
(2012) 07 AHC CK 0224
In the Allahabad High Court
Case No : C.M.W.P. No. 12409 of 1999

Smt. Pushpa Devi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Citation : (2012) 6 AWC 5991

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : B.D. Mandhyan, Ajay Kumar Srivastava and Sanjay Kumar Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—By means of this writ petition, the petitioner is assailing the order of the District Supply Officer dated 2.11.1992, cancelling the licence of his fair price shop and the appellate order dated 18.2.1999 passed by the Commissioner, Meerut Division, Meerut rejecting the appeal of the petitioner. Facts of the case in brief are that the petitioner is a valid fair price shop owner. By the impugned order dated 2.11.1992, the licence of the fair price shop was cancelled. The reasons for cancelling the fair price shop as given in the impugned order is that the petitioner was imposed fine for closing his shop early and for not loading essential commodities on time as well as for the irregularities in distribution of food grains and other things. It is stated that on 3.12.1987, a fine of Rs. 50 was imposed against him; on 22.4.1988, a fine of Rs. 100 was imposed against him; on 29.9.1988, a fine of Rs. 200, on 2.2.1989, a fine of Rs. 200, on 21.5.1990 a fine of Rs. 100; on 2.1.1991 a fine of Rs. 50 and again on 18.3.1991 a fine of Rs. 100 was imposed against him and were realized from him. The allegations in the impugned order is that the fines were imposed on the petitioner for keeping his shop closed without valid reason and for not distributing food grains properly and for "other irregularities". A show-cause-notice is stated to have been given to the petitioner on 2.9.1992 calling for his

explanation. The petitioner is stated to have submitted a reply dated 7.9.1992 through his counsel admitting the allegations against him. Accordingly, the impugned order dated 2.11.1992 was passed cancelling the licence of his fair price shop.

2. I have heard Sri Sanjay Kumar Srivastava, learned counsel appearing for the petitioner and the learned standing counsel appearing on behalf of the respondents. The order is being dictated in open Court.

3. Sri Sanjay Kumar Srivastava submitted that even assuming for a moment that the petitioner had admitted the allegations regarding imposition of penalties upon him in the past, the last penalty was imposed on 18.3.1991, whereas the show-cause-notice was given on 2.9.1992 and there is nothing on record to show that from 18.3.1991 up to 2.9.1992, there were any allegations of any irregularities in the distribution of food grains and in fact, his submission is that there were absolutely no irregularities committed by the petitioner and that the petitioner was distributing food grains strictly as per the rules and as per the schedule to unit-holders.

4. The submission of Sri Sanjay Kumar Srivastava further is that a reading of the impugned order dated 2.11.1992, does not disclose any material against the petitioner for the period of one and half years from 8.3.1992 up to the date of show-cause-notice dated 2.9.1992 and therefore, according to him, the action taken by the District Supply Officer in the cancellation of the fair price shop is absolutely an arbitrary act based solely upon the past history of the petitioner and his submission is that the past history of the petitioner could not have formed the foundation of the order dated 2.11.1992, if the functioning of the petitioner, as a fair price shop-holder, for a period of one and half years was unblemished and without any complaint.

5. The learned standing counsel, on the contrary submitted that from a reading of the impugned order, it will be seen that the petitioner is habitual in closing his fair price shop early and in "not distributing food grains" properly as per rules to the unit holders. However, I have seen the order dated 2.11.1992 and the appellate order dated 18.2.1999.

6. From a reading of the two orders, it appears that the action for cancellation of the fair price shop of the petitioner has been taken only on account of the admission on the part of the petitioner with regard to the pecuniary penalties imposed against him prior to March, 1991, however, the impugned orders do not disclose that after March 1991 up to the date of show-cause-notice dated 2.9.1992, there was any irregularity committed by the petitioner in the distribution of food grains" and essential supplies to the unit-holders nor does it disclose that there was any complaint by any unit-holder that the petitioner was guilty of non-distribution of food grains as per rules or that he was guilty of keeping his shop closed without any reason.

7. At the time of the admission of the case, this Court vide order dated

31.3.1999 had stayed the operation of the impugned orders and thereafter, in terms thereof the petitioner has been continuing as fair price shop dealer regularly and that during this period nothing has been brought to the notice of the Court as to whether the working of the petitioner had not been up to mark or there was any irregularity or violation of rules. In view of the above facts and circumstances of the case, the impugned order dated 2.11.1992 and the appellate order dated 18.2.1999 on the face of it are absolutely illegal and arbitrary and have passed without any application of mind. Accordingly, the orders dated 2.11.1992 and 18.2.1999 are quashed. The writ petition is allowed.

There shall be no order as to costs.