw iq= tgkxjh }kjk yknk x;k Fkk rFkk vkse fxjh uked O;fDr dh ;kfpuh }kjk uhys jax ds fe?h rsy dks tks dsoy jk"ku dkMksZ ij gh forfjr fd;k tk ldrk gS dks pksjcktkjh esa cspk x;k FkkA voS/k lapj.k fd;s tk jgs M?e ij Jh jktdqekj fy[kk gksuk dks gh dsoy vk/kkj ugha ekuk x;k cFYd

lfUuir cqXxh pkyd dh fu"kkunsgh ij ;kfpuh dh nqdku ij fcuk IR;kiu ds fe?h ds rsy ds forj.k fd;s tkus vkSj fe?h rsy dh fodzh dh iqf"V u gksus rFkk dkMksZ ij QthZ fcdzh n"kkZ dj ;kfpuh }kjk pksjcktkjh fd;k tkuk ik;s tkus ij gh oS/kkfud dk;Zokgh dh x;h Fkh vkSj fe?h ds rsy ds forj.k es ?kksj vfu;ferrk ik;s tkus ij budh nqdku fuyfEcr dh x;hA?

11. The appellate authority has dealt with the grounds of appeal and has considered the case of the petitioner and ultimately recorded a finding of fact that reasonable opportunity was afforded to the petitioner and the petitioner intentionally did not get verified her stock. Both the authorities below have recorded concurrent finding of fact that the petitioner was indulged in black marketing. The kerosene oil was loaded from the shop of the petitioner as is apparent from the averments made in paragraph 5 of the counter-affidavit, quoted above, and the trolley driver had identified the shop of the petitioner from where he lifted the aforesaid drum containing 200 litres of kerosene oil. It has been found that the petitioner was showing false sale of kerosene oil and was selling the same in black market. Such a person is not, at all, entitled to any equitable relief from this Court under Article 226 of the Constitution.

12. Black marketing by a fair price shop owner is a serious crime. Charging excess price, non-maintenance of proper registers and documents amounts to clear violation of the provisions of the Essential Commodities Act, 1955 and the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Considering the fact that the licence of the petitioner was cancelled owing to her indulgence in black-marketing kerosene oil and fabricating records and not maintaining records/ documents properly by her is breach of the terms of the licence/agreement.

13. Fair price shop is meant for distribution of essential commodities to the poor class of people at reasonable prices. Charging excess amount for the essential commodities, committing irregularities in the distribution of essential commodities, fabricating entries in the ration cards and black marketing frustrates the very purpose of the licence granted to run the fair price shop. No person can be permitted to earn money by adopting unfair means.

14. Counsel for the petitioner has not been able to establish any illegality or infirmity in the orders impugned calling for interference by this Court in its writ jurisdiction under Article 226 of the Constitution of India.

15. For the reasons stated above, there is no force in this writ petition which is accordingly dismissed without any order as to costs.