

RAM KUMAR

A

v.

STATE OF UTTAR PRADESH AND ORS.

(Civil Appeal No. 4258 of 2022)

SEPTEMBER 28, 2022

B

[B. R. GAVAI AND C. T. RAVIKUMAR, JJ.]

Public Distribution – Fair Price shop – Cancellation of licence – Subsequent allotment during pendency of legal proceedings at the instance of the earlier allottee – Subsequent allottee, if a necessary party – Fair Price Shop licence of respondent no.9 cancelled – Appeal dismissed by Appellate Authority – In the meantime, licence to run the said fair price shop was granted in favour of appellant – Order passed by Appellate Authority challenged by respondent no.9, writ petition allowed by High Court – On appeal, held : A necessary party is a person in whose absence no effective decree could be passed by the Court – In the present case, the appellant was appointed as Fair Price Dealer through regular allotment, during the pendency of the appeal before the Appellate Authority, on a recommendation of the Tehsil Level Selection Committee – Even if a subsequent allottee does not have an independent right, he/she still has a right to be heard and to make submissions defending the order of cancellation – Appellant was a necessary party to the proceedings before High Court – Further, respondent no.9 has not only suppressed the fact about the subsequent allotment of the fair price shop to the appellant but also tried to mislead the High Court that her fair price shop was attached to another fair price shop holder – Judgment/decrees obtained by fraud is a nullity – Impugned order of High Court set aside – Order passed by Deputy Collector cancelling the Fair Price Shop licence of respondent no.9 and that of the Appellate Authority dismissing her appeal are affirmed – Party – Fraud.

C

D

E

F

G

Party – Necessary party – Who is – Discussed – Public Distribution.

Fraud – Held: Non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud.

H

- A *Pawan Chaubey v. The State of Uttar Pradesh & Ors.*
Decision of Supreme Court dtd. May 6, 2022 in C.A. No.3668 of 2022; Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others (2010) 7 SCC 417 : [2010] 7 SCR 790; S.P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) by LRs and Others (1994) 1 SCC 1 : [1993] 3 Suppl. SCR 422 – relied on.
- B *Puran Singh v. State of U.P. and Others (2010) SCC OnLine All 2707; Poonam v. State of Uttar Pradesh and Others (2016) 2 SCC 779 : [2015] 14 SCR 565; Smt. Urmila Devi vs. State of U.P. & 6 Others (2015) SCC OnLine All 3910; Jagannath Upadhyay vs. State of U.P., through Principal Secretary, Food & Civil Supplies* **Decision of High Court of Judicature at Allahabad in Misc. Bench No.10373 of 2011; Sumitra Devi v. State of U.P. & Ors. Decision of Supreme Court dtd. 8th October 2014 in C.A. Nos. 9363-9364 of 2014 – referred to.**
- C
- D

<u>Case Law Reference</u>		
E	[2015] 14 SCR 565	referred to
	[2010] 7 SCR 790	relied on
	[1993] 3 Suppl. SCR 422	relied on
F	CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4258 of 2022.	

- From the Judgment and Order dated 21.02.2019 of the High Court of Judicature at Allahabad in Writ C No. 29832 of 2018.
- G
Udayaditya Banerjee, Ms. Parul Shukla, Advs. for the Appellant.
S.R. Singh, Sr. Adv., Ajay Yadav, Ankur Prakash, Abhinav Agrawal, Irshad Ahmad, Advs. for the Respondent.
- H

The Judgment of the Court was delivered by

A

B. R. GAVAI, J.

1. This appeal challenges the judgment and order of the High Court of Judicature at Allahabad dated 21st February 2019 thereby allowing the writ petition filed by respondent No. 9 herein, setting aside the order dated 18th November 2017 passed by the Deputy Collector, Rasoolabad cancelling the fair price shop licence of respondent No. 9 and the order dated 20th July 2018 passed by the Additional Commissioner (Judicial), Kanpur Division, Kanpur, (hereinafter referred to as “the Appellate Authority”) dismissing the appeal of respondent No.9 and restoring the Fair Price Shop licence to the respondent No.9 forthwith.

B

C

2. The facts, in brief, giving rise to the present appeal are as under:

2.1 Respondent No. 9 herein-Kiran Devi (the original writ petitioner) was granted a licence for running a fair price shop at Gram Panchayat Anta, Tehsil Rasoolabad, District Kanpur Dehat. Various complaints were received by the Sub-Divisional Officer, Rasoolabad, District Kanpur Dehat (hereinafter referred to as “the SDO”), with regard to malpractices committed by the said fair price shop dealer. As such, a site inspection of the fair price shop was done on 3rd June 2017 through the Regional Supply Inspector. In the site inspection also, various irregularities and malpractices were found in the running of the said fair price shop. As such, a show cause notice came to be issued to respondent No.9 by the SDO on 7th July 2017. Initially, on the date fixed, respondent No.9 did not file her explanation. Subsequently, she submitted her explanation on 16th August 2017.

D

E

2.2 Thereafter, an inquiry was conducted by the SDO. Various statements were recorded. At the conclusion of the inquiry, the SDO found the charges to be proved and as such, vide order dated 18th November 2017, cancelled the Fair Price Shop licence of respondent No.9.

F

2.3 Being aggrieved by the order passed by the SDO, respondent No.9 carried an appeal to the Appellate Authority. The said appeal also came to be dismissed by the Appellate Authority vide order dated 20th July 2018.

G

H

- A **2.4** It is to be noted that, in the meantime, licence to run the said fair price shop was granted in favour of the present appellant-Ram Kumar vide order dated 15th May 2018. This was done on the basis of the decision taken by the Tehsil Level Selection Committee dated 19th April 2018. This fact was specifically noted in the order of the Appellate Authority dated 20th July 2018.
- B **2.5** Being aggrieved by the aforesaid order passed by the Appellate Authority, respondent No.9 preferred a writ petition before the High Court of Judicature at Allahabad being Civil Misc. Writ Petition No. 29832 of 2018.
- C **2.6** The High Court came to a finding that the cancellation of the Fair Price Shop licence of respondent No.9 was done without following the full-fledged inquiry process and, therefore, relying on the Full Bench decision of the Allahabad High Court in the case of *Puran Singh vs. State of U.P. and others*¹, allowed the writ petition as aforesaid.
- D **2.7** Being aggrieved thereby, the present appeal.
3. We have heard Mr. Udayaditya Banerjee, learned counsel appearing on behalf of the appellant and Mr. S.R. Singh, learned Senior Counsel appearing on behalf of respondents Nos. 1 to 7, Mr. Abhinav Agrawal, learned counsel appearing on behalf of respondent No.8 and E Mr. Irshad Ahmad, learned counsel appearing on behalf of respondent No.9.
4. Mr. Udayaditya Banerjee, learned counsel, submits that though respondent No.9 was very well aware that during the pendency of the appeal before the Appellate Authority, the licence to run the fair price shop was allotted to the present appellant, she has not only suppressed the said fact in the writ petition but has also made a statement which is totally false to her knowledge. It is submitted that, on this short ground of non-joinder of the appellant in the proceedings before the High Court, the present appeal deserves to be allowed. He relies on the judgment of this Court in the case of *Pawan Chaubey vs. The State of Uttar Pradesh & Ors.*² in support of his submission that the appellant being the subsequent allottee was a necessary party and as such, the impugned judgment and order of the High Court, without impleading him as a party, is not sustainable in law.
-
- H ¹ (2010) 2 UPLBEC 947 = 2010 SCC OnLine All 2707
 ² Civil Appeal No.3668 of 2022, decided on May 6, 2022

5. Mr. Irshad Ahmad, learned counsel, on the contrary, submits that this Court in the case of *Poonam vs. State of Uttar Pradesh and others*³ has held that an allottee during the pendency of the legal proceedings at the instance of the earlier allottee is not a necessary party and as such, the impugned judgment and order, which is passed without impleading the appellant cannot be assailed on that ground.

6. He also relies on the judgment of this Court in the case of *Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others*⁴ in support of the proposition that the relief could have been granted in the absence of the appellant and as such, he was not a necessary party before the High Court.

7. Mr. Irshad Ahmad, learned counsel, also submits that the proceedings against respondent No.9 were initiated on account of political rivalry. He submits that in view of this, no interference is warranted in the present matter.

8. This Court in the case of *Mumbai International Airport Private Limited (supra)* had an occasion to consider as to who is a necessary party to the proceedings. It will be relevant to refer to paragraph 15 of the said judgment, which reads thus:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

³ (2016) 2 SCC 779

⁴ (2010) 7 SCC 417

- A 9. It could thus be seen that a necessary party is a person in whose absence no effective decree could be passed by the Court. It has been held that if a “necessary party” is not impleaded, the suit itself is liable to be dismissed.
- B 10. Another aspect that needs to be taken into consideration is that, a Full Bench of the Allahabad High Court in the case of *Smt. Urmila Devi vs. State of U.P. & 6 others*⁵, had an occasion to consider an issue as to whether, upon suspension or cancellation of a licence of a Fair Price Shop, it was permissible for the State to make an interim or temporary arrangement by the appointment of a new fair price shop holder. The Full Bench of the Allahabad High Court held that the view taken by the Division Bench of the said High Court in the case of *Jagannath Upadhyay vs. State of U.P., through Principal Secretary, Food & Civil Supplies*⁶ that till a statutory appeal is decided, the fair price shop should not be allotted on an *ad hoc* basis and should be attached only to some other neighbouring fair price shop, did not lay down a correct position of law. It has been held that the State Government was empowered to make a regular allotment during the pendency of the appeal filed by the earlier allottee against the cancellation or suspension of the licence.
- C 11. It is to be noticed that in the present case, during the pendency of the appeal before the Appellate Authority, on a recommendation of the Tehsil Level Selection Committee dated 19th April 2018, the present appellant, through regular allotment, was appointed as Fair Price Dealer on 15th May 2018.
- D 12. Insofar as the judgment of this Court in the case of *Poonam (supra)*, on which strong reliance is placed by Mr. Irshad Ahmad, learned counsel, is concerned, this Court in the case of *Pawan Chaubey (supra)* had an occasion to consider the aforesaid judgment in the case of *Poonam (supra)*. This Court in the case of *Pawan Chaubey (supra)* also noticed its earlier decision in the case of *Sumitra Devi vs. State of U.P. & Ors.*⁷ Noticing both these judgments, this Court observed thus:
- E “Our attention has been drawn to the judgment of this Court in *Poonam vs. State of Uttar Pradesh & Ors.* reported in (2016) 2

⁵ 2015 SCC OnLine All 3910

⁶ Misc. Bench No.10373 of 2011

H ⁷ Civil appeal Nos. 9363-9364 of 2014, decided on 8th October 2014.

SCC 779. Relying on the aforesaid judgment, learned counsel appearing 3 on behalf of the Respondent No.4 contended that the appellant need not be heard. She had no right or locus to be impleaded.

In Poonam (*supra*), the subsequent allottee had actually been heard at all stages. What the Court held was that the subsequent allottee had been trying to establish her right independently. She contended that she had an independent legal right. This Court found that it was extremely difficult to hold that she had an independent legal right.

In Sumitra Devi vs. State of UP & Ors. (Civil Appeal Nos. 9363-9364 of 2014), a Bench of coordinate strength of this Court comprising Hon'ble Ms. Justice Ranjana Prakash Desai and Hon'ble Mr. Justice N.V. Ramana (As His Lordship then was) passed an order dated 08.10.2014, the relevant parts whereof are extracted hereinbelow:

“The appellant being the subsequent allottee filed an application for impleadment in the writ petition on 17.10.2008. That application was neither entertained nor allowed.

xxx xxx xxx

Learned counsel for the appellant urged and, in our opinion, rightly that the High Court should have heard the appellant before restoring the licence of respondent no.6 as the appellant was the subsequent allottee and his rights were affected by the restoration of licence of respondent no.6. We are entirely in agreement with learned counsel for the appellant. In our opinion, the High Court could not have restored the licence of respondent no.6 without hearing the appellant as his rights were certainly affected by such order.”

Even if a subsequent allottee does not have an independent right, he/she still has a right to be heard and to make submissions defending the order of cancellation.

It is true that the order of appointment of the appellant reads that the order is subject to the outcome of the proceedings pending in court. This does not disqualify the appellant from appearing and contesting the proceedings by trying to show that the order of

- A cancellation had correctly been passed against the Respondent No.4.”

13. It could thus be seen that this Court had held that, even if a subsequent allottee does not have an independent right, he/she still has a right to be heard and to make submissions defending the order of cancellation.

14. It is further to be noticed that in the said case, i.e., *Pawan Chaubey (supra)*, the order of appointment of the appellant therein was subject to the outcome of the proceedings pending in court. The case at hand stands on a much better footing. The appellant herein had been selected by the Tehsil Level Selection Committee in its meeting dated 19th April 2018 and thereafter, he was appointed as Fair Price Dealer vide order of the Competent Authority dated 15th May 2018, on a regular basis.

15. In this background, we find that the appellant was a necessary party to the proceedings before the High Court. The present appeal deserves to be allowed on this short ground. However, there is another more serious ground on which the present appeal deserves to be allowed.

16. The Appellate Authority in its order dated 20th July 2018 has categorically observed thus:

- E “At present, new dealer Sh. Ram Kumar Singh s/o Chhote Singh has been approved as Fair Price Dealer, village Anta Tehsil Rasoolabad, Kanpur Dehat vide District Magistrate’s order dated 15.05.2018. In the end, prayer has been made that the appeal being devoid of merits, may be dismissed.”

- F 17. It has further been observed thus:

- G “As per the proposal made by Block Development Officer in the public interest, an open meeting was called on2018 for the selection of Fair Price Dealer at Gram Panchayat, Anta, in which the name of Sh. Ram Kumar Singh s/o Sh. Chhote Singh, resident of Gram Panchayat Anta, Tehsil Rasoolabad, Kanpur Dehat was taken into consideration and after discussion, in view of the decision taken by the Tehsil Level Selection Committee, dated 19th April 2018, as per the order of District Magistrate, Rasoolabad, Kanpur Dehat dated 15.05.2018, Sh. Ram Kumar Singh S/o Sh. Chhote Singh, resident of Gram Panchayat Anta,

H

Tehsil Rasoolabad, Kanpur, Dehat has been appointed as new A
Kotedar in accordance with the orders issued by the Dy.
Commissioner (Food) Kanpur Division and Hon'ble High Court,
Allahabad.”

18. It could thus be seen that respondent No. 9 was very well aware that during the pendency of the proceedings, the appellant was appointed as a Fair Price Dealer on 15th May 2018. The order of the Appellate Authority has been passed on 20th July 2018. Even this being the position, respondent No.9 has been bold enough to aver thus in the memo of the writ petition: B

“33. That it is also noteworthy to mention here that during the pendency of the Fair Price Shop, no third party allotment was made and as per the direction of this Hon'ble Court, the shop of the petitioner was attached to another Fair Price Shop Holder.” C

19. It could thus be seen that, though respondent No.9 was very well aware that during the pendency of the proceedings before the Appellate Authority, an allotment was done in favour of the present appellant, she has averred in her writ petition that no third party allotment was made. She has further gone on to state that, as per the directions of the High Court, the fair price shop of respondent No.9 was attached to another fair price shop holder. The statement is factually incorrect to the knowledge of respondent No.9. The same has been reiterated in the Ground thus: D

“N. Because during the pendency of the Fair Price Shop, no third party allotment was made as per the direction of this Hon'ble Court, the shop of the petitioner was attached to another Fair Price Shop Holder.” E F

20. It is thus clear that respondent No.9 has not only suppressed the fact about the subsequent allotment of the fair price shop to the appellant herein but has also tried to mislead the High Court that the fair price shop of respondent No.9 (the writ petitioner before the High Court) was attached to another fair price shop holder. G

21. This Court, in the case of *S.P. Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs and others*⁸ has held that non-disclosure of the relevant and material documents with a view to

⁸(1994) 1 SCC 1 H

- A obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity. We find that respondent No.9 has not only suppressed a material fact but has also tried to mislead the High Court. On this ground also, the present appeal deserves to be allowed.
 - B 22. In the result, the appeal is allowed. The impugned order of the High Court dated 21st February 2019 is quashed and set aside. The order dated 18th November 2017 passed by the Deputy Collector, Rasoolabad cancelling the Fair Price Shop licence of respondent No. 9 and order dated 20th July 2018 passed by the Additional Commissioner (Judicial), C Kanpur Division, Kanpur dismissing the appeal of respondent No.9 are affirmed.
23. Pending applications, if any, shall stand disposed of. No order as to costs.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.