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**(2010) 05 AHC CK 0218**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 2755 of 2010**

Shyama Devi

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

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**Date of Decision :** 11-05-2010

**Acts Referred:**

Essential Commodities Act, 1955 — Section 3

Uttar Pradesh Scheduled Commodities Distribution Order, 2004 — Clause 28(3)

**Citation :** (2010) 05 AHC CK 0218

**Hon'ble Judges :** Narayan Shukla, J

**Final Decision :** Dismissed

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## Judgement

Shri Narayan Shukla,J.

Heard Mr. Ram Dheeraj Yadav, learned counsel for the petitioner and the learned Standing counsel.

Being aggrieved with order dated 28.2.2010 passed by the opposite party no. 2 Additional Commissioner (Food), Faizabad Division Faizabad in Appeal No. 241 pending under section 28(3) of the U.P. Scheduled Commodities Distribution Order, 2004, the petitioner has preferred the present writ petition By means of order dated 28.2.2010 though the petitioners appeal has been admitted but the application for interim relief has been rejected .

Learned counsel for the petitioner submits that once the appellate authority arrived at the conclusion that the appeal is admissible and admitted the same, he is under obligation to pass an interim order.

In support of his contentions, he relied upon decision of Hon''ble Supreme Court rendered in the case of Mool Chand Yadav Vs. Raza Buland Sugar Co. Ltd. Rampur and others, 1983 (9) A.L.R., 403, in which the Hon''ble Supreme Court has held that judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so when appeal is admitted.

The dispute for determination before Hon''ble Supreme court was whether Hari Bhawan is a property which has vested in the Corporation and whether the Corporation is entitled to occupy it and whether a part of it can be used by the General Manager of the Corporation. In a suit filed by the respondent an injunction was granted restraining the present appellants or their officers from occupying Hari Bhawan against which an appeal was filed by the present appellants which is pending. Subsequently,an application was made alleging flouting of the Courts order and the court was invited to hold the corporation and its officers in contempt and to punish them for the same. This application resulted in the following order:

Accordingly the application Exhibit IV1 is being accepted. One months time is being granted to defendant, Mool Chand Yadav, to vacate the disputed room and if he does not do so all the movable property of defendant Nos. 2 and 3 will be attached in compliance with the order of temporary injunction passed on 2.11.1979.

An appeal from this order was preferred which was admitted and notice of motion was taken out for suspension of the order under appeal. But the Division Bench of the Allahabad High Court declined to grant stay. Hence, Special Leave Petition was preferred before the Hon''ble Supreme Court.

The Hon''ble Supreme Court in Special Leave Petition has held that we would like to notice of emerging situation if the operation of the order under appeal is not suspended during the pendency of the appeal, if the F.A.F.O. is allowed, obviously Mool Chand Yadav would be entitled to continue in possession. Now, if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand Yadav have to vacate the room and handover the possession to the respondents in obedience to the Courts order. We are in full agreement with Mr. Swarup, learned Advocate for respondents, that the courts order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal. Mr. Manoj Swarup may be wholly right in submitting that there is intentional flouting of the courts order. We are not interdicting that finding. But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended.

Here in the present case the dispute relates to distribution of essential commodities which is public property and the appeal has been filed against the order of cancellation of contract of petitioners fair price shop, whereby the contract of the petitioners fair price shop has been cancelled, the result would be that another contract is entered into for distribution of essential commodities, upon which the petitioner has no right to claim as a matter of right to subsist the contract and if during the course of appeal any fresh allotment is made for distribution of essential commodities, that does not create any civil consequences particularly to the petitioner who was given contract of fair price shop only for distribution of essential commodities to the public.

Therefore, I am of the view that the present case is not covered under the facts of the case cited hereinabove.

Under the circumstances, I am of view that the petitioner is not entitled for the benefit of the judgment passed by the Hon"ble Supreme Court.

In the result, the writ petition is dismissed.