

Amlawati Devi vs State Of U.P. And 3 Others on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69391

Court No. - 33

Case :- WRIT - C No. - 17263 of 2021

Petitioner :- Amlawati Devi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ram Raj Prajapati, Rama Kant Gupta, Vishal Tandon

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Vishal Tandon, learned counsel for the petitioner, learned Standing Counsel for the State-respondents no.1 to 4 and Shri Rama Kant Gupta, Advocate, holding brief of Shri M.J. Akhtar, Advocate, who has filed an application seeking impleadment of one Smt. Kiran Gupta in whose favour fair price shop in question has been allotted under the order dated 17.09.2021, communicated vide order dated 28.09.2021 (Annexure No.1 to the affidavit supporting impleadment application).

2. Though there are certain judgments laying down that a subsequent allottee has no right to be heard, in all fairness, the Court deems it appropriate not to shut doors of hearing for the subsequent allottee when certainly order passed in this petition would affect her either way. Therefore, the impleadment application stands allowed.

3. Smt. Kiran Gupta is treated to be impleaded as the last respondent in the writ petition.

4. The petitioner was running a fair price shop in Village Lakhua Lakhui, P.S. Khadda, Block and Tehsil Khadda, District Kushinagar. A complaint regarding irregular distribution of essential commodities was moved against her on 04.08.2020, pursuant where to a joint team was constituted which carried spot inspection of the shop on 27.10.2020 and found that the petitioner had stored excess food grains without distributing the same to the cardholders. On that basis, the fair price shop licence of the petitioner was suspended on 31.10.2020 and the petitioner was called upon to show cause. The petitioner submitted her reply and apart from other submissions, it was stated in 10th paragraph of the reply that on 27.10.2020, a well known lady in the village, namely, Smt. Krishna Devi had expired and about 90% of the cardholders had gone to attend her cremation and after returning therefrom, at about 4.00 PM, food grains were received by those cardholders from the petitioner. In the same paragraph, reference of affidavits of those 46 cardholders was given who had received food grains from the petitioner and in 11th paragraph of the reply, reference of those 14 cardholders was given, out of whom 10 had earlier submitted their affidavits regarding irregular distribution of the essential commodities but this time they had deposed in favour of the petitioner.

5. Learned counsel for the petitioner submits that cancellation has been done based upon a verification exercise undertaken on 29.12.2020 where the Authority proceeded to verify the genuineness of the affidavits of cardholders who had deposed in favour of the petitioner and found that 14 such cardholders had termed the affidavits as not genuine. It is urged that the entire exercise of verification was undertaken behind the back of the petitioner and, at no point of time, she was given any clue of the same and, further, out of 60 affidavits, observation has been recorded only regarding 14 affidavits and not regarding remaining ones and, therefore, the said exercise could not be made basis of passing the order impugned. It is further urged that the Commissioner, in appeal, has simply upheld the order of cancellation and has not applied his independent mind. Reliance has been placed upon a final order of this Court dated 02.12.2020 passed in Misc. Single No. 14815 of 2019 (Bandey Vs. State of U.P. through Secretary Food and Civil Supply Lucknow and others).

6. Per contra, learned Standing Counsel submits that the petitioner was found guilty of not distributing essential commodities to the cardholders and was acting in a pick and choose method and, once inquiry was conducted against the petitioner and even affidavits filed by the cardholders were found to be ingenuine, the authorities have not erred in passing the orders impugned. It is also submitted that distribution of essential commodities has to be a fair exercise and, therefore, in view of the observations made in the orders impugned, no contrary view can be taken by this Court.

7. It is argued on behalf of the newly impleaded respondent that a first information report was also lodged against the petitioner on account of non-distribution of essential commodities and as far as the death of Smt. Krishna Devi is concerned, false ground has been taken by the petitioner, inasmuch as she had died on 28.10.2020 and not on 27.10.2020 and, therefore, the entire defence of the petitioner is baseless.

8. In this regard, learned counsel for the petitioner has placed reliance upon Annexure No. S.A.-3 to the supplementary affidavit, which is a photostat copy of the death certificate of Smt. Krishna Devi obtained under the Right to Information Act, 2005 wherein her date of death is recorded as 27.10.2020 and the said document was brought on record by the son of late Krishna Devi for the

purposes of receiving pension, as noted in the reply furnished under the R.T.I. Act and, therefore, any subsequent document procured by the subsequent allottee cannot be read.

9. Having heard learned counsel for the parties, this Court finds that there is no serious allegation against the petitioner as regards distribution of essential commodities. What reflects from the record is that the food grains were distributed amongst various cardholders and there only 14 persons who had deposed against the petitioner during the exercise undertaken on 27.10.2020. The explanation offered in 10th and 11th paragraphs of the reply submitted by the petitioner has not been carefully perused by the authority and, even if it is found that 14 persons had earlier deposed against the petitioner, 10 out of them, later on, submitted affidavits in favour of the petitioner accepting distribution of food grains in their favour. There is no finding regarding other cardholders and even if this Court accepts for a while, submissions made from the respondent side regarding certain infirmity in the affidavits, the fact remains that the earlier inquiry was conducted on 27.10.2020, whereas the verification exercise was undertaken after two months on 29.12.2020 and, at no point of time, any notice of such proceedings was given to the petitioner. Had an information/notice regarding verification been given to the petitioner, she could have explained the circumstances mentioned in the reply as well as all other attending circumstances but no such opportunity having been granted to her, this Court finds substance in the submission made by the petitioner's counsel that action leading to passing order against the petitioner was carried behind her back. The Court also notices that under identical circumstances, this Court has set aside the orders cancelling the fair price shop licence in the matter of Bandey (*supra*).

10. As regards the anomaly regarding date of death of Smt. Krishna Devi, this Court cannot take a different view regarding her death occurred on 27.10.2020 once the competent authority, under the Right to Information Act, based upon the documents filed before the Treasury office in relation to disbursement of pension to the son of deceased, furnished information and a copy of the death certificate disclosing her date of birth as 27.10.2020 was also issued by the Authority.

11. In view of the above discussion, since cancellation of fair price shop appears to be carried out in violation of principles of natural justice and, even otherwise, there being no proper consideration of the petitioner's explanation regarding disbursement of essential commodities on the same day in the evening which was occasioned on account of the cardholders having gone to attend the cremation of Smt. Krishna Devi and there being no serious allegation against her, this Court finds cancellation of petitioner's fair price shop licence as not justified.

12. As far as the subsequent allottee, i.e. the newly impleaded respondent is concerned, her rights having accrued pursuant to order of cancellation of fair price shop and the subsequent allotment was made pending writ petition, the same is certainly subject to decision of the writ petition.

13. For all the aforesaid reasons, the writ petition is allowed.

14. The impugned orders dated 11.01.2021 passed by the Sub-Divisional Officer, Tehsil Khadda, District Kushinagar and 12.04.2021 passed by the Joint Commissioner (Food and Civil Supply), Gorakhpur Division, Gorakhpur in Appeal No. 00097 of 2021 (Computerized Case No.

C20215000000097) (Smt. Amlawati Devi Vs. Sub-Divisional Officer, Khadda) are set aside.

15. The fair price shop of the petitioner and the licence granted to her stand restored and revived in her favour.

16. A writ of mandamus is issued to the respondent no. 3 to deliver actual and physical possession of the shop to the petitioner after proper procedure and after verifying the status of food grains and records available in the shop.

17. The entire exercise shall be undertaken and completed within a period of six weeks from the date a true attested copy is filed before the respondent no. 3.

Order Date :- 1.5.2025 AKShukla/-