

Mukesh Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-29-2010

Judge : Sibghat Ullah Khan, J.

Appellant : Mukesh Kumar

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Sibghat Ullah Khan, J.

1. Heard learned Counsel for the parties.
2. This writ petition is directed against order dated 17.08.2007 passed by Deputy Collector, Manjhanpur, Kaushambi cancelling fair price shop agreement/dealership of the petitioner (Annexure-V to the writ petition). Against the said order, petitioner filed appeal being Appeal No. 213 of 2007. Deputy Commissioner (Food), Allahabad Division, Allahabad dismissed the appeal on 30.05.2008. Said order has also been challenged.
3. The main argument of learned Counsel for the petitioner was that petitioner's agreement/dealership has been cancelled on the direction of Sri Indrajeet Saroj, Minister, Samaj Kalyan, Bal Vikas Pushtahar, Krishi Vitaran, Krishi Videsh Vyapar

and Krishi Export Department, U.P. The Minister concerned is respondent No. 5 in the writ petition. Annexure-IV to the writ petition is photostat copy of application given by Tirathraj, respondent No. 6 and two others to the Minister concerned. In the said application, it is mentioned that petitioner's agreement/dealership had been suspended two months before, however till the date of application, the same had not been cancelled. It is also mentioned that even though earlier the Minister concerned had written still the agreement/dealership had not been cancelled. On the margin of the said application, the Minister concerned on 04.08.2006 wrote to the S.D.M. concerned that action/proceeding for cancellation of quota should be taken. In view of this startling situation/direction, this Court on 04.01.2010 passed following order:

On the request of learned standing counsel, put up on 06.01.2010.

It must be explained by the learned standing counsel that in the first instance what was the necessity for the Minister to issue a direction to do a particular thing in a particular manner. In the second instance, it must be explained as to whether Deputy Collector or Collector is expected to go against the written orders of Minister.

Office is directed to supply a copy of this order free of cost to learned standing counsel today.

4. In pursuance of the aforesaid direction, supplementary counter affidavit has been filed by learned standing counsel, the affidavit has been sworn by Sri Girijesh Kumar, present Deputy Collector. The first sentence of Para-3 of the said supplementary counter affidavit is as follows:

That an MLA or Minister is the representation (sic) of the people in the legislature and to express grievances of the people he may make a demand or pass an order to do a particular thing in a particular manner to an authority or an officer but that authority or officer is not bound to obey the demands or orders of an MLA or Minister and the concerned officer passes an order in accordance with law after considering the entire facts and circumstances of the case and the material on record of the matter.

5. Similarly the first sentence of Para-7 is quoted below:

That the Deputy Collector or Collector is not bound to comply with the orders passed by the Minister in his personal capacity.

6. Para-8 is also quoted below:

That in public interest, public representative may also write to the officers to do particular thing in a particular manner but the officers do the thing in accordance with law and such orders are supposed to be the demand made by the public representative, which are dealt with by the officers in accordance with law without fear and favour.

7. Firstly, the Court is not prepared to believe that a clear-cut direction of the Minister concerned may be avoided by Deputy Collector or any other officer. Secondly, what the Minister concerned has done is not the way in which the Ministers should act. Officers are required to pass the orders in accordance with relevant law including Rules, Regulations, Government Orders and Schemes. They shall not be directed to pass particular order by the Ministers or MLAs or MPs.

8. In the instant case, the impugned orders are liable to be set aside on the ground that they have been passed on the extraneous consideration, i.e. direction of the Minister concerned. In view of the above, I do not consider it necessary to enter into the merit of the case. Even a hundred percent correct judgment or order is no judgment or order in the eye of law if it has been passed on the direction of the higher authority.

9. Learned standing counsel on behalf of respondent No. 5 has cited an authority of the Supreme Court reported in Mohd. Masood Ahmad v. State of U.P. 2007 (8) SCC 150. In the said authority, it has been held that transfer of an employee is an incidence of service and it can be made on the recommendation of MLA. Transfer does not affect the right of any person, however cancellation of fair price shop agreement/dealership affects the rights of the dealer and the officer concerned, i.e. Deputy Collector acts in a quasi judicial manner while passing such order. Learned

Counsel for the respondent No. 6 has cited several authorities and supplied photostat copies of the same. However, none of the authorities is relevant as most of them deal with irregularities committed by fair price shop dealers. In the instant case, I do not find any necessity to enter into the merits of the case.

10. Accordingly, impugned orders are set aside only on the ground that they have been passed on the direction of the Minister concerned.

11. Deputy Collector is directed to decide the matter afresh without being influenced in the least by the direction of the Minister concerned. Petitioner is directed to appear before the Deputy Collector concerned on 18.02.2010 along with certified copy of this order. The matter shall be decided after hearing all the parties concerned, i.e. petitioner, complainants including respondent No. 6 and village Pradhan. The matter shall be decided only and only on the basis of material on record without taking into consideration any ex-parte reports and orders. The complainants shall be required to file affidavit before the Deputy Collector regarding irregularities and petitioner must be required to file affidavits in reply and the matter shall be decided on the basis of the affidavits. The decision shall be taken within two months from 18.02.2010.

12. Writ petition is accordingly allowed as above.