
(2004) 08 AHC CK 0334

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27637 of 2004

Shiv Kumar Yadav

APPELLANT

Vs

State of Uttar Pradesh and Purushottam Singh

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Citation : (2004) 5 AWC 4884

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : H.C. Dwivedi, for the Appellant; R.K. Singh and R.S. Yadav and S.C., for the Respondent

Judgement

Ashok Bhushan, J.—Heard Counsel for the petitioner, Sri Rohit Kumar Singh, learned Counsel, appearing for respondent No. 3 and learned standing Counsel.

2. By this writ petition, the petitioner has prayed for quashing the order dated 9th July, 2004 passed by Assistant Commissioner, Varanasi in Appeal No. 7/131 of 2004 Purusottam Singh v. State.

3. Brief facts necessary for deciding the controversy raised in the writ petition are; petitioner is a fair price shop dealer. On the basis of inspection dated 30th August, 2001, the fair price agreement of the petitioner was suspended. The petitioner submitted his reply on 19th August, 2001 on which the Supply "Inspector made a recommendation dated 23rd October, 2001 for restoring the licence of the petitioner. The Sub Divisional Officer by the order dated 24th October, 2001 cancelled the agreement. Against the order dated 24th October, 2001, the petitioner filed Appeal No. 13 of 2001. The appellate Court took the view that petitioner's explanation was not considered and the order cancelling the licence cannot be sustained. The appellate Court took the view that matter requires "reconsideration after giving opportunity to the petitioner. The appeal of the petitioner was allowed and the matter was remanded to the Sub Divisional Officer for passing fresh order after giving opportunity to the petitioner. After the

cancellation of agreement of the petitioner, the shop was given to respondent No. 3. Respondent No. 3 filed a writ petition before this Hon"ble Court being Writ Petition No. 7525 of 2004 challenging the order dated 27th January, 2004. The writ petition filed by respondent No. 3 was dismissed by the order dated 23rd February, 2004 taking the view that since the appeal filed by the petitioner has been allowed, the licence granted in favour of petitioner (Purusottam Singh) stood cancelled. The Sub Divisional Officer issued a letter dated 25th February, 2004 to the petitioner to submit reply within fifteen days. On 26th February, 2004, the Sub Divisional Officer restored the supply of the petitioner and by the same order stopped the supply of respondent No. 3 (purusottam Singh). Against the order dated 26th February, 2004, an appeal was filed by respondent No. 3 which has been allowed by the appellate Court. The appellate Court set-aside the order dated 25/26th February, 2004 of the Sub Divisional Officer and directed the Sub Divisional Officer to literally comply the order dated 27th January, 2004 of the appellate Court. The above order dated 9th July, 2004 is under challenge in this writ petition.

4. The Counsel for the petitioner challenging the order dated 9th July, 2004 contended that appellate Court committed error in setting aside the order of Sub Divisional Officer restoring the supply of the petitioner. The Counsel for the petitioner contended that after order cancelling the agreement having been set-aside by the appellate Court on 27th January, 2003, the supply of the petitioner was rightly restored by Sub Divisional Officer. He further contended that the Sub Divisional Officer did not commit any error in stopping the supply of respondent No. 3 whose writ petition challenging the order dated 27th January, 2004 has already been dismissed on 23rd February, 2004. Learned Counsel for the petitioner has placed reliance on judgment of this Court reported in 2002(1) JCLR 738 (All); Nand Lal Maurya v. State of U.P. and Anr. judgment of Division Bench of this Court reported in 2001(1) CRC 558; Naumi Ram v. Deputy Collector and Ors.

5. Learned Counsel appearing for respondents contended that agreement of the petitioner was suspended earlier and against the suspension order no appeal was filed by the petitioner and appellate Court vide its order dated 27th January, 2004 did not restore the licence of the petitioner nor directed for restoration of supply and only proceedings for cancellation were directed to be taken afresh. He contended that supply of the petitioner should not have been restored by the Sub Divisional Officer and the order of appellate Court setting aside the said illegal order cannot be faulted.

6. I have considered the submissions raised by Counsel for the parties and perused the record.

7. There is no dispute regarding facts of case between the parties. Agreement of the petitioner was earlier suspended and thereafter cancelled on 24th October, 2001. The order cancelling the agreement was set a side by the appellate Court on 27th January, 2004 by which order the appellate Court remanded the matter

to the Sub Divisional Officer to pass fresh order after giving opportunity to the petitioner. The issue between the parties is as to what is the consequence of the order dated 27th January, 2004, whether in consequence of the order dated 27th January, 2004 the supply of the petitioner was also to be restored or not. The answer of the question is to be found out from the order dated 27th January, 2004 itself. The appeal was filed against the cancellation order and the appellate Court has every jurisdiction to pass any order in the appeal. The appellate Court while deciding the appeal against the cancellation order can set-aside the cancellation and restore the shop, can set-aside the cancellation and remand the matter and can pass any other order. In the present case, the order dated 27th January, 2004 against the cancellation order dated 24th October, 2001 was not an order finally deciding the controversy. The appellate Court remanded the matter to the Sub Divisional Officer to decide the cancellation afresh due to the reason that reply of the petitioner given to the show cause notice has not been considered by the Sub Divisional Officer and further no reasons were given by the Sub Divisional Officer for not accepting the report of the Supply Officer dated 23rd October, 2001. The appellate Court, thus, intended that fresh order be passed as to whether the shop of the petitioner is liable to be cancelled or not. The appellate court's order did not direct for restoration of the supply of the petitioner. However, one of the consequences of the order dated 27th January, 2004 is that allotment of the shop made consequent to the cancellation will come to an end. The shop of respondent No. 3, admittedly, was given after cancellation of petitioner's shop and after setting aside the cancellation order dated 27th January, 2004, the consequential act of allotment in favour of respondent No. 3 automatically came to an end. This Court has already taken this view in writ petition filed by respondent No. 3 being Writ Petition No. 7525 of 2004 which was dismissed by this Court on 23rd February, 2004. The consequence of the order dated 27th January, 2004 is that position prior to cancellation of the agreement i.e. prior to 24th October, 2001 was to be restored. In the facts of the present case, it cannot be held that in consequence of the order dated 27th January, 2004 the supply of the petitioner ought to have been restored. The Sub Divisional Officer committed error in passing the order dated 26th February, 2004 restoring the supply of the petitioner. The order of the appellate authority dated 9th July, 2004 up to that extent impugned in the writ petition cannot be faulted. However, the order of Sub Divisional Officer dated 26th February, 2004 by which he stopped the supply of respondent No. 3 was a correct order. After setting aside of the order dated 24th October, 2001, the allotment in favour of respondent No. 3 automatically falls on the ground and the appellate Court ought not to have set-aside the entire order dated 25/26th February, 2004.

8. Coming to the decisions relied by Counsel for the petitioner in Nand Lal Maurya's case (*supra*), in the said case writ petition was filed by subsequent allottee challenging the order of appellate Court by which appeal was allowed. This Court took the view that once the cancellation order is set-aside on the appeal of existing licensee, the subsequent dealership automatically comes to an

end. In the above judgment, the issue which has been raised in the present writ petition that in case the appellate Court has remanded the matter to the Sub Divisional Officer, the supply of the existing licensee has to be necessarily restored, has neither been gone into nor decided, hence the said judgment has no bearing in the present controversy.

9. Another judgment in Naumi Ram's case (supra), relied by the petitioner, also has no application in the facts of the present case. In Naumi Ram's case (supra) the writ petition was filed by existing licensee challenging the order of Sub Divisional Officer stopping the supply on some complaint, the said order was set-aside. From the facts of the present case, as noted above, and from the contents of the order dated 27th January, 2004 of the appellate Court, it is clear that the appellate Court remanded the matter to Sub Divisional Officer for deciding cancellation proceeding afresh. The appellate Court neither specifically directed nor from the order it can be found that there is any indication of restoration of supply of the petitioner. In view of the above, the order of Sub Divisional Officer dated 26th February, 2004 restoring the licence, although cancellation proceeding has not yet been finalised, is not valid and the appellate Court did not commit any error in setting aside that part of the order. The order dated 26th February, 2003 of the Sub Divisional Officer was in two part. By subsequent part the supply of respondent No. 3 was stopped. Stoppage of supply of respondent No. 3 was justified order. The appellate Court ought not to have quashed, the order dated 25/26th February, 2004 in its entirety.

10. In view of the aforesaid, the writ petition is disposed of maintaining the order of appellate Court dated 9th July, 2004 in so far as it set-asides the order dated 25/26th February, 2004 restoring the supply of the petitioner. However, the order dated 9th July, 2004 in so far as it set-aside the later part of the order dated 25/26th February, 2004 stopping the supply of respondent No. 3 cannot be sustained and is hereby set-aside. In pursuance of the order dated 27th January, 2004 no decision has yet been taken by the Sub Divisional Officer. The Sub Divisional Officer is directed to take a final decision in pursuance of the remand order dated 27th January, 2004 expeditiously, preferably, within a period of three months from the date of production of a certified copy of this order.

11. The writ petition stands disposed of accordingly.