

(2018) 02 AHC CK 0053
In the Allahabad High Court
Case No : 41794 of 2017

Smt. Tara Devi

APPELLANT

Vs

State Of U.P. And 3 Others

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Citation : (2018) 02 AHC CK 0053

Hon'ble Judges : Siddhartha Varma

Bench : Single Bench

Advocate : Upendra Upadhyay, Aakash Rai, Manoj Kumar Yadav

Final Decision : Allowed

Judgement

1. Upon the death of the petitioner's husband on 15.9.2016, she claimed her right as his dependent to run the fair price shop. When it was refused by the order dated 15.9.2016, she filed an appeal which was also dismissed on 18.8.2017. Aggrieved thereof the instant writ petition has been filed.

2. The contention of the petitioner is that she could not be denied the licence to run the fair price shop on account of the fact that her husband was a resident of village-Nagsar Newaju Rai and the shop was situate in village Nagsar Meer Rai. She claimed that when a person was to be appointed as a dependent of a deceased fair price shop dealer then the provisions of Clause 10 (cha) of the Government Order dated 17.8.2002 would not apply. Further contention of the petitioner was that when an appointment of a dependent was to be made under Clause-10 (jha) of the Government Order dated 17.8.2002 then the only consideration was that the applicant had to be a dependent of the deceased. It mattered little that the dependent of the deceased, was a resident of some other village. The purpose of Clause-10(jha) of the Government Order dated 17.8.2002 was to bring succour to the dependents of the deceased who had become indigent owing to the death of the fair price shop dealer. Further contention of the petitioner was that while the petitioner's husband was alive, he was living in

village-Nagsar Newaju Rai and was running his shop in Nagsar Meer Rai very effectively. It was stated by learned counsel for the petitioner that before the two villages were bifurcated they were one and the house of the petitioner was just a lane away from the shop, meaning thereby that it was just across the lane. Learned counsel for the petitioner further submitted that the residents ever since 27.12.1999 when the petitioner's husband was allotted the fair price shop were always very happy with the functioning of the shop and they never complained against him. It has further been submitted that Clause 10 (jha) of the Government Order dated 17.8.2002 was a piece of beneficial legislation and it could not be whittled down by the provisions of Clause 10 (cha). The intention of the provisions of Clause 10 (jha) was that succour had to be brought to the dependents. Therefore, interpretation of the Government Order should be such that it furthers the policy and object of the Government Order. He further submits that a generous degree of latitude was to be made permissible in cases of welfare legislations which are designed to further a noble cause. In fact courts should strive to interpret beneficial Clauses in such a manner that they further the cause the legislation had sought to espouse. Learned counsel for the petitioner submitted that when the fair price shop was allotted to the petitioner's husband as per the Government Order dated 3.7.1990, the distribution of the essential commodities took place very effectively. He further submitted that once when in the year 2015, an objection was made by certain villagers that the shop could not be run by the fair price shop dealer as he was a resident of another village then on 8.6.2015 the Sub-divisional Magistrate had turned down the objection and had stated in the order that the shop was allotted to the petitioner on 28.12.1999 as per the Government Order dated 3.7.1990 and, therefore, it could not be said that there was anything wrong in the allotment done in favour of the petitioner.

3. The learned Standing Counsel, however, relied on the Government Order dated 17.8.2002 and emphatically stressed on Clause 10 (cha) and submitted that if the petitioner had to be allotted the fair price shop then she should be a resident of Village- Nagsar Meer Rai where the shop was situate. He also pointed out to the Government Order dated 11.5.2017 and stated that if a fresh shop had to be allotted then the same had to be done only if the shopkeeper was the resident of that village.

4. Having heard the learned counsel for the parties, I am of the view that Clause 10 (cha) of the Government Order dated 17.8.2002 and the Government Order dated 11.5.2017 do not in any manner lessen the effect of Clause 10 (jha) of the Government Order dated 17.8.2002. The provision for appointment of a dependant of a deceased who had died while running the shop is a piece of beneficial legislation. Its effect cannot in any manner be whittled down by any other supervening provision whatsoever. A person is appointed after the earlier fair price shop dealer has died only to bring succour to the family which falls into a state of extreme indigency. When the husband of the petitioner was running the fair price shop effectively till the date of his death i.e. till 2.8.2016 and there

was absolutely no problem to the villagers and the essential commodities were being distributed very effectively then as per the provisions of Clause 10 (jha) of the Government Order dated 17.8.2002 the dependent should be allowed to continue to run the shop. The provision of Clause 10 (jha) of the Government Order dated 17.8.2002 was absolutely independent of the provisions of Clause 10 (cha) and the Government Order dated 11.5.2017. The Supreme Court in (1980) 1 SCC 340 (M/s. Ukhara Estate Zamindaries (Pvt.) Ltd. vs. The Commissioner of Income-tax, West Bengal, Calcutta, AIR 1973 SC 1227 (Workmen Of Messrs Firestone Tyre ... vs Management & Others) and AIR 1981 SC 422 (Surendra Kumar Verma Etc vs The Central Government) has consistently held that a beneficial legislation which has been enacted for the welfare of a certain category of down trodden and the needy should be interpreted liberally.

5. Thus the respondent, Sub-divisional Magistrate and the Gaon Sabha will proceed as per the provisions of Clause 10 (jha) and initiate proceedings for the appointment of the petitioner as a fair price shop dealer.

6. The writ petition is allowed.

7. The orders dated 15.9.2016 and 18.8.2017 are quashed. The procedure for appointment vis a vis the petitioner would be completed within a period of one month from the date of presentation of a certified copy of this order.