
(2011) 09 AHC CK 0440
In the Allahabad High Court
Case No : Misc. Bench No. 9108 of 2011

Smt. Suman Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2011) 09 AHC CK 0440

Hon'ble Judges : Uma Nath Singh, J; Anil Kumar, J

Bench : Division Bench

Judgement

1. We have heard Learned Counsel for parties and perused the pleadings of writ petition.

2. Learned Counsel for parties from the materials on record are fair enough to submit that the category to which the fair price shop should go has to be determined first which is normally in accordance with the nature of constituency of the Village Pradhan. Learned Counsel for Petitioner referred to one of our orders on the subject matter rendered in Writ Petition No. 7800 (MB) of 2011, which on reproduction reads as under:

Heard Learned Counsel for parties and perused the pleadings of the writ petition.

Learned Counsel for Petitioner submitted an order of Co-ordinate Bench of this Court dated 29.08.2008 passed in Writ Petition No. 8799 (MB) of 2008 (Hanuman Prasad Verma v. State of Uttar Pradesh and Ors.) which is based on a judgment of the same Bench in Writ Petition No. 8781 (MB) of 2007 (Mahendra Kumar v. State of U.P. and Ors.). He also submitted that the said ratio was reiterated in a later judgment rendered by that Bench in the case of Anil Kumar Singh v. State of U.P. and Ors. 2010 (28) LCD 421 wherein it has been held that it is the category of constituency and election of Village Pradhan that would determine the category to which fair price shop would go on allotment.

Admittedly, the election to the office of pradhan of village Sukrauli was held in

the general class category. Therefore, the fair price shop could not have been reserved for allotment to a candidate of the scheduled caste category.

On the other hand, learned State counsel submitted that since there are Government Orders, the Sub-Divisional Magistrate has passed the impugned order only in terms thereof.

On due consideration, we do not find any plausible explanation for passing the impugned order which appears to be patently erroneous being contrary to the ratio of the said judgment. Therefore, the impugned order of reservation of the fair price shop for scheduled caste category is hereby set aside with a direction to make a fresh exercise while keeping in view that the shop in question would fall in the general class category.

Writ petition is accordingly disposed of.

3. It appears that the resolution was passed by Gaon Sabha in favour of the Petitioner and thereafter his representation submitted towards an order in Writ Petition No. 3294 (MB) of 2011 dated 07.04.2011 has also since been rejected.

4. In view of all the aforesaid, we dispose of the writ petition with direction that the Gaon Sabha shall pass a fresh resolution after determining the category of shop which should normally be in accordance with the nature of constituency of the Village Pradhan and expedite the process of allotment to the candidate in whose favour the resolution is passed.

5. However, this order shall not create a bar on the way of Gaon Sabha in reiterating its earlier resolution in favour of the Petitioner.

6. Writ petition thus stands disposed of.