
(2009) 03 AHC CK 0099

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 57856 of 2007

Rama Shanker Singh Yadav

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 03 AHC CK 0099

Hon'ble Judges : Shishir Kumar, J

Final Decision : Allowed

Judgement

1. Rejoinder affidavit filed today may be kept on record.
2. Heard learned counsel for the petitioner and Sri Brijendra Singh, learned counsel appearing for respondent No.6 who is a subsequent allottee after cancellation of the shop of the petitioner and learned Standing Counsel who appears for the respondents.
3. The petitioner who is a licensee of a fair price shop, his shop was investigated by the Special Task Force on the direction issued by the higher authorities and it was found that the goods issued to the petitioner for the purpose of distribution to the cardholders has not been distributed in time. It was belatedly distributed on 21.7.2006. On that basis a show cause notice was given to the petitioner on 8.12.2006. Petitioner after receipt of the show cause notice has given a reply stating therein that due to the illness of his wife, the goods were not distributed to the villagers within time but it was subsequently distributed. Considering the reply of the petitioner, an order of cancellation was passed on 31.1.2001, cancelling the license of the petitioner. The petitioner filed an appeal which too has been dismissed.
4. The petitioner submits that during pendency of the appeal, the shop in question which was allotted to the petitioner has been allotted in favour of respondent No.6. It has been submitted by the learned counsel for the petitioner that from the order impugned by which the shop in question has been cancelled,

it is apparent that a charge for which the show cause notice was never given, has been mentioned in the order of cancellation, i.e. it has been mentioned that on an inspection it was found that about 21 cardholders have stated that the sugar is not being distributed for a period of two years. Learned counsel for the petitioner submits that from the perusal of the show cause notice any charge to this effect regarding nondistribution of any foodgrains or commodities have been mentioned in the show cause notice. Therefore, there was no occasion for the petitioner to submit a reply. If behind the back of the petitioner any investigation or statement has been obtained from the villagers, that cannot be taken into consideration for the purposes of cancellation of the shop of the petitioner. The appellate Authority has also not considered the said fact.

5. On the other hand, Sri Bijendra Singh, learned counsel for respondent No.6 wanted to justify the order of cancellation to this effect that after due investigation it has been found that the sugar is not being distributed to the cardholders for a period of two years which is apparent from the order impugned. It has further been submitted by the counsel for respondent No.6 that as there is a delay in distribution of articles to the villagers and if it has been distributed belatedly, that is in contravention of the condition of the license. Further the explanation submitted by the petitioner was not satisfactory.

6. I have considered the submissions made on behalf of the parties and perused the record. From the record it is clear that the only charge against the petitioner in the show cause notice was that the petitioner has not distributed the goods within time. It has been distributed on 21.7.2006 meaning thereby only one charge regarding distribution of foodgrains and other articles belatedly was there. Therefore, if some secret investigation has been made by the authorities after submission of the reply, that cannot be any ground to be considered for cancellation of the shop of a person. It is well settled in law that the investigation can be made only on the basis of the charges levelled because a person is liable to submit a reply on the basis of charges given by the competent authority. If no charge is mentioned in the charge sheet or show cause notice, the incumbent is not liable to submit a reply to the charge which is not mentioned. From the perusal of the order it clearly appears that upon an investigation behind the back of the petitioner, if some statement have been taken by the licensing authority regarding nondistribution of sugar to the card holders but as the same was not mentioned in the show cause notice, therefore, in my opinion, that cannot be a basis of passing the order impugned cancelling the fair price shop license of the petitioner.

7. Further the show cause notice is only to the effect regarding distribution of the foodgrains belatedly. There is no charge against the petitioner that he has misused the foodgrains and other items and has not distributed the same to the cardholders. In my opinion, it cannot be said to be in violation of the conditions of the license.

8. As regards the submission made on behalf of respondent No.6 who is a

subsequent allottee, in my opinion, he has no right to be heard because he has been allotted the said shop only in lieu of the cancellation of the shop of the petitioner. Though, it was obligatory upon the respondent authority not to allot the said shop permanently in faovur of any person unless and until the finality is attached to the proceeding but in the present case, as during the pendency of the appeal of the petitioner, the shop in question has been allotted to respondent no.6, therefore, in my opinion, he will have no right to claim anything if the order impugned is set aside.

9. In view of the aforesaid fact, the writ petition is allowed. The orders dated 31.2.2007 and 20.2.2007 passed by respondents no.3 and 2 respectively and the orders dated 21.8.2007 passed in Appeal No. 99 and 108 of 2007 are hereby quashed. The respondents are directed to restore the license of the petitioner forthwith and to allot the foodgrains to be distributed to the card holders immediacy.

No order is passed as to costs.