

Kapil Deo Yadav Vs State of U.P. and Others

Court: Allahabad High Court

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.