

Ram Ashish Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/460582

Court : Allahabad

Decided On : Feb-06-2009

Reported in : 2009(2)AWC1670

Judge : Rajes Kumar, J.

Appellant : Ram Ashish

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Anil Kumar Tiwari

Disposition : Petition allowed

Judgement :

Rajes Kumar, J.

1. Heard Sri Anil Kumar Tiwari, learned Counsel for the petitioner, learned standing counsel appearing on behalf of respondent Nos. 1 to 3.

2. By means of the present writ petition, petitioner is challenging the order of the Commissioner, Gorakhpur Division, Gorakhpur dated 26.7.2007, by which he has dismissed the appeal of the petitioner filed against the order of Sub-Divisional Magistrate, Sadar Deoria dated 31.1.2007. By the aforesaid order, Sub-Divisional Magistrate has cancelled the licence of the fair price shop of the petitioner.

3. It appears that on the various allegations the licence of the petitioner has been suspended by Sub-Divisional Magistrate vide order dated 18.9.2006. It also appears that no separate show cause notice has been issued before cancelling the licence of the petitioner. However, petitioner has filed the reply on the allegations made in the suspension order. On the consideration of the reply, the licence of the petitioner has been cancelled vide order dated 31.1.2007. Appeal filed against the said order has been dismissed by the Commissioner.

4. Learned Counsel for the petitioner submitted that in the suspension order the allegations have been made that the lesser quantity of the goods were supplied to 14 ration card holders and 16 B.P.L. card holders. The name of such persons have not been mentioned in the suspension order nor in the order cancelling the licence of the petitioner. In the reply it has been stated that the record of three months have been submitted, in which the signature of the card holders are available, which shows that the goods have been properly supplied to them. He submitted that no opportunity of cross-examination has been given to cross-examine the persons who according to Sub-Divisional Magistrate have alleged that the goods have not been properly supplied. In the absence of any specific material the cancellation of the licence of the petitioner is wholly unjustified. He further submitted that the Commissioner has also not considered the submission of the petitioner and has illegally rejected the appeal.

5. Learned standing counsel submitted that the cancellation of the licence of the petitioner is based on evidence on record and on the enquiry being made by Sub-Divisional Magistrate and therefore, no interference is called for.

6. Having heard learned Counsel for the parties, I have perused the impugned order and the relevant documents annexed alongwith the writ petition.

7. Perusal of the suspension order reveals that name of 14 card holders and 16 B.P.L. card holders have not been given. The allegations are vague in nature. The plea of the petitioner that the record of three months have been submitted, which shows the signature of card holders that they have received the goods, has not been disputed in any of the order. The plea of the petitioner that due to the political enmity the complaint has been made against the petitioner, though there is no

material for the lesser supply/non-supply of the goods to the card holders. It is settled principle of law that if the respondents are making the allegations for the short supply/non-supply of the goods on the basis of the complaint, burden lies upon the authority to prove the same. In the circumstances, it was incumbent upon the Sub-Divisional Magistrate to disclose the name of such persons to whom the supplies were not made or not properly made and also confront the enquiry report and statement of such persons taken behind the petitioner. Perusal of the order reveals that the name of the card holders have not been mentioned in the suspension order nor in the cancellation order.

8. In this view of the matter, the order cancelling the licence of the petitioner is vitiated and is liable to be set aside and the matter is remanded back to the Sub-Divisional Magistrate to decide the matter afresh after giving opportunity of hearing to the petitioner confronting the statement of the persons and on consideration of the documents adduced by the petitioner.

9. In the result, writ petition is allowed. Order dated 31.1.2007 passed by the Sub-Divisional Magistrate Sadar, Deoria and the order dated 26.7.2007 passed by Commissioner, Gorakhpur Division, Gorakhpur are set aside and the matter is remanded back to the Sub-Divisional Magistrate, Sadar, Deoria to decide the matter afresh in the light of the observations made above.

10. Petitioner is directed to file the certified copy of the order before Sub-Divisional Magistrate, Sadar, Deoria within two weeks from today and Sub-Divisional Magistrate, Sadar, Deoria is directed to decide the matter afresh within a period of four weeks thereafter.