Mahesh Chandra Sharma Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Jan. 3, 2011

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Shukla, J.
In the present case Samundra Singh, Respondent No. 5 was fair price shop licensee. His fair price shop license was

suspended and thereafter it was cancelled on 15.12.2000. In between said fair price shop agency was allotted in favour of the Petitioner on

06.02.2001. Samundra Singh, Respondent No. 5 preferred appeal against the said order of cancellation and the said appeal was allowed on

16.09.2010. At this juncture present writ petition in question has been filed.

2. Learned Counsel for the Petitioner, Sri Brij Gopal Tripathi, contended with vehemence that in the present case appeal in question has been

arbitrarily allowed, as such writ petition deserves to be allowed.

3. Countering the said submission learned Standing counsel, Sri D.D. Chauhan, Advocate appearing for Respondent No. 4 as well as Sri Mahesh

Kuntal, Advocate appearing for Respondent No. 5 contended that Petitioner''s right was third party right and once appeal preferred by Samundra

Singh, Respondent No. 5 was allowed then he has no locus to maintain writ petition as such writ petition as it has been framed and drawn deserves

to be dismissed.

4. This is accepted position in the present case that Petitioner''s right has been created for grant of fair price shop agency, after fair price shop

agency of Samundra Singh, Respondent No. 5 has been cancelled. Petitioner was well aware of the fact that his right are dependent on the right of

Samundra Singh, Respondent No. 5. Samundra Singh, Respondent No. 5 has been conferred statutory right of appeal under Clause 28(3) of U.P.

Scheduled Commodities Distribution Order 2004 and he invoked said right by filing Appeal No. 5135 of 2000-01 and thereafter appeal in

question has been ultimately allowed on 16.09.2010. Once appeal preferred by Samundra Singh, Respondent No. 5 has been allowed and

Petitioner"s allotment was made on the vacancy which has been occurred on account of cancellation of fair price shop agency of Samundra Singh,

Respondent No. 5, and fair price shop has been allotted to Petitioner, then in the event of appeal being allowed and license having been restored

back then Petitioner has got no right to continue in view of the judgment of this Court in the case of Smt. Mithilesh Kumar v. State of U.P. and Ors

Civil Misc. Writ Petition No 45893 of 2008 decided 18.11.2010 and the judgment of Division Bench of this Court in the case of Mahendra Singh

v. State of Uttar Pradesh and Ors write petition No 54498 of 2009 decided on 16.11.2009 has clearly taken the view that once third party right

had been created during pendency of appeal, and in the event of appeal being allowed, the incumbent in whose favour third party right had been

created, ceased to have any right or authority to carry on the fair price shop agency.

5. In such a situation and in this background, once appeal has been allowed, the fair price shop agency stands restored to its original licensee, and

none of the rights of the Petitioner has been infringed.

6. Consequently, present writ petition as it has been framed and drawn is dismissed.