

(2011) 03 AHC CK 0415

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1766 of 2011

Smt. Raj Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (2011) 3 ADJ 638 : (2011) 3 AWC 3180 : (2011) 8 RCR(Civil) 3161

Hon'ble Judges : F.I. Rebello, C.J.;Vineet Saran, J

Bench : Division Bench

Judgement

1. The Petitioner is a fair price shop dealer. An FIR had been lodged under Sections 3/7 of the Essential Commodities Act on 1.9.2009 against the Petitioner whereby her fair price shop dealership was placed under suspension on 3.9.2009. On 10.8.2010, the dealership of the Petitioner has been cancelled by the Sub-Divisional Officer on the ground of lodging of FIR under Sections 3/7 of the Essential Commodities Act against the Petitioner. It has been stated in the said order that since the shop of the Petitioner is continuing under suspension for about a year and the card holders attached to the shop of the Petitioner are facing difficulty, the dealership is being cancelled. The same ground has been reiterated in the order dated 20.12.2010 for cancelling the dealership of the Petitioner. Challenging the said orders dated 10.8.2010 and 20.12.2010, this writ petition has been filed.

2. We have heard Sri Ajay Shankar Pathak, learned Counsel for the Petitioner as well as learned Standing Counsel appearing for the Respondents and have perused the record.

3. Earlier on 13.1.2011 time was granted to the learned Standing Counsel to file counter-affidavit and the matter was adjourned for 17.2.2011. However, no counter-affidavit was filed and the matter was again adjourned to 1.3.2011 and it was made clear that no further time would be granted to file counter-affidavit. Till date no counter has been filed and today again a request has been made on

behalf of the Respondents for adjournment, which is refused. We thus proceed to dispose of this writ petition on the averments as they now stand.

4. Ordinarily we would not have entertained this writ petition as an appeal is available in a case of cancellation of licence. However, we find over here that the judgment of this Court dated 30.10.2009 in Jagdish Narain Mishra v. State of U.P. Civil Misc. Writ Petition No. 28051 of 2008 has not been followed wherein the learned Judge observed as under:

Despite advancing lengthy arguments, learned standing counsel has failed to bring to the notice of the Court any provision either under the Essential Commodities Distribution Order, 2004 or under any other Government Order issued either under the 2004 order or 1990 order empowering the Licensing Authority to cancel a fair price shop agreement merely on account of a dealer being involved in a criminal case. Hence the cancellation of the Petitioner's agreement on the ground of his involvement in aforesaid Criminal Case under the Essential Commodities Act is also unsustainable.

5. Nothing has been brought to our attention that the said judgment has been overruled. Even otherwise, we are of the opinion that the said conclusion cannot be faulted for the reason that mere filing of a F.I.R. cannot result in holding a fair price shop owner guilty of the offences charged. If there be a conviction, then it is possible to proceed, based on the conviction and not otherwise. In case if the F.I.R. is lodged, it is still open to the Respondents to proceed by leading independent evidence and statements of the persons recorded.

6. In the instant case that has not been done. It is not possible to countenance a situation where a judgment, which is binding on the authority, is not being followed and the parties are made to seek a remedy which ordinarily they need not have to resort to if the law laid down by this Court was followed by the Respondents.

7. Considering what we have set out earlier and the judgment of this Court in Jagdish Narain Mishra (supra), which we approve, the cancellation of the licence of the Petitioner is without authority of law.

8. Even otherwise we may point out that a reading of the order dated 10.8.2010 discloses total non application of mind. The said order purports to cancel the license merely on the ground of lodging of an F.I.R. and that suspension is going on for a long time thereby causing inconvenience in distribution of essential commodities to the card holders. The said reasons cannot be justified in law to cancel the dealership.

9. Consequently the orders dated 10.8.2010 and 20.12.2010 are set aside. The Respondents are directed to resume the supply of the food grains to the Petitioner if there be no other contrary order. However, it shall be open to the Respondents to hold an enquiry and proceed according to law.

10. With the aforesaid observation, this writ petition stands disposed of.