
(2011) 08 AHC CK 0021
In the Allahabad High Court
Case No : C.M.W.P. No. 46945 of 2011

Virendra Kumar

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Citation : (2011) 08 AHC CK 0021

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The sole ground challenging the appellate order is that Deputy Commissioner has no jurisdiction to decide appeal against an order passed by the Deputy Collector cancelling the fair price agreement of the petitioner. He submits that power is conferred only upon Commissioner and not Deputy Commissioner. Learned standing counsel disputing aforesaid placed before this Court U.P. Scheduled Commodities Distribution (First Amendment) Order, 2010 published in U.P. Gazette, Extraordinary, Part-4, Division (Kha) dated 2nd July, 2010 page No. 1-2, which has made amendment in para 28 (1) empowering Deputy Commissioner (Food) and Additional Commissioner also to hear an appeal liable to be heard by Commissioner under the said provision. The amended provision reads as under:

(Vernacular matter deleted)

2. Learned counsel for the petitioner however placed before this Court a judgment dated 21st July, 2011 in Writ Petition No. 50134 of 2009, Girish Chandra v. State of U.P. and others, to contend that it was held therein that such power of appeal could not have been exercised by Deputy Commissioner.

3. However, learned standing counsel explained that despite time granted, when Girish Chandra's (supra) matter was heard, he could not find out said amendment and, therefore, could not assist the Court and in absence of proper

assistance, the Court decided the matter vide judgment dated 21st July, 2011. The said judgment being in ignorance of the notification dated 2nd July, 2010 making amendment in Clause 28 (1) is per incuriam and ought not to be relied. He further submits that a review/recall application has been filed in the case of Girish Chandra (*supra*) which is pending before this Court.

4. Be that as it may, since amended notification has been placed before this Court, which clearly shows that power of appeal can be exercised by Deputy Commissioner or Additional Commissioner, it cannot be said that appellate order is without jurisdiction. No other point has been raised.

5. Writ petition, therefore, lacks merit. Dismissed.