

(2009) 10 AHC CK 0211

Allahabad High Court

Case No: None

Nisar Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Oct. 30, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2010) 1 AWC 605 : (2010) 5 RCR(Civil) 472

Hon'ble Judges: B.K. Narayana, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

B.K. Narayana, J.

Heard Sri Amarjit Singh learned Counsel for the petitioner and the learned standing counsel appearing for the respondents.

2. Counter and rejoinder-affidavits have been exchanged. With the consent of learned Counsel for the parties this writ petition is being finally disposed of at this stage.

3. The petitioner was granted a licence for running a fair price shop in village Gokalpur, Block Puwaraka, district Saharanpur. The aforesaid licence was cancelled by the respondent No. 3 by order dated 7.7.2007 (Annexure-2 to this writ petition) inter alia on the grounds that there were complaints of irregularities in the distribution of scheduled commodities and black marketing against the petitioner and upon his son being elected as Pradhan of the Gram Sabha in which the petitioner's fair price shop exists he had become disqualified to run his fair price shop in view of the restriction imposed in the Government order dated 18.7.2002. The petitioner challenged the order dated 7.7.2007 by preferring an appeal under paragraph No. 28 of the U.P. Essential Commodities Distribution Order, 2004 before the respondent No. 2 which was registered as Appeal No. 67 of 2006-07, inter alia,

on the grounds that the licensing authority erred in cancelling the petitioner's fair price shop agreement merely on the basis of complaints of irregularities in the distribution of essential commodities against the petitioner without recording any finding that the allegations made against the petitioner stood proved on the basis of any evidence on record; that the licensing authority did not consider the explanation submitted by him in reply to the charge-sheet in accordance with law; that the petitioner's fair price shop agreement was not liable to be cancelled by invoking the Government order dated 18.7.2002, which is prospective in nature as the disqualification stipulated therein could not have been applied retrospectively for cancelling the petitioner's fair price shop licence on the ground of his son having been elected as Pradhan and also for the reason that he had disowned his son in the year 2000.

4. Learned standing counsel appearing for the respondents submitted that the petitioner's fair price shop licence was rightly cancelled by the respondent No. 3 keeping in view the provisions of the Government order of the year 2002. Respondent No. 3 by cancelling petitioner's licence on the basis of the Government order of the year 1990 and 2000 has applied the said Government order prospectively and not retrospectively. He further submitted that the orders passed by the respondent Nos. 4 and 3 are based upon cogent material and supported by valid reasons and no interference under Article 226 of the Constitution of India is required by this Court.

5. I have examined the submissions made by learned Counsel for the parties and have also perused the record.

6. A careful reading of the order dated 7.7.2007, passed by respondent No. 3 shows that the petitioner's licence was cancelled on two grounds : firstly, on the ground that he had been committing irregularities in the distribution of scheduled commodities and despite being penalised on several occasions in this regard, he failed to improve his functioning and the report of Senior Supply Officer dated 12.6.2007 indicated that he had again committed grave irregularities in the distribution of scheduled commodities. There is nothing in the order of respondent No. 3 which may indicate that the charges made against the petitioner in regard to irregularities in the distribution of essential commodities were found to be proved by any evidence on record. Hence, the cancellation of a licence merely on the basis of complaints is not sustainable at all.

7. The second ground for cancellation is that upon the petitioner's son being elected as Pradhan of the Gram Sabha where the fair price shop in question is situate he stood disqualified to run the fair price shop in view of the disqualification contained in the Government order dated 18.2.2002. The submission made by learned Counsel for the petitioner that the disqualification allegedly incurred by the petitioner under the Government order issued in the year 2002 could not have been made a ground in cancelling the petitioner's fair price shop licence which had been

granted to him much before the issuance of the Government order of the year 2002 as the same is prospective in nature is concerned, the same has no force. The issue whether the Government order of 2002 was applicable to the fair price shop dealers whose licences were granted prior to the issue of the aforesaid Government order was examined by a Division Bench of this Court in the case of [Ram Murat Vs. Commissioner, Azamgarh Division, Sub-Divisional Magistrate, Block Development Officer and State of U.P.,](#) and the Division Bench held as hereunder:

We do not find any force in this contention. When a G.O. is issued in exercise of statutory powers. It shall be applicable to all the persons from the date of its enforcement and the persons whom licences for running the fair price shops were granted prior to issue of the G.O. cannot say that since there was no provision in the agreement executed by them that their licences shall be liable to be cancelled on their election or on election of their family members as Gram Pradhan or Up-Pradhan, their licences cannot be cancelled. The G.O. of the year 2002 shall certainly be not applicable to those persons who themselves or whose relations were elected as Pradhan or Up-Pradhan prior to enforcement of this G.O. as held in point No. 1, but after issue of this G.O. in the year 2002, if the licence holder himself or any member of his family decided to contest the election of village Pradhan or Up-Pradhan, he did so with complete knowledge of the above disqualification, and so now this plea cannot be taken that the licences of those persons which were granted prior to promulgation of the G.O. of 2002 cannot be cancelled on the basis of this G.O. This G.O. is applicable to all those persons and their relations as mentioned in paras 4 and 7 of the G.O. of 1990 who are elected as Pradhan or Up-Pradhan of the village after its enforcement.

8. Thus, in view of the law laid down by a Division Bench of this Court in the case of Ram Murat (supra), the cancellation of the petitioner's fair price shop agreement for the reason of his son having been elected as Pradhan of the Gram Sabha where the fair price shop is situate and hence he had incurred the disqualification stipulated under the Government order of 2002 rendering his fair price shop licence liable to be cancelled cannot be faulted with.

9. As far as the last contention of the learned Counsel for the petitioner that the petitioner had disowned his son in the year 2000, much before the promulgation of the G.O. of 2002 and the initiation of the proceedings of cancellation of his fair price licence, and his son is living separately from him and as such the provisions of Government order 2002, could not have been invoked in the case of petitioner is concerned, the same is also without any merit.

10. Apart from a public notice published in a local newspaper at the behest of the petitioner there was no material before the licensing authority on the basis of which the veracity of the claim of the petitioner could have been determined. Public notice issued at the behest of a father disowning his son is not sufficient to prove the severance of relationship between father and son.

11. For the aforesaid reason, this Court is of the view that the licensing authority was fully justified in cancelling the petitioner's fair price shop licence on the ground that he had become disqualified to run the fair price shop for the reason of election of his son as Pradhan of the Gram Sabha where his fair price shop is situate. The appellate authority also did not commit any error or illegality in rejecting the petitioner's appeal.

12. Thus, this writ petition has no merit and is accordingly dismissed.