
(2012) 02 AHC CK 0275

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 49981 of 2009

Ram Dulare Prajapati

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Citation : (2012) 4 ADJ 11 : (2012) 3 AWC 2430

Hon'ble Judges : Vineet Saran, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : R.S. Kushwaha and Chinta Prasad, for the Appellant; Mahesh Narain Singh and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. The brief facts of this case are that the petitioner was allotted a fair price shop in Gram Panchayat, Guraini, Block Manihari Jakhania, District Ghazipur. On the basis of a resolution passed by Gram Panchayat, the Sub-Divisional Magistrate, Jakhaniya, District Ghazipur, respondent No. 3, passed an order dated 21.8.2009 appointing respondent No. 5, Lal Behari, as second fair price shop dealer in the same Gram Panchayat. Challenging the order dated 21.8.2009 this writ petition has been filed with a further prayer for a direction in the nature of mandamus commanding the respondents not to interfere in the peaceful functioning and supply of the essential commodities to the fair price shop of the petitioner. We have heard Sri R.S. Kushwaha, learned counsel for the petitioner as well as learned Standing Counsel appearing for the State-respondents and Sri Mahesh Narain Singh, learned counsel for the Gram Panchayat. Despite notice to the private respondent Nos. 5 and 6, no one has put in appearance on their behalf.

2. The challenge to appointment of respondent No. 5 as second fair price shop dealer in the Gram Panchayat in question is two fold. It is firstly contended that the units in the Gram Panchayat, Guraini are below 4000 and thus, the second fair price shop could not be allowed. Secondly, it is contended that the respondent No. 5, who has been appointed as second fair price shop dealer, is

the real brother of the Gram Pradhan (respondent No. 6) and hence, as per the Government Orders issued by the State Government from time to time the appointment of respondent No. 5 could not have been made.

3. Sri Vishnu Pratap Singh, learned Standing Counsel, appearing for the respondents, while justifying the passing of the order dated 21.8.2009 by the Sub-Divisional Magistrate, Jakhaniya, District Ghazipur, has placed reliance on the Government Order dated 10.8.1999, which mentions that the fair price shop would not be allotted to the family members of the Gram Pradhan and family has been defined to include the members given in the definition of a family" in the Government Order itself and also those who reside and have their meal with the Gram Pradhan. As regards the contention that the second fair price shop dealer could not be appointed, it has been stated in the counter-affidavit that the number of units in the Gram Panchayat were 4650, which was above 4000 and thus, the appointment of the second fair price shop dealer was justified.

4. Though it has been stated in the counter-affidavit that the number of units was more than 4000 but there is no order passed by any competent officer/ authority determining that the units were 4650 or above 4000. Alongwith the rejoinder-affidavit the petitioner has enclosed the form, giving the details of the card holders and units of the Gram Panchayat of the District Ghazipur, wherein for Guraini the number of the card holders is shown as 940 and the number of units as 2915. It is thus contended by the petitioner that the appointment of the second fair price shop dealer could not be justified.

5. In our view, in the absence of there being any determination by a competent authority that there were more than 4000 units in the Gram Panchayat in question, the second fair price shop dealer could not be appointed. No such order of a competent officer that there are more than 4000 units in the Gram Panchayat has been filed alongwith the counter-affidavit.

6. As regards the next question as to whether the real brother of the Gram Pradhan could have been appointed as a fair price shop dealer, in this context a perusal of paragraph 5 of the Government Order dated 10.8.1999 would be relevant, which is reproduced below:

7. In the counter-affidavit it is not denied that respondent No. 5 is the real brother of Gram Pradhan. All that has been stated is that he is staying separately and having his meal separately, and hence as per the aforesaid definition, the respondent No. 5 would not be barred from the allotment of fair price shop dealership.

8. The definition of "family" for the present purpose would include self, wife, son, married daughter, mother, brother or any other member who resides with the Gram Pradhan and has meals cooked together. It is difficult for us to accept the submission of learned Standing Counsel that in view of the aforesaid definition a brother residing separately would be entitled to be appointed as fair price shop dealer. From the definition given in the Government Order the persons specified

therein, which includes brother of the Gram Pradhan, would be barred from appointment as a fair price shop dealer. Besides the specified persons, any other member who stays with the Gram Pradhan and has meal cooked together would also be barred. The words used in paragraph 5 of the Government Order are

which would mean that the specified members of the family are self, wife, son, married daughter, mother, brother and besides this any other member who reside together and also have meals cooked together. Had it not been so, it would have been clarified that such specified persons should also live together and have meals with the Gram Pradhan would be barred. Such is not the position. In the definition specific relatives are totally barred and the other members are barred only if they reside with the Gram Pradhan and have meals cooked together.

9. In the present case, admittedly the respondent No. 5 is the real brother of the Gram Pradhan (respondent No. 6). Thus, in our view, as per the Government Order dated 10.8.1999, respondent No. 5 could not have been appointed as a fair price shop dealer. As such, the impugned order dated 21.8.2009 deserves to be quashed.

10. Accordingly, this writ petition stands allowed. The order dated 21.1.2009 passed by the Sub Divisional Magistrate, Jakhania, District Ghazipur is quashed. The respondent authorities are directed to take fresh steps for appointment of the second fair price shop dealer in the Gram Panchayat in question only after an appropriate order has been passed by the competent authority holding that there are more than 4000 units and also after recording that it has become necessary for making allotment of a second fair price shop and after a valid resolution has been passed by the Gram Panchayat that the need for a second fair price shop dealer exists. Such steps may be taken by the respondent authorities in accordance with law, as expeditiously as possible. No order as to cost.