

(2011) 07 AHC CK 0282

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 70256 of 2010

Kapil Deo Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 20, 2011**Citation:** (2011) 9 ADJ 666**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Hon'ble Sudhir Agarwal, J.

Short submission advanced in this writ petition is that petitioner's fair price shop agreement was initially suspended but having found the complaint false, suspension was recalled and his fair price shop agreement was restored by Deputy Collector on 27.9.2010. Strangely, thereafter, complainant preferred an appeal which has been entertained by Commissioner, though no such appeal lies since right of appeal has been conferred upon the person who is aggrieved by an order of suspension or cancellation of fair price shop agreement and not an order recalling the order of cancellation. Reliance is placed on this Court's judgment in Babu Ram Singh v. State of U.P. and others, 2009(10) ADJ 24.

2. Learned counsel appearing on behalf of respondent No. 5 has filed counter-affidavit, but could not place anything to show as to how an appeal could have been filed by a complainant in absence of any statutory right to file an appeal provided to the complainant. This Court, in Babu Ram (supra) observed as under.

The right of appeal is a substantive right and is not a mere rule of procedure. In this view of the matter, it is not a mere technicality but it is consideration of a substantive right, which is involved in the present proceeding. An appeal is a creature of a statute and is not generally available unless a right to such appeal is expressly provided for. It cannot be inferred by interpretation. Accordingly, the

argument advanced on this score cannot be accepted.

In view of the conclusion drawn herein above the order impugned and the entertainment of the appeal at the instance of the Gaon Sabha cannot be sustained. The impugned order is quashed and it is further held that the learned Commissioner had no authority to entertain the appeal on behalf of the Gram Pradhan or Gaon Sabha keeping in view the law as indicated herein above.

3. In view of above decision as also since learned counsel for respondent No. 5 could not point out as to how a complainant could have filed appeal and even learned Standing Counsel fairly stated that no appeal at the instance of complainant is maintainable, writ petition deserves to succeed.

4. Allowed.

5. Impugned order dated 29.9.2010 (Annexure 4 to writ petition) is hereby quashed. Commissioner, Gorakhpur is restrained from proceeding ahead on the appeal preferred by respondent No. 5.