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**(2007) 03 AHC CK 0075**  
**In the Allahabad High Court**

Shesh Nath

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 20-03-2007

**Acts Referred:**

**Citation :** (2007) 78 AWC 2309 : (2007) 3 AWC 2309

**Hon'ble Judges :** S.N. Srivastava, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.N. Srivastava, J.—By this writ petition order dated 3rd May, 2006, passed by the Additional Commissioner, Gorakhpur Division, Gorakhpur allowing the Appeal of Sadhan Sahkari Samiti Limited, Kauri Ram, district Gorakhpur and by the connected Writ Petition No. 31223 of 2006 the order dated 17.5.2006, passed by the Additional Commissioner Gorakhpur Division, Gorakhpur allowing the Recall Application setting aside the earlier order passed on appeal and directing the matter to be heard and decided on merits are impugned.

2. Heard learned Counsel for the parties.

3. It was urged by learned Counsel for the petitioner Shesh Nath in Writ Petition No. 26859 of 2006 that no appeal lies against an order appointing two persons as licensees to distribute essential commodities through fair price shop bifurcating one shop.

4. In this regard Sri V.K. Singh, learned Counsel for Gaon Sabha produced before me a Government order by which Government order dated 3rd July, 1990 was made operative.

5. From perusal of Paragraph 11 of the Government order dated 3rd July, 1990, it is clear that against an order passed by the District Magistrate relating to appointment/suspension/cancellation /renewal of licence, an appeal lies to the Commissioner.

6. On consideration of the materials on record and after hearing learned Counsel for the parties. I am of the view that an appeal lies against the order appointing Shesh Nath as licensee of fair price shop to distribute essential commodities under the agreement in pursuance to the Government order dated 3rd July, 1990. This question is decided accordingly.

7. On the arguments of learned Counsel for the parties, the second question arises to be considered is whether the Jurisdiction vested in Commissioner could be exercised by the Additional Commissioner.

8. Under the Government order, aforesaid, there is no such delegation of power to Additional Commissioner appointed for adjudicating and deciding revenue matters and as such this Court is of the view that the power to decide appeal could only be exercised by the Commissioner and not by the Additional Commissioner, unless power is delegated specifically by any Government order/ any statute.

9. It is stated by Sri V.K. Singh, learned Counsel for Gaon Sabha and learned standing counsel that a new Government order has been issued delegating power to Assistant Commissioner (Food) to decide appeal, but no such Government order has been produced before me.

10. In case power has been delegated to Assistant Commissioner (Food), they may decide the appeal transferred to them by the Commissioner. It is not disputed in the present case that the Additional Commissioner having jurisdiction in revenue matters was delegated powers under any statute to decide appeal arising out of Government order dated 3rd July, 1990 and as such order passed by the Additional Commissioner was without jurisdiction.

11. It was also brought to the notice of the Court that the same Additional Commissioner has exercised power of review, though he passed earlier order on merits.

12. Power of review is a statutory power conferred by some statute. In case there is no such statute conferring power of review, the order passed on application to recall/review earlier order was also without jurisdiction.

13. In view of the above, these two writ petitions deserve to be allowed.

14. With the result, writ petitions succeed and are allowed. The order dated 3rd May, 2006, passed by the Additional Commissioner, Gorakhpur Division, Gorakhpur deciding appeal and order dated 17.5.2006 reviewing earlier order are quashed. Commissioner, Gorakhpur Division, Gorakhpur is directed to decide the appeal in accordance with law within three months from the date of production of a certified copy of this order after giving opportunity hearing to the parties.

No order as to cost.