

(2011) 07 AHC CK 0059

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41342 of 2011

Smt Kalawati

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 10 ADJ 829

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Sudhir Agarwal, J.—The petitioner's fair price agreement having been cancelled by order dated 24th June, 2011, the petitioner preferred an appeal which has been admitted by the Deputy Commissioner vide order dated 5th July, 2011 but he has declined to grant any interim order. Hence this writ petition.

2. In my view, it is wholly misconceived and not entertainable writ petition. Mere admission of an appeal, which is provided in the statute, does not entitle a person to get an interim order as a matter of routine. Learned counsel for the petitioner could not point out any error apparent on the face of record in the impugned order warranting interference.

3. Learned counsel for the petitioner relied on certain decisions of this Court requesting that till his appeal is decided, no third party right will be created.

4. The public distribution system is not meant for providing source of livelihood to a dealer and those who execute agreement but they are only part of the system to achieve the real objective of the same I.e. providing subsidized essential commodities to poor. Where the agreement of a particular dealer has been cancelled and the matter is pending in appeal, distribution has to be maintained and therefore so long as the matter of cancellation of agreement of a dealer is pending for consideration in appeal before the authority concerned, they are to continue with the system so that distribution may not hamper. Thus for

this reason and to maintain public distribution system, as an interim measure somebody has to be appointed. This Court in Civil Misc. Writ Petition No. 10539 of 2007 (Smt. Vimla Devi and another v. State of U.P. and others), decided on 13.3.2007 has held that subsequent allottee has no right to continue with the fair price agreement, if the predecessor comes back due to revocation of his cancellation order.

5. Thus third party, who is allotted the distribution, do not have any Individual right but its rights are subject to the decision in appeal and therefore a fair price dealer, whose matter is pending in appeal, does not suffer in any manner.

6. In the circumstances, I do not find any reason for directing the respondents not to make any arrangement for maintaining distribution to the beneficiaries as a matter of fact. Moreover, nothing has been discussed in the judgment cited by the learned counsel for the petitioner as to how petitioner, as a matter of right, can request for not creating third party right in the meantime. Therefore, the judgment to this extent are not a binding precedent. In order to constitute binding precedent a judgment must show that the issue was raised, argued and decided and only then the law laid down therein would be binding on the coordinate Bench. [See M/s. Kanoria Chemicals and Industries Ltd. Vs. U.P. State Electricity Board and other,]

7. The writ petition therefore lacks merit. Dismissed.