
(2016) 07 AHC CK 0186
In the Allahabad High Court
Case No : Writ C. No. 31009 of 2016.

Sukhveer Singh Yadav - Petitioner @HASH State of U.P. And 2 Others

Date of Decision : 12-07-2016

Acts Referred:

Citation : (2016) 11 ADJ 759 : (2016) 119 ALR 338 : (2017) 134 RD 88

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Manoj Kumar Gupta, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Disposed Off

Judgement

Ran Vijai Singh, J. - Heard Sri Manoj Kumar Gupta, learned counsel for the petitioner, learned standing counsel for the State-respondents and learned counsel appearing for Gaon Sabha.

2. Through this writ petition prayer has been made to issue writ of certiorari quashing the order dated 29.7.2015 passed by Sub Divisional Magistrate, Faridpur, District Bareilly, prayer has also been made to issue writ of mandamus commanding the respondent authorities not to interfere with the peaceful running of the fair price shop of the petitioner. The petitioner has also prayed to decide the petitioner's application for extension of interim relief filed in Appeal no. 100 of 2015 (Sukhveer Singh Yadav v. State of U.P.) within stipulated time.

3. The brief facts of this case are that it appears on the ground of irregularities in distribution of schedule commodities the petitioner's agreement to run fair price shop of village Dagroli, Block and Tehsil Faridpur, District Bareilly was cancelled. Aggrieved petitioner has filed an appeal under Order 28 (3) of U.P. Schedule Commodities Distribution Order, 2004 (in short "Distribution Order, 2004") before the respondent no. 2. Along with appeal the petitioner has also filed an application under sub order 5 of Order 28. On that application following order was passed: -

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mHk;i{kksa dks lquk x;kA vihy lquokbZ gsrq xzkgkz dh tkrh gSA vihy esa xq.k&nks" k ij lquokbZ gsrq 12-08-2015 fu;r dh tkrh gS lEcU/kr vfHkys[k eaxk;k tk,A fujLrhdj.k vkns" k ds vuqdze esa ;fn u;s m0o0fo0 dh fu;qfDr u dh x;h gks rks mDr fu/kkZfjr fnukad rd u;h nqdku dh fu;qfDr u dh tk, fdUrq lEc)hdj.k dh Lora=rk gksxhA

4. It appears that the order dated 12.8.2015 stood expired and for the extension of the aforesaid orders an application has been filed by the petitioner on 22.6.2016 but no order has yet been passed.

5. Learned counsel for the petitioner submits that a direction be issued to the Deputy Commissioner (Food) Bareilly to extend the interim order granted by him earlier.

6. Learned standing counsel appearing for the State relying upon the full bench judgment of this Court in Smt. Urmila Devi v. State of U.P., 2015 (2) ADJ 368 (FB) submits that an order restraining the authorities not to appoint any new fair price shop agent during the pendency of appeal or writ petition before this Court cannot be passed as in view of the Government Order dated 26.11.2014 the attachment of fair price shop cannot be allowed beyond the period of two months. The relevant paragraphs of the aforesaid judgment are reproduced herein under:-

22. For these reasons, we hold that the Division Bench in Jagannath Upadhyay's case was not justified or, for that matter, correct in law in issuing a general mandamus to the effect that the Principal Secretary, Food and Civil Supplies shall ensure that till a statutory appeal is decided, the fair price shop shall not be allotted on an adhoc basis and shall be attached to some other neighbouring fair price shop. What arrangement should be made when an authorisation has been suspended or cancelled, is an administrative matter for the State which has to bear in mind issues of public interest and local need over and above the private interest. In consequence, the Government Order which was issued on 10 July 2014 in pursuance of the directions issued by the Division Bench in Jagannath Upadhyay's case (supra), decided on 19 October 2011, would have no meaning and must be recalled by the Principal Secretary, Food and Civil Supplies forthwith. As regards, the general mandamus which was issued by the Division Bench in Rajeshwar Prasad (supra), we have already held that if the Division Bench were to disagree with the earlier decisions, the correct course of action would have been to refer the matter to the Full Bench. Since, eventually the conflicting views have been referred to the Full Bench, we have put the matter to rest by this judgment.

23. We, accordingly, hold that the authorisation granted to a person to conduct a fair price shop only constitutes such a person as an agent of the State Government under Clause 4(2) of the Control Order. If the authorisation is suspended or cancelled, a remedy of an appeal is provided in Clause 28(3). During the pendency of an appeal, a provision has been made in Clause 28(5),

for seeking a direction that the order under appeal shall not take effect until the appeal is disposed of. If the order of suspension or cancellation has not been stayed pending the disposal of the appeal, the cancellation or suspension, as the case may be, shall continue to remain in effect. The mere filing or pendency of an appeal or an application for stay does not result in a deemed or automatic stay of the order of suspension or cancellation. There is no such deeming provision. In such a situation, the State is at liberty to make necessary administrative arrangements to ensure the proper distribution of scheduled commodities based on the public interest in the proper functioning of the Public Distribution Scheme and on an assessment of local needs and requirements that would sub-serve the interest of the beneficiaries. We, therefore, hold that the interim mandamus in Vinod Mishra and the judgment in Jagannath Upadhyay's case (supra) which took a contrary view do not reflect the correct position in law and would consequently stand overruled. The Principal Secretary, Food and Civil Supplies, shall now on the basis of the present judgment, issue a circular to all the Divisional Commissioners and concerned officials of the State so that necessary steps in compliance are taken. The learned Standing Counsel has apprised the Court that the Government Order dated 10 July 2014 has since been withdrawn by the Principal Secretary, Food and Civil Supplies on 26 November 2014 and a new Government Order has been issued.

From the perusal of paragraph 23 of the aforesaid judgement it transpires that the Government order dated 26.11.2014 refers the Government order dated 29.7.2004, relevant paragraphs of the same are reproduced herein under:-

"6- tkWap dh dk;Zokgh ds mijkUr nqdkunkj ds nks" k dh xEHkhjrk ns[krs gq, mls n.M fn;k tk,A ;fn n.M Lo:i nqdkunkj dh fuyfEcr nqdku fujLr dh tkrh gS rks fujLrhdj.k vkns" k dh frfFk ls vf/kdre ,d ekg ds vUrxZr u;s mfpr nj ds nqdkunkj dh fu;qfDr vfuoq;Z :i ls gks tkuh pkfg, rkfd nqdku dh lEc)rk tYnh ls tYnh lekIr gks ldsA

7- fu;qfDr izkf/kdkjh mijksDr vkns" kksa dk dM+kbZ ls ikyu djsaxs vkSj dk;Zokgh ds fy;s mij nh x;h le; lkfj.kh dks lqfuf"pr djsaxsA le; lkfj.kh ds vuqlkj tkWap dh dk;Zokgh ,d ekg esa rFkk nqdku ds fujLrhdj.k dh fLFkfr esa ,d vkSj ekg ubZ fu;qfDr ds fy;s fu/kkZfjr gSA vr% fuyfEcr@fujLr nqdku dk fdLh vU; nqdku ls lEc)hdj.k vf/kdre nks ekg ds fy;s gksxkA"

7. From the perusal of paragraph 7 of the aforesaid Government Order it transpires that attachment of the shop with another fair price shop agent cannot be allowed to travel beyond the period of two months. The object of the appointment of fair price shop agent and regulation of the distribution of schedule commodities under Distribution Order, 2004 is to ensure the smooth distribution of schedule commodities to the card holders. In order to prevent the irregular distribution or black marketing etc. provisions have been made for suspension and cancellation of the agreement and once the agreement is suspended or cancelled for ensuring smooth distribution to the card holders, provisions have been made under the Government order for attaching the shop

whose agreement has been cancelled, to the nearby fair price shop agent but the attachment is not permanent arrangement therefore it has been mandated that attachment shall not travel beyond the period of two months, if attachment cannot travel beyond the period of two months, then how the shop shall be permitted to run as in case it is permitted to do so the distribution of schedule commodities of the concerned shop shall be stopped which is not purpose of the Distribution Order, 2004 therefore the step has to be taken for appointment of new fair price shop agent and that is why keeping in mind this aspect of the matter the Full Bench of this Court has opined that no order restraining the authorities to appoint of fair price shop agent can be passed.

8. Here the petitioner has prayed for issuing a writ of mandamus directing the Joint Commissioner Food to decide his stay extension application. The interim order passed by the Joint Commissioner Food was to the effect that in case new fair price shop agent has yet not been appointed the same shall not be appointed.

9. In my opinion looking into the Full Bench judgment of this Court in Smt. Urmial Devi (supra) this type of interim order could not be passed by the Deputy Commissioner (Food). Sub order 5 of Order 28 of Distribution Order, 2004 empowers the appellate authority to stay the operation of the cancellation order until the appeal is disposed of.

10. So far as the petitioner's submission with regard to extension of interim order not to appoint new fair price shop agent is concerned, since the appellate authority has not been empowered under sub Order 5 of order 28 of Distribution Order 2004 to pass such order therefore no mandamus can be issued against the statute and the law laid down by this Court in the case of Smt. Urmila (supra).

11. It is settled by the Hon'ble Apex Court that futile writs should not be issued, reference may be had to Dr. J. Shashidhara Prasad v. Governor of Karnataka and another, AIR 1999 SC 849, M.C. Mehta v. Union of India and others, AIR 1999 SC 2583, Common Cause (A Regd. Society) v. Union of India and others, AIR 2008 SC 2116, and Punjab National Bank and others v. Manjeet Singh and another, AIR 2007 SC 262.

12. However it is observed that the petitioner's appeal shall be decided by the appellate authority expeditiously if possible within a period of six months without granting any unnecessary adjournments to learned counsel for the parties from the date of receipt of certified copy of the order of this Court.

13. Otherwise also the petitioner's apprehension that in case any new fair price shop agent is appointed during the pendency of the appeal his right would suffer, in case the appeal is allowed, is also misconceived for the reasons that this Court in number of cases has held that subsequent allottee has no right to challenge the appellate order where the appeal is allowed of the erstwhile fair price shop agent reference may be had of Nasarudin v. State of U.P. and Ors. 2015 (11) ADJ 557, Smt. Javitri Devi v. State of U.P. and others (WRIT C. No. 63117 of 2015, decided on 18.11.2015), Shyam Singh v. State Of U.P. And 4 Others (WRIT C.

No. 63882 of 2015, decided on 4.12.2015) and Roop Kishor v. State Of U.P. And 4 Others (Writ-C. No. 68087 of 2015, decided on 18.12.2015). The view taken in different cases has been approved by the Apex court in Puran Singh v. State of U.P. and others (2010) 2 UPLBEC 947.

14. In nutshell, after cancellation of the agreement, since the petitioner is not functioning as a fair price shop agent, therefore appointment of any fair price shop agent during the pendency of appeal will not affect the substantial right of the petitioner in case appeal filed him is allowed.

15. With the aforesaid observations, the writ petition is disposed of.