

(2016) 01 AHC CK 0094

In the Allahabad High Court

Case No : Writ - C Nos. 34878, 50158 and 51825 of 2009

Urmila Sagar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 01 AHC CK 0094

Hon'ble Judges : Rakesh Tiwari and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Nitin Kumar Agarwal, for the Appellant; C.S.C., Anuj Kumar and Radha Mohan Pandey, for the Respondent

Final Decision : Disposed off

Judgement

Shashi Kant, J.—1. Heard Sri Nitin Kumar Agarwal, learned counsel for petitioners, Sri Radha Mohan Pandey, learned counsel for respondent Nos. 5 to 19, learned Standing Counsel for the State respondents and perused the record.

2. The aforesaid writ petitions under Article 226 of the Constitution of India have been filed challenging the allotment of fair price shops in favour of respondent Nos. 5 to 19, in Gram Panchayat - Khora, Tehsil - Loni, District - Ghaziabad, according to petitioners allotments subject to challenge, have not been made in accordance with the procedure/guidelines, laid down vide Government Order dated 17.08.2002.

2.1 Writ Petition No. 51825 of 2009 - Urmila Sagar and Another vs. State of U.P. and Others has been filed for following reliefs:

"(i) Issue, a writ, order or direction in the nature of Certiorari to set aside the allotment of fair price shop vide order dated 27.8.2009 passed by Respondent No. 2 (Annexure No. 1 to the present writ petition).

(ii) Issue, a writ, order or direction in the nature of Mandamus commanding the

respondent No. 2 not to release of goods in favour of private respondents (i.e. Respondent No. 5 to 19).

(iii) Issue, any writ, order or direction as this Hon"ble Court may deem fit and proper in the present circumstances of the case.

(iv) Award Cost of the writ petition in favour of the petitioner."

2.2 Writ Petition No. 50158 of 2009 - Prakash Chandra Sagar and Another Vs. State of U.P. and Others, has been filed for following reliefs:

"(i) issue a writ, order or direction in the nature of Mandamus directing the respondent No. 2 to inquire into the allegations made in the representation dated 08-06-2009 (Annexure No. 3 to the writ petition) and complaint dated 28-08-2009 (Annexure No. 4 to the writ petition) by the petitioners and decide the same within a stipulated period.

(ii) issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case; and

(iii) award the costs of the petition to the petitioner throughout."

2.3 Writ Petition No. 34878 of 2009 - Smt. Saraswati Devi and Others Vs. State of U.P. and Others, has been filed seeking following reliefs:

"(i) issue a writ, order or direction in the nature of certiorari, quashing the order/ letter dated 16.2.2009 issued by the Sub Divisional Magistrate, Sadar, District - Ghaziabad/respondent No. 3 (Annexure: 2 to the writ petition).

(ii) issue a writ, order or direction in the nature of mandamus, directing the respondents not to allot the fair price shop dealer at village Khora, Block Loni, District Ghaziabad in pursuance of order/letter dated 16.2.2009 issued by the Sub Divisional Magistrate, Sadar, District Ghaziabad/respondent No. 3 (Annexure: 2 to the writ petition).

(iii) issue such other appropriate writ, order or direction in the nature of writ, which this Hon"ble Court may deem fit and proper in the circumstances of the case to which the petitioners be entitled under law; and

(iv) award costs to the petitioners."

3. Since the aforesaid writ petitions involve common facts and issues, therefore with the consent of learned counsel for the parties, all the above writ petitions are being heard and are being decided by this common judgment.

4. Brief facts giving rise to aforesaid writ petitions are that the State Government issued Government Order dated 17.08.2002 (hereinafter referred to as "G.O. Dated 17.08.2002"), whereby the State Government issued guidelines with regard to enforcement of reservation in allotment of new fair price shops. In pursuance thereto aforesaid Government Order, a open meeting of Gram Panchayat took place in the presence of Gram Panchayat Adhikari and Assistant

Block Development Officer, in which applications from eligible candidates were invited. In pursuance thereto 23 applications were submitted, out of which 15 candidates were found eligible and vide resolution dated 06.07.2009 passed by Gram Panchayat, names of eligible candidates were forwarded to the Deputy Collector, Sadar, Ghaziabad for approval. After approval dated 27.08.2009, allotment orders/letters were issued to selected candidates i.e. respondent Nos. 5 to 19, and they started operating their respective fair price shops. The petitioners being aggrieved by the aforesaid allotment of fair price shops in favour of respondent Nos. 5 to 19, filed representations/applications before the District Magistrate, Ghaziabad. Due to inaction on those by the authorities concerned, the petitioners have approached this Court by means of aforesaid writ petitions.

5. Learned counsel for petitioners urged that:

5.1 The resolution dated 06.07.2009, is not a valid resolution as the same has not been passed in an open meeting of Gram Sabha involving all the ward members.

5.2 According to Government Order dated 18.08.2008 (hereinafter referred to as "G.O. Dated 18.08.2008"), neither the ward member nor his family members are entitled for allotment of fair price shop, whereas respondent No. 14 - Tahir Khan has been allotted the shop though his mother is a ward member, as such, the allotment is against the aforesaid Government Order.

5.3 As per G.O. dated 17.08.2002, while making allotment of fair price shops, reservation policy as laid down in the aforesaid Government Order, has not been followed, while making such allotments.

5.4 G.O. dated 17.08.2002, also provides that an allottee must hold Rs. 40,000/- in his/her savings bank account. This guideline has not been followed while allotting fair price shop to respondent No. 10 - Smt. Usha Devi, who is said to be holder of Antyodaya Card, and belongs to below poverty line category.

5.5 The village Pradhan, passed the resolution in question behind the back of the members of Gaon Sabha and therefore same is illegal and not sustainable under the law.

5.6 From the facts of the case, it is well established that the entire proceeding of allotment of fair price shops is illegal, arbitrary and without following the procedure in a fair manner and same is against the provisions of the Government Order as well as policy decision of the State.

6. Per contra learned counsel for respondents submits that:

6.1 In pursuance to resolution passed by the Gram Sabha and approval thereof by the Deputy Collector, the allotments were made and subsequently, allotment orders were provided to the allottees.

6.2 The petitioners have no locus because they were not applicant for allotment

of fair price shops, as such they are not aggrieved persons and therefore they have no locus in approaching this Court by filing aforesaid writ petitions, which are totally misconceived and are liable to be dismissed.

6.3 That petitioner No. 1 of Writ Petition No. 51825 of 2009, Urmila Sagar and petitioner No. 1 of Writ Petition No. 50158 of 2009, Prakash Chandra Sagar are husband and wife, and they have preferred aforesaid writ petitions for same cause of action, as such they are not maintainable.

6.4 The allotments of fair price shops have been made in accordance to the policy laid down in the G.O. dated 17.08.2002 and G.O. dated 18.08.2008. All the petitioners of the aforesaid writ petitions are not the aggrieved persons and therefore they have no locus standi to file aforesaid writ petitions, as such they are liable to be dismissed.

7. In rebuttal learned counsel for the respondents in respect to two writ petitions filed by petitioners for same cause of action, learned counsel for petitioners submits that the Writ Petition No. 50158 of 2009 - Prakash Chandra Sagar and Others Vs. State of U.P. and Others, has been filed by Prakash Chandra Sagar and Others, who participated in the allotment proceedings but due to arbitrary act of respondents they were not allotted the shops. So far as Writ Petition No. 51825 of 2009 - Smt. Urmila Sagar and Others Vs. State of U.P. and Others is concerned same was filed by Smt. Urmila Sagar and Others in the capacity of Ward members, as the meeting of Gram Sabha for allotment of fair price shops was conducted in absence of Ward Members and without fulfilling the coram of meeting. The Village Pradhan recommended the names of those persons who were near and dear to him, as such being aggrieved by the conduct of Pradhan, said writ petition was preferred by the ward member. Therefore, aforesaid two writ petitions though filed by husband and wife separately, were filed in different capacities with prayers for different reliefs, though the challenge in both the writ petitions was allotment of fair price shops of a particular Block.

8. Having heard learned counsel for the parties and on perusal of record, it appears that the petitioners are aggrieved by non compliance of the guidelines by the authorities while allotting fair price shops in favour of private respondents, prescribed in the G.O.s dated 17.08.2002 and 18.08.2008, thus, the whole controversy revolves around the aforesaid two Government Orders, in view of the above they are reproduced herein below:

9. Perusal of record reveals that by means of aforesaid writ petitions, the petitioners have raised disputed questions of fact, in respect to violation of various important provisions of aforesaid Government Orders, which can be adjudicated only after leading evidence by the parties concerned.

10. In view of above, we are not inclined to interfere in the matter in exercise of writ jurisdiction under Article 226 of the Constitution of India and find it appropriate that the matter be looked at the first instance by the appropriate authority, who appears to be the Sub Divisional Magistrate (respondent No. 3),

before whom the petitioners may file their detailed representation(s) mentioning their all grievances supported with complete necessary documentary evidence in support of their respective claims.

11. In view of above discussion, we dispose of the aforesaid writ petitions with directions that petitioners may file their representation(s) mentioning their all grievances supported with complete necessary documentary evidence in support of their respective claims alongwith certified copy of this order, before the Sub Divisional Magistrate (respondent No. 3), within a period of six weeks from today, those representation"(s) shall be considered and decided by Respondent No. 3 expeditiously, preferably within a period of two months from the date of representation"(s), by means of reasoned and speaking order, in accordance with law, after providing opportunity of hearing to all the concerned.

12. With above observations and directions, these writ petitions are disposed of.

13. No order as to costs.