

Smt. Meena Devi vs State Of U.P. And 4 Others on 30 July, 2018

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Bench: Sangeeta Chandra

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

RESERVED ON 12.01.2018

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1. Case :- WRIT - C No. - 58035 of 2017

Petitioner :- Smt. Meena Devi

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Arvind Kumar Singh

Counsel for Respondent :- C.S.C., Dharam Deo Chauhan

With

Case :- WRIT - C No. - 3583 of 2018

Petitioner :- Gurudeen

Respondent :- State Of U.P.

Counsel for Petitioner :- Mr Krishnaji Khare, Mr Shiv Lal

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sangeeta Chandra, J.

1. Similar questions of law having arisen in these two writ petitions, they are therefore being considered by this Court together.

2. Heard learned counsel for petitioners, Mr. Arvind Kumar Singh, Shri Krishnaji Khare and learned Standing Counsel and Shri S.M. Iqbal Hasan, learned Advocate who appeared to assist this Court on his own, as according to the counsel for the parties, the question involved in the aforesaid two writ petitions are substantial and needs to be decided finally to avoid spate of litigation in this Court on similar questions.

3. In Writ - C No. 58035 of 2017 petitioner Smt. Meena Devi has challenged the order dated 17.10.2017 passed by Sub Divisional Officer, Mehdawal, District Sant Kabir Nagar cancelling fair price shop licence of the petitioner, and in Writ - C No. 3583 of 2018 the petitioner Gurudeen has challenged the order dated 03.11.2017 passed by the Sub Divisional Officer, Tehsil - Meja, District Allahabad cancelling the fair price shop licence of the petitioner.

4. Learned counsel for the petitioners have argued that the petitioners were running their fair price shops in the respective villages since long but due to political and personal rivalry false complaints were made alleging irregularities in distribution of essential commodities allocated to them. Inspection was done behind the back of the petitioners and on the basis of the statements made by the villagers in the preliminary inquiry, suspension orders were issued. Petitioners produced their Stock Registers and Distribution Registers before the Licensing Authority for inspection while filing their reply to the show cause notice issued to them along with the suspension orders. The replies submitted by the petitioners were not considered and without holding an oral inquiry i.e. without fixing a date, time and place for the same and without recording the statements of witnesses and giving opportunity of cross examination to the petitioners impugned cancellation orders have been passed.

5. It has been argued that such cancellation orders having been passed without following the principles of natural justice, the objections raised by the learned Standing Counsel regarding the availability of the statutory remedy under paragraph - 13 of the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016, was liable to be rejected in view of the

law settled by the Hon'ble Supreme Court in Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) 8 SCC 1.

6. Learned counsel for the petitioners have also relied upon the Division Bench judgments of this Court in Har Pal Singh Vs. State of U.P., (2008) 4 ALJ 10; Pramod Kumar Vs. State of U.P., (2007) 1 SLJ 407, M/s Mahatma Gandhi Upbhokta Sahkari Samiti vs. State of U.P. and others 2001(19)LCD 513 and several orders passed by the Hon'ble Single Judges in the following writ petitions:-

1. Shakeel Ali Vs. State of U.P. and others, (2001) 13 LCD 448;
2. Dori Lal Vs. State of U.P. and others, (2006) 1 LCD 1121;
3. Raj Pal Singh Vs. State of U.P. and others, (2008) 16 LCD 891;
4. Maiku Lal Vs. State of U.P., (2009) 27 LCD 1192;
5. Siya Ram Vs. State of U.P., (2009) 2 ADJ 170;
6. Abu Bakar Vs. State of U.P. and others, (2010) 6 ADJ 339;
7. Mohd. Haneef Vs. State of U.P. and others, (2013) 120 RD 99;
8. Smt. Santara Devi Vs. State of U.P. and others, (2016) 2 ADJ 70;
9. Mahendra Singh Vs. State of U.P. and others, (2016) 8 ADJ 738;
10. Writ Petition No. 31048 of 2008: Niyamat Jahan. Vs. State of U.P. and others decided on 12.08.2009;
11. Pradeep Kumar Rai Vs. State of U.P. and others : Writ - C No. 5390 of 2006 decided on 25.11.2011
12. Gyan Singh Vs. State of U.P. Writ - No. 33712 of 2006 decided on 12.09.2012;
13. Writ Petition No. 1070 of 2010: Ashok Kumar Pandey Vs. State of U.P. decided on 13.12.2012;
14. Writ Petition No. 68980 of 2009 : Sabhapati Pandey Vs. State of U.P. and others decided on 12.01.2012;
15. Writ - C No. 12737 of 2013 : Ashok Kumar Tiwari Vs. State of U.P. decided on 28.11.2014;
16. Writ - C No. 34755 of 2013 : Ausaf Ali Vs. State of U.P. decided on 05.01.2015;

17. Writ - C No. 42175 of 2013 : Pushpraj Vs. State of U.P. and 2 others decided on 02.09.2015;

18. Writ - C No. 22299 of 2013: Kishun Vs. State of U.P. and others decided on 04.09.2015:

19. Writ - C No. 52587 of 2016: Agrawati Vs. State of U.P. and two others decided on 04.11.2016;

20. Writ Petition No. 1243 (M/S) of 2015 : Dharam Raj Dube Vs. Commissioner, Devi Patan Mandal decided on 14th of July, 2016.

7. In the afore-cited judgments rendered by the Co-ordinate Benches of this Court reliance has been placed upon a Full Bench decision rendered in *Puran Singh Vs. State of U.P.*, 2010 (3) ADJ 659 to hold that after suspension order is passed a show cause notice containing the inquiry report along with statements of the villagers relied upon in such inquiry should be supplied to the licensee who shall be informed of the date, time and place of the hearing and the witnesses/villagers summoned and opportunity to cross-examine the witnesses be given to the licensee. This oral hearing was necessary in terms of the government order dated 29.07.2004 which envisaged full opportunity to be given to the licensee before cancellation order is passed by the Licensing Authority. Reference has been made to the paragraph - 35 of the Full Bench decision in *Puran Singh* (supra) which has referred to a "full fledged enquiry" to be undertaken after suspension order is passed by the Licensing Authority before cancelling the fair price shop licence of the agent concerned.

8. I have gone through the judgments relied upon by the petitioners. In some of the judgments this Court has only set aside the order of cancellation of the fair price shop licence on the ground that inquiry report had not been given to the licensee along with the show cause notice before cancellation. In some of the judgments, however, it has been observed by this Court that "full fledged inquiry" as envisaged in the government order dated 29.07.2004 referred to in the Full Bench judgment of *Puran Singh* (supra) meant a regular inquiry as is envisaged under Article 311 of the Constitution of India for the persons holding Civil Posts employed under the Union of India or State.

9. In regular disciplinary proceedings against the Government Servants/Public Servants not only preliminary inquiry report has to be given to the delinquent employee but also the materials relied upon in the said preliminary inquiry report viz. the statements of witnesses. An oral hearing is thereafter to be provided by fixing date, time and place of hearing for examination of departmental witnesses and defence witnesses and their cross-examination by the delinquent employee and only thereafter, the Inquiry Officer has to submit his final report. A second show cause notice has to be issued on proposed punishment along with a copy of the inquiry report and after a reply is submitted by a delinquent employee the same has to be considered by the Appointing Authority along with the inquiry report and appropriate orders have to be finally passed only thereafter.

10. Since almost all of the judgments cited by the learned counsel for petitioners have placed reliance upon the Full Bench decision rendered by this Court in Puran Singh (supra), it would be appropriate to first refer to the questions referred to the Hon'ble Full Bench and the finding recorded by the Hon'ble Full Bench thereon. In paragraph - 12 of the decision in Pooran Singh (supra) the questions posed before the Full Bench are quoted herein below:-

"1. Whether before suspension of fair price agreement an opportunity of hearing is mandatory to be given to the fair price shop agent in violation of which the suspension order is liable to be set aside.

2. Whether the Division Bench judgments in 2007 (1) ALJ 407 Pramod Kumar Vs. State of U. P. and others and 2008 (4) ALJ 10 Harpal Vs. State of U. P. and another, lay down the correct law that opportunity is must; or

3. Whether the Division Bench in Gopi's case lays down the correct law ?"

11. In Pramod Kumar and Har Pal Singh (supra) two Division Benches of this Court had held that a suspension order cannot be passed before giving opportunity of hearing and before conducting a preliminary fact finding inquiry against the licensee. Whereas two other Division Benches of this Court in Gopi Vs. State of U.P. reported in (2007) 5 ALJ 367 and Kallu Khan Vs. State of U.P. reported in (2008) 6 ADJ 453 had held otherwise. The Full Bench considered the Public Distribution System (Control) Order, 2001 issued by the State of Uttar Pradesh for maintaining the supplies of food grains and other essential commodities and to secure their equitable distribution at fair prices. The U.P. Scheduled Commodities Distribution Order, 2004 issued on 20.12.2004 was also considered as also the Government Order dated 29.07.2004 on the subject of monitoring/regulating the distribution of scheduled commodities by the fair price shop licensee. This Court held that the Division Bench in Pramod Kumar (supra) while placing reliance upon paragraph - 2 of the Government Order dated 29.07.2004 had not taken care of Clause - 3 (1) of the U.P. Scheduled Commodities Distribution Order, 2004 issued on 30.12.2004 which provided that the provisions of the U.P. Scheduled Commodities Distribution Order, 2004 were to prevail over all the previous orders passed by the State Government and mentioned the "Non-obsante" clause.

12. The Full Bench then considered in paragraph - 28 the government order dated 29.07.2004 and quotes its paragraphs - 2, 3, 4 and 5 as follows:-

"28. Let us now talk about Government Order dated 29.7.2004 which has Paragraph no. 2, 3, 4 and 5, which are relevant paragraphs to cover the issue are quoted hereunder :

^^2 mDr i`"BHkwfe esa eq>s ;g dgus dk funs'k gqv k gS fd xzkeh.k ,oa 'kgjh {ks=ksa dh mfpr nj dh nqdkuksa ds fuyEcu@fujLrhdj.k ds lEcU/k esa fuEu izfdz;k dk ikyu fd;k tk,A

3.(i) mfpr nj dh nqdku dk fuyEcu ek= fdlh O;fDr dh f'kdk;r ds vk/kkj ij ugha fd;k tk;A ;fn fdlh nqdkunkj ds fo:) fdlh lzksr ls f'kdk;r izkIr gksrh gS rks igys mldh izkfjEHkd tkap dj;k tk,A ;fn izkfjEHkd tkap esa nqdkunkj ds fo:) ,slh xEHkhj vfu;ferrk,a izFke n`"V;k fl) gks jgh gksa ftuds vk/kkj ij nqdkunkj dh nqdku fujLr gksus dh lEHkkouk gks rHkh nqdku dks fuyfEcr fd;k tk; vkSj lkFk gh lkFk nqdkunkj dks dkj.k crkvks uksfVl tkjh fd;k tk, fd mldh nqdku D;ksa u fujLr dj nh tk,A ;fn izkfjEHkd tkap esa ik;k tk; fd vfu;ferrk bruh xEHkhj ugha gS fd nqdku ds fujLrhdj.k dh lEHkkouk gks rks dsoy dkj.k crkvks uksfVl tkjh fd;k tk;A fuyEcu vkns'k@dkj.k crkvksa uksfVl ,d Lihfdax vkMZj gksuk pkfg, rFkk mlesa izkfjEHkd tkap esa ik;h x;h mu lHkh vfu;ferrkvksa dk fooj.k gksuk pkfg, ftudk mRrj nqdkunkj ls visf{kr gksA

(ii) $\frac{1}{4}d\frac{1}{2}$ [kk] foHkkx ds vf/kdkfj;ksa@ftyk iz'kklu ds vf/kdkfj;ksa@vU; izkf/kd`r O;fDr;ksa }kjk mfpr nj dh nqdku ds vkdfLed fujh{k.k ds nkSjku ;fn ik;k tkrk gS fd nqdkunkj }kjk dksbZ xEHkhj vfu;ferrk dh x;h gS rks Hkh nqdku dks fu;qfDr vf/kdkjh }kjk vius foosd dk iz;ksx djrs gq, fuyfEcr fd;k tk ldrk gSA $\frac{1}{4}[k\frac{1}{2}$ [kk] foHkkx ds vf/kdkfj;ksa@ftyk iz'kklu ds vf/kdkfj;ksa@vU; izkf/kd`r O;fDr;ksa }kjk ;fn nqdkunkj dksbZ vfu;fer dk;Z] forj.k esa xM+cM+h ;k vuqlwfr oLrqvksa dh dkyekctkj dh djrs gq, idM+k tkrk rks Hkh fu;qfDr vf/kdkjh }kjk vius foosd dk iz;ksx djrs gq, nqdku dks fuyfEcr fd;k tk ldrk gSA mDr ifjLFkfr;ksa esa nqdku ds fuyEcu dh fLFkfr esa Hkh Lihfdax vkMZj" ls fuyEcu vkns'k tkjh fd;k tk;sxk flesa lHkh vfu;ferrkvksa dk mYys[k gksxk rFkk nqdkunkj dks dkj.k crkvks uksfVl tkjh fd;k tk;sxk fd D;ksa u mldh nqdku fujLr dj nh tk;A 4- fuyfEcr dh x;h nqdkuksa ds fo:) tkap dh dk;Zokgh vf/kdre ,d ekg esa vfuok;Z :i ls iwjh dh tk;sxh rFkk tkap esa lEcfU/kr nqdkunkj dks lquokbZ dk iwjk ekSdk fn;k tk;sxkA lEcfU/kr nqdkunkj dk ;g nkf;Ro gksxk fd og tkap esa viuk iwjk lg;ksx ns rkfd tkap dk dk;Z tYnh ls tYnh iwjk fd;k tk lds rFkk fu;qfDr izkf/kdkjh }kjk izdj.k esa xq.k&nks" k ds vk/kkj ij vfUre fu.kZ; fy;k tk ldsA ;fn nqdkunkj }kjk tkap esa lg;ksx ugha fn;k tk jgk gks vkSj tkap esa foyEc djus dk iz;kl fd;k tk jgk gks rks nqdkunkj dks bl vk'k; dk Hkh uksfVl tkjh fd;k tk;sxk vkSj viuk i{k j[kus dk vfUre volj iznku fd;k tk;sxkA 5- tkap dh dk;Zokgh vf/kdre ,d ekg esa iw.kZ djds fu;qfDr izkf/kdkjh }kjk izdj.k esa vfUre fu.kZ; fy;k tk;sxk vkSj xq.k nks" k ds vk/kkj ij ,d Lihfdax vkMZj" tkjh fd;k tk;sxkA bl vkns'k esa ;g Li"V mYys[k gksuk pkfg, fd lEcfU/kr nqdkunkj dks lquokbZ dk volj fn;k x;k vkSj mls lquk x;kA ;fn nqdkunkj us tkap esa lg;ksx ugha fd;k gks vkSj lquokbZ ds volj dk tkucw>dj mi;ksx u fd;k gks rks vfUre vkns'k esa bl ckr dk Hkh iwjk mYys[k gksuk pkfg, fd nqdkunkj dks volj iznku fd;k x;k rFkk vfUre uksfVl fn;k x;k ijUrq mlus tkucw> dj volj dk mi;ksx ugha fd;k vkSj tkap esa lg;ksx ugha fd;kA"

(emphasis supplied)

13. This Court thereafter held that there were two contingencies in which suspension order could be issued without holding a preliminary fact finding inquiry which were mentioned in paragraph - 2 (ii) (Ka) and (Kha) thereof. However, it clarified that the suspension order needed to be clear and specific with regard to the irregularities found in the distribution of the licensee and should call upon the licensee to submit his reply and consider the same before passing the cancellation order. In

paragraph - 35 this Court has observed thus:-

"Para 4 and 5 of the Government Order clearly permits fulfilled enquiry pursuant to the show cause notice for cancellation and then final decision in the matter. So far the order of suspension is concerned Government Order do not provide any appeal and at the same time there was no contemplation of signing an agreement as was made obligatory pursuant to Distribution Order of 2004."

14. In paragraphs - 22, 23, 24, 25 and 26 of the judgement in Puran Singh (supra) the Full Bench observed thus:-

"22. In this Distribution Order, Clause 4 provides that a person granted fair price shop is to sign an agreement under sub clause (3) for running the fair price shop before the competent authority prior to the coming into effect of the said appointment. Clause 25 provides observance of the conditions as the State Government provides. Clause 28 (3) of the Order provides filing of appeal against the order of suspension or cancellation of the agreement. The provisions contained in 4, 25 and 28 of the Distribution Order, 2004 are quoted below :

"4. Running of fair price - (1) A fair price shop shall be run through such person and in such manner as the Collector, subject to the directions of the State Government may decide.

(2) A person appointed to run a fair price shop under sub-clause (1) shall act as the agent of the State Government.

(3) A person appointed to run a fair price shop under sub-clause (1) shall sign an agreement, as directed by the State Government regarding running of the fair price shop as per the draft appended to this order before the competent authority prior to the coming with effect of the said appointment.

25. Conditions to be observed by the agent - The agent shall observe such conditions as the State Government or the Collector may by an order in writing direct from time to time, in respect of opening of shop maintenance of stocks, supply and distribution of Scheduled Commodities, maintenance of accounts, keeping of the registers filing returns and issue of receipt of Identity Card holder and other matters.

28. Appeal - (1) All appeals shall lie before the Concerned Divisional Commissioner who shall hear and dispose of the same may by order delegate his/her powers to the Assistant Commissioner Food for hearing and disposing of the appeal.

(2) Any person aggrieved by an order of the Food Officer or the designated authority refusing the issue or renewal of a ration card or cancellation of the ration card may appeal to the Appellate Authority within thirty days from the date of receipt of the order.

(3) Any agent aggrieved by an order of the competent authority suspending or cancelling agreement of the fair price shop may appeal to the Appellate Authority within thirty days from the date of receipt of the order.

(4) No such appeal shall be disposed of unless the aggrieved person or agent has been given a reasonable opportunity of being heard.

(5) Pending the disposal of an appeal the Appellate Authority may direct that the order under appeal shall not take effect until the appeal is disposed of."

23. In view of various provisions of the Distribution Order, 2004 a fair price shop license owner is to sign fresh agreement. Clause 22 (1) of the draft agreement is to be quoted here :

^^22- 1/41 1/2 ;fn vkSj tc dHkh ,rn~ iwoZ mfYyf[kr 'krksZa vkSj izfrcU/kksa esa ls fdllh dk Hkh vfHkdrkZ }kjk mYya?ku fd;k tk; vFkok@vkSj vuqiky u fd;k tk; rks l{ke izkf/kdkjh] fyf[kr :i ls Li"Vr% dkj.k crkrs gq, vfHkdrkZ }kjk tek izfrHkwfr dh jkf'k vius foosdkuqlkj vkaf'kd vFkok lEiw.kZ :i ls 'kklu ds i{k esa tCr dj ldrk gS vFkok bl vuqcU/k i= dks fuyfEcr djrs gq, vfHkdrkZ ds fo:ö vxzsrl tkWp ,oa foHkkxh; dk;Zokgh la;ksftr djkdj izfdz;k esa yk ldrk gS vkSj foHkkxh; dk;Zokgh dh izfdz;k esa vfHkdrkZ dks mlds fo:~ lk{;ksa dk voyksdu djus dk volj iznku djrs gq, vfHkdrkZ dks viuk i{k izLrqr djus dk volj iznku djrs gq, xq.kkoxq.k ds vk/kkj ij fopkjksijUr vfHkdrkZ dk vuqcU/; fujLr rd dj ldrk gS rFkk lEiw.kZ izfrHkwfr jkf'k 'kklu ds i{k esa tCr dj ldrk gSA"

24. It is thus clear that agreement duly signed by the fair price shop license/petitioner permits the authority to suspend the license/agreement before proceeding in the matter. This was not placed before the Bench, and at the same time the provisions of the Government Order dated 29.7.2004 was also not placed in its correct perspective which will be discussed immediately.

25. Thus it is clear that the decision in the case of Pramod Kumar (Supra) has not taken correct view in the matter.

26. Similar is the position in respect to the decision given by the Division Bench in the case of Harpal where also the same Government Order dated 29.7.2004 was taken into consideration and without referring to various clauses of the control order, 2004 noted above and on a incorrect interpretation of Government Order of 2004 the decision was given."

15. In the same view in paragraphs - 38, 42, 45 and 46 this Court observes thus:-

"38. It is not to be emphasized that in all kind of exercise/orders on the pretext of civil consequence and effect on the rights of a claimant, affording of the opportunity is not a matter of rule, but can be a matter of need and fairness in given set of facts if the facts so warrant. Although courts are not to work on the basis of some personal knowledge about various factors but at the same time we are not to keep our eyes

closed to what is happening in the society and thus to accept or to promote the technical aspect/submission unless the court is satisfied about the serious prejudice, indulgence is not required as that is to result into more injustice to the society and that too to a particular class in context of which we are considering the issue.

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42. If a serious charge of malpractice, non supply, overcharging of the price, closure of the shop or the complaint of like nature having an adverse effect on the smooth and fair distribution is received and at the surprise inspection serious kind of charges are prima facie found then it will give an immediate cause/need to the authority to take action as temporary measure, with a simultaneous arrangement of distribution through another fair price shop dealer. If for a small duration applicant claim discomfort then as the interest of an individual qua public at large is to be weighed, the court will ask the applicant to wait and meet the charges with promptness. Certainly the authority can be expected to deal with the issue within shortest possible time so that on acceptance/non acceptance of the charges the result may take a final shape.

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45. It has been further held by the Bench that power of suspension if exercised in publi

46. Observation made by the Bench in the case of Gopi (Supra) in para 25 and 26 of the judgment is quoted below :

"25. Realising the importance of the Public Distribution System, Parliament while bringing about the 73rd constitutional amendment included the Public Distribution System as one of the primary functions of the Gram Panchayat and it has been incorporated in Article 243-G of Part 9 of the Constitution. The Public Distribution System is obviously a avowed function of the State in order to ensure the distribution of essential commodities fairly. The object is clearly to provide benefit to the public at large in order to ensure supply of essential commodities which is necessary for the sustenance of daily life. The aforesaid object, therefore, has to be fulfilled keeping in view the intention of the legislature which is to promote public awareness and ensure distribution of essential commodities. In essence, the object is to provide benefit to the public at large. As a necessary corollary to the same, the object is not to set up any trade for the benefit of any individual. It may be that by virtue of this licensing system, an individual also gets the opportunity to benefit himself by setting up a fair price distribution unit. However, such a licence does not fall within the category of a fundamental right to carry on trade and business as understood under Article 19 (1)(g) of the Constitution of India. The Government Order which has been issued under the provisions of the Essential Commodities Act, is to regulate the supply and distribution of essential essential commodities Act, is to regulate the supply and

distribution of essential commodities fairly. The suspension of such a license, pending inquiry is a step in the process of eliminating any such discrepancy which affects the public at large. The authorities while proceeding to suspend a licence, have the authority to attach a fair price shop to another Agency, in order to ensure that the public at large does not suffer on account of such suspension. Thus, viewed from any dimension, the power of suspension if exercised bonafidely in public interest does not by itself cause prejudice to a licensee in as much as he has a remedy by filing an appeal against such an order and even otherwise upon the satisfaction of the authority after hearing the objections, the authority can still restore the licence subject to a satisfactory reply being submitted by the licensee.

26. In this view of the matter, the contention raised on behalf of the petitioner that suspension order without providing opportunity curtails the right of a licensee cannot be accepted. Even otherwise, since there is a remedy by way of appeal and the petitioner has a right to object to the charges on which the licence has been suspended, it is not necessary to read the principles of natural justice by implication at the stage of suspension. The order of suspension is not a final order of termination and therefore, there is no permanent cessation of the licence. The petitioner has an opportunity to contest the matter and get his licence restored in the event he is able to establish that the grounds of suspension cannot be sustained in law."

(emphasis supplied)

16. It was held that the decision rendered by the Division Bench in the case of Gopi Vs. State of U.P. and Kallu Khan Vs. State of U.P. had taken into account the public distribution system and its importance for which the arrangement was brought about by the State Government. They correctly held that the authorities cannot be said to be under obligation to provide an opportunity of hearing to a licensee before passing the order of suspension.

17. It is evident from the careful perusal of the judgment of the Full Bench of this Court that this Court was careful to observe that a licensee is only an agent of the government engaged for ensuring the equitable distribution and availability of the essential commodities at fair prices. The agent having signed the licence/agreement is bound by the conditions mentioned therein including all such conditions which the government chooses to impose during the currency of such licence. A need for fairness in procedure adopted for suspension and cancellation of such licence/agreement would not mean that these licences fall within the category of a fundamental right to carry on the business as provided under Article 19 (i) (g) of the Constitution of India.

18. Almost all the judgments cited by the learned counsel for the petitioners have relied upon the observations made in paragraph - 35 of the judgement of the Hon'ble Full Bench which observes that paragraphs - 4 and 5 of the Government Order dated 29.07.2004 permits " a full fledged inquiry pursuant to the show cause notice for cancellation and then a final decision in the matter."

19. It is this observation of the Hon'ble Full Bench regarding the "full fledged inquiry" after suspension order and show cause notice is issued, which has been interpreted by the Co-ordinate Benches of this Court to include giving a copy of inquiry report, copies of the statements of witnesses/villagers fixing date, time and place of hearing for such cross-examination as the licensee wishes to carry out of such villagers, besides examination of documentary evidence submitted by him, before the Licensing Authority can pass the order of cancellation.

20. The judgment rendered by the Full Bench of this Court was in reference to the questions referred to it. All observations made by the Full Bench in the afore-cited judgments in Puran Singh (supra) are therefore to be taken into consideration in the context in which the reference was made and decided. The Full Bench decision of this Court had examined paragraphs - 4 and 5 of the government order dated 29.07.2004 in the context of the reference made to it. The language of paragraph - 4 refers to full opportunity of hearing being given to the licensee in the inquiry to be conducted after suspension order is passed. The inquiry is to be completed within a maximum period of one month necessarily. The final order was to be passed by the Licensing Authority on merits after making a clear mention therein that the concerned licensee had been given opportunity of hearing and in case he did not co-operate in the inquiry, a mention was to be made of the notices served upon him including the notice giving the final opportunity in case he avoided the inquiry.

21. The Hon'ble Full Bench had referred to the object of issuing a fair price shop licence and appointing agents for distribution of essential commodities and had emphasized that a licence is given for the benefit of ordinary citizens, the beneficiaries of the Public Distribution System.

22. It has been brought to my notice by the learned Standing Counsel that this Court in Writ Petition No. 56415 of 2012: Smt. Lalita Vs. State of U.P. and others had summoned the Principal Secretary (Food and Civil Supplies) on 15.09.2014 and made certain observations which are as follows:-

"So far as marketing discipline is concerned, in this regard it is also clarified that every shop keeper is bound to ensure necessary entry of distribution in the respective ration card of the card holder. The ration cards to the respective categories of people are issued under the seal and signature of the State authorities, therefore, the disciplinary measures without verification from the ration card of a card holder cannot be reasonably resorted to. It is assured that indiscriminate actions of the authorities resulting into heavy flow of litigation shall be subjected to necessary scrutiny. In all the cases, which are before this Court, by and large the necessary verification from the respective card holders is lacking, it is assured that the same shall be looked into so as to restrict undue litigation."

23. In pursuance of such interim order being passed, the then Principal Secretary (Food and Civil Supplies) issued a government order No. 2441/296 - 2014- 300-SA/03 TC dated 16th of October, 2014 wherein it was provided that before passing a final order in the inquiry the Licensing Authority shall carefully examine the Stock Register and the Distribution Register and compare it with the entries made in the Ration Cards of the beneficiaries and pass an order after due verification of such entries from the Ration Cards of all such beneficiaries. Also the complainants and other persons on

whose statements the inquiry is being conducted shall be allowed an opportunity of cross-examination to make the inquiry conducted show prima facie of having followed a fair procedure to avoid undue litigation.

24. It appears that the Writ Petition No. 56415 of 2012: Smt. Lalita Devi Vs. State of U.P. and others was thereafter disposed off in terms of the Government Order issued on 16th of October, 2014. This Government Order has been brought to my notice during the course of arguments by Shri S.M. Iqbal Hasan on 05.02.2018 also after I had passed the judgment in Writ - C No. 42849 of 2013: Sheo Bhan Singh Vs. State of U.P. through the Secretary and two others on 02.01.2018.

25. In the judgment rendered by me in Sheo Bhan Singh (supra) I have placed reliance upon AS Motors Pvt. Limited Vs. Union of India , (2013) 10 SCC 114 wherein the Supreme Court has considered the principles of natural justice and their applicability in the realm of contract/licence/agreement entered into between the government and the such agent and had also referred to earlier binding precedents to the effect that the principles of natural justice are not embodied, rigid or immutable Rules and they cannot be applied in a strait-jacket formula and that they all must yield and change with the exigencies of the situation. Such principles of natural justice must be confined within their limits and cannot be allowed to run wild.

26. The Hon'ble Supreme Court observed in paragraph - 8 of the judgment rendered in AS Motors Pvt. Limited (supra) as follows:-

"8. It was argued on behalf of the appellant that termination of the contract between the parties was legally bad not only because the principles of natural justice requiring a fair hearing to the appellant were not complied with but also because there was no real basis for the respondent-authority to hold that the appellant had committed any breach of the terms and conditions of the contract warranting its termination. We find no merit in either one of the contentions. The reasons are not far to see. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the Courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the Tribunal and the rules and regulations under which it functions. A Court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are a legion.

We may refer to only some of the decisions on the subject which should in our opinion suffice."

27. The Supreme Court referred to Suresh Koshy George Vs. University of Kerala and others, AIR 1969 (SC) 198 and several other judgments of the Hon'ble Supreme Court rendered thereafter, for example: S.L. Kapoor Vs. Jag Mohan, (1980) 4 SCC 379; K.L. Tripathi Vs. SBI, (1984) 1 SCC 43; Maharashtra State Board of Secondary and Higher Education Vs. Paritosh Bhupesh Kumar Seth, 984) 4 SCC 27; Chaman Lal Sahu Vs. Union of India, (1990) SCC 613; State Bank of Patiala Vs. S.K. Sharma, (1996) 3 SCC 364; Aligarh Muslim University Vs. Mansoor Ali Khan, (2000) 7 SCC 529; Viveka Nand Sethi Vs. Chairman, Jammu and Kashmir Bank Ltd. and Ors, (2005) 5 SCC 337; State of U.P. Vs. Neeraj Awasthi and others, (2006) 1 SCC 667 and observed that in view of the decisions of the Supreme Court, the settled principle of law is that some real prejudice must be caused to the person complaining of violation of principles of natural justice. The Court had shifted from its earlier concept that even a small violation of the doctrine of audi alteram partem shall result in the order being a nullity. Now a clear distinction has been laid down between a case where there was no hearing at all, and a case where there was a mere technical infringement of the principle. The Courts should apply the principles of natural justice having regard to the fact situation obtaining in each case. It is not to be applied in a vacuum without reference to the relevant fact and circumstances of a case. It is no unruly horse. It cannot be put in a strait-jacket formula.

28. In A.S. Motors (supra) the Supreme Court observed that on complaints being received, a discreet inquiry was held. The allegations were found prima facie true. A copy of the report submitted by the Investigating Agency indicating opportunity for verifying the allegation against the appellant was given to the appellant. He submitted his reply, which was considered and the order of cancellation of licence and forfeiture of security money was passed and penalty imposed thereafter. It observed in paragraph - 16 thus:-

"The contention that the appellant should have been given an opportunity to cross-examine the persons whose statements had been recorded by the agency in the course of its inquiry and verification was rightly rejected by the High Court keeping in view the nature of the inquiry which was primarily in the realm of contract, aimed at finding out whether the appellant had committed any violation of the contractual stipulations between the parties. Issue of a show-cause notice and disclosure of material on the basis of which action was proposed to be taken against the appellant was in compliance with the requirement of fairness to the appellant who was likely to be affected by the proposed termination. Absence of any allegation of mala fides against those taking action as also the failure of the appellant to disclose any prejudice, all indicated that the procedure was fair and in substantial, if not strict, compliance with the requirements of Audi Alteram Partem. The first limb of the challenge mounted by the appellant, therefore, fails and is hereby rejected." (emphasis supplied)

29. The Supreme Court further observed in paragraph - 20 thus:-

"There is, in our opinion, no error of law, nor is there any perversity in the appreciation of the material available before the respondents. The reports submitted by the agency employed by the respondent- Authority was damning for the appellant and clearly showed that the appellant was indulging in malpractices like charging excess fee from the owners/drivers of the vehicles using the stretch of road covered by the contract. Nothing in particular has been pointed out to us to persuade us to take a contrary view. If the report submitted by the agency against whom the appellant has no allegation of malice or other extraneous considerations to make are accepted, we see no reason why the same could not furnish a safe basis for the respondent to take action especially when the appellant was abusing its position as a contractor, putting the public at large to unnecessary harassment and exaction of money not legally recoverable from them. The material collected could and was rightly made a basis for the termination of contract by the competent authority." (emphasis supplied)

30. It is evident from the judgement rendered in AS Motors Pvt. Limited (supra) that the Supreme Court has laid down different parameters for application of principles of natural justice in the inquiries to be held in different circumstances. Even with regard to the government servants and the protection given under Article 311 of the Constitution to such government servants holding the Civil Posts, the Supreme Court has always considered the fact situation of each case and made observations to the effect that the delinquent employee must show a prejudice having been actually caused to him in case an inquiry report is not given or in such cases where no oral hearing is held.

31. With regard to the employment in Private Sector and Public Sector Undertakings which are governed by the Standing Orders, the Supreme Court has made observations that the principles of natural justice cannot be applied in a vacuum and the safeguards given to government servants employed in civil capacities under the Union of India or a State would also not be available without any reference to the relevant fact situation. The "full fledged inquiry" would mean only an inquiry which is found to be just, fair and reasonable (vide Vivekanand Sethi Vs. Chairman, J & K Bank Limited, (2005) 5 SCC 337; and Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association, (2000) SCC 65, Hindustan Paper Corporation Vs. Purnendu Chakrobarty and others, (1996) 11 SCC 404; and Dr. Gur Jeeva Gurwati Vs. Pigmeri, (2004) 8 SCC 129)."

32. In Burdwan Central Cooperative Bank Limited & Another Vs. Asim Chatterjee and others reported in (2002) 2 SCC 641 the Supreme Court has observed in paragraph - 19 thus:-

"However, there is one aspect of the matter which cannot be ignored. In B. Karunakar's case (supra), despite holding that non-supply of a copy of the report of the Inquiry Officer to the employee facing a disciplinary proceeding, amounts to denial of natural justice, in the later part of the judgment it was observed that whether in fact, prejudice has been caused to the employee on account of non-furnishing of a copy of the inquiry report has to be considered in the facts of each case. It was observed that where the furnishing of the inquiry report would not make any difference to the ultimate outcome of the matter, it would be a perversion

of justice to allow the concerned employee to resume his duties and to get all consequential benefits."

33. The Supreme Court has observed in *Ajit Kumar Nag Vs. General Manager (P.J) Indian Oil Corporation Ltd. Haldia and others*: (2005) 7 SCC 764 that while interpreting the legal provisions a court of law cannot be unmindful of hard realities of life. "In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'."

34. If we look at the practical and pragmatic aspects of the functioning of the Public Distribution System, the Public Distribution System was introduced for the benefit of ordinary citizens i.e. for the benefits of Cardholders belonging to poor strata of the society. It is not meant to create an opportunity for a continuous source of livelihood for the licensee. The U.P. Scheduled Commodities Distribution Order, 2004 defines the expression "agent" in Clause - 2 (c) as follows:-

"(c) "Agent" means a person or a cooperative society or a Corporation of the State Government authorized to run a fair price shop under the provisions of this order."

35. Clause 28 provides for a remedy of an appeal. Under sub-clause (3) of Clause 28, an agent, aggrieved by an order of a competent authority suspending or cancelling an agreement in respect of a fair price shop, has the remedy of an appeal before the Appellate Authority. The Appellate Authority is vested with the power to grant a stay, pending disposal of an appeal, against an order of cancellation or, as the case may be, suspension of an agreement in respect of a fair price shop. The licence holder is entitled to pursue the remedy which is provided in Clause 28 of the Control Order. The licence holder having a statutory remedy provided under the Clause 28 of the Control Order must first approach the Appellate Authority.

36. The Government has now issued the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 wherein paragraph - 13 provides the remedy of appeal against order of allotment, suspension or cancellation of licence.

37. The right of an agent is created under a licence agreement under the Distribution Control Order. The remedy is also provided under the said Distribution Control Order. This Court cannot ignore the observations made by the Hon'ble Supreme Court more than sixty years ago in *N.P. Ponnuswami vs Returning Officer*,: AIR 1952 SC 64 with regard to the necessity to relegate a person to the remedy available under the statute in which the right itself is created.

38. The question before this Court that arises for consideration is whether the judgement rendered in *Puran Singh* (supra) more specifically paragraph - 35 thereof which has been referred to by various Hon'ble Single Judges in holding that it prescribed "full fledged inquiry" in the matter of misconduct of a licensee in distribution of scheduled commodities, can be said to be a valid and binding precedent for this proposition of law.

39. As discussed above the judgment rendered in Puran Singh (supra) was with respect to the question whether before passing a suspension order preliminary inquiry and an opportunity of hearing is necessary. It was in that context alone the said judgment was rendered by the Full Bench. It is settled law that a judgement can be a binding precedent for only that which it actually decides and not that which can be logically inferred therefrom. From one particular paragraph No. 35 and one particular phrase i.e. "full fledged inquiry" can it be said that the Hon'ble Full Bench held that a licensee is entitled to a charge sheet along with the statements of witnesses proposed to be relied upon, a copy of the preliminary inquiry report, date, time and place for oral hearing being fixed by the Licensing Authority, and oral statements being recorded wherein opportunity of cross-examination is given to the licensee as is envisaged under Article 311 of the Constitution of India?

40. The judgments of Hon'ble Coordinate Benches have inferred from the observations made by the Hon'ble Full Bench in paragraph - 35 of the judgement in Puran Singh (supra) that this so. With all due respect I shall differ. Nothing can be read in a judgment which has not been actually stated therein. Moreover, even in the language of the government order dated 29.07.2004 the only requirement is of giving full opportunity to the licensee. The procedure for giving full opportunity having not been spelt out, the procedure and scope of inquiry would be as envisaged by the Hon'ble Supreme Court in all such matters falling in the realm of contract as in the case of A.S. Motors (supra).

41. Now, this Court would be bound to also look into the submission made by the learned Standing Counsel that the judgment rendered by the Full Bench in Puran Singh (supra) passed sub silentio. The English Courts and Juries have carved out an exception to the rule of precedent. It has been explained as the rule of sub silentio. Salmond in his Commentary of Jurisprudence (12th Edition) page 153 explains the principles thus: "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio. The precedents sub silentio and without argument are of no moment....." (Divisional Controller, KSRTC Vs. Mahadeva Sheety and another: (2003) 7 SCC 197).

(emphasis supplied)

42. The Hon'ble Supreme Court has considered the doctrine of sub silentio in several cases and has referred to Salmond on jurisprudence in Municipal Corporation of Delhi Vs. Gurnam Kaur, (1989) 1 SCC 101, which held that "a decision which has not expressed and is not founded on reason nor it proceeds on consideration of issue, cannot be deemed to be a law declared to have a binding effect." The Supreme Court observed in State of U.P. Vs. Synthetics and Chemicals Limited, (1991) 4 SCC 139 thus:- "Uniformity and consistency are core of judicial discipline. But that which escapes in the

judgment without any occasion is not ratio decedendi. In Shama Rao Vs. State of Pondichery, AIR 1967 SC 1680 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

43. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. A judgment of a Coordinate Bench made after argument on the question of law fairly arisen in the case, and necessary to its determination, is an authority or binding precedent in the same Court or any other Courts of equal or lower rank in subsequent cases where the very point is again in controversy, unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. (Krishna Kumar Vs. Union of India: (1990) 4 SC 207).

44. However, a decision rendered by a Coordinate Bench as a consequence of inadequate pleadings and unstructured and incoherent argument regarding the relevant statutory provision applicable to central issue can be said to be a judgement rendered per incuriam. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a Rule having the force of statute. Such a decision loses its precedential vitality.

45. The Supreme Court has observed "the quotable in law is avoided and ignored if it is rendered in IGNORANTIA of a statute or other binding authority....."

46. From the perusal of the judgment rendered by Coordinate Benches it is evident that none of the judgments have considered the core issue involved i.e. whether a licensee in terms of his agreement can be given the same scope of opportunity of hearing as is given to a government servant/public servant or even a workman under statutory requirements like Standing Orders governing an Industry?

47. The Hon'ble Supreme Court has repeatedly emphasized the law with regard to the opportunity of hearing for a licensee. Having carefully considered the Government Order dated 29.07.2004 I have in my judgment rendered in Sheo Bhan Singh Vs. State of U.P. through Secretary and 2 others in Writ - C No. 42849 of 2013 decided on 02.01.2018 have observed in paragraphs 27, 28, 29, 30, 31, and 32 thus:-

"27. The government order dated 29.07.2004 that has been relied upon by the two Coordinate Benches of this Court in holding that an opportunity of hearing is must and the procedure prescribed for suspension/cancellation should be followed to the letter. The government order dated 29th of July, 2004 relates to the procedure to be followed for cancellation/suspension of the Fair Price Shop licence and has provided

that whenever suspension/cancellation of Fair Price Shop licence has to be undertaken by the Licensing Authority it should not be done only on the basis of the complaint received from some person. If a complaint is received, then, a preliminary fact finding inquiry should be conducted and if it is found in the preliminary fact finding inquiry that a prima facie case is made out against the licensee which may lead to a valid conclusion that the misconduct complained of is of such grave nature that may lead to cancellation of Fair Price Shop licence, then only, suspension order be passed which should be a reasoned and speaking suspension order and should contain all facts that have come out in the preliminary fact finding inquiry so that the licensee can have an opportunity to rebut the prima facie conclusions arrived at on the basis of such preliminary fact finding inquiry.

28. This government order further says that the Licensing Authority may suspend the Fair Price Shop licence of a licensee also on the basis of an on the spot inspection/surprise inspection carried out of the shop concerned if some grave irregularity comes to light during such surprise inspection or if it is found that the licensee is indulging in an offence of selling the scheduled commodities illegally or black-marketting as described in Essential Commodities Act, 1955 or Orders issued from time to time in this regard. In case of such suspension also the order that has to be passed by the Licensing Authority should be a reasoned and speaking order making apparent the grave irregularity found in the said on the spot inspection.

29. The Government Order dated 29th of July, 2004 also provides therein that in case of suspension/cancellation of the Fair Price Shop the ration cards of the said shop should be attached to some other shop, either of the same village or nearby village, so as to avoid any difficulty being faced by the ration card holders and the inquiry that has to be conducted after such suspension should be tried to be concluded within a period of one month and the final orders that have to be passed, should be passed on the basis of the explanation submitted by the licensee and in case it is found that the licensee is unduly causing delay in submitting his reply and has not submitted any reply at all, then, the Licensing Authority may pass cancellation order taking into account all facts mentioned in the preliminary fact finding inquiry. The orders so passed should also be reasoned and speaking order.

30. In the government order dated 29.07.2004 in paragraphs 6 it has been specifically mentioned that in passing a final order of punishment the graveness of the misconduct complained of should be taken into account as also the past conduct of the licensee concerned to determine the quantum of the punishment and cancellation order should not be passed without application of mind to the gravity of the misconduct complained of.

31. After such cancellation order is passed then within a period of one month thereafter the vacancy should be advertised and proper procedure followed for reallotment of the said Fair Price Shop to avoid any difficulty to the card holders of

the village/area concerned. As per paragraph - 7 of the said government order no shop should be allowed to remain attached to another shop for a period of more than two months and within a period of two months from the date of suspension/cancellation of the licence, reallocation proceeding should be completed.

32. The government order dated 29th of July, 2004 which has been relied upon by the two Division Benches and two Coordinate Benches of this Court refers mainly to the procedure of giving fair hearing and reasonable opportunity to the Fair Price Shop licensee before cancellation/suspension orders are passed. The principle laid down by the judgments of this Court regarding the fair opportunity of hearing being given to the licensee concerned cannot be denied and admittedly opportunity of hearing is required in such cases. But the same degree of proof of misconduct as required for holding a government servant guilty in disciplinary proceedings is not required and neither the procedure as prescribed in U.P. Government Servant (Disciplinary and Appeal) Rules, 1999 or in the CCS (CCA) Rules 1965 is required to be followed."

48. After the judgment rendered by me in Sheo Bhan Singh, the Government Order dated 16th of October, 2014 was brought to my notice. I have carefully considered the subsequent government order where it has been clarified that the entries of Ration Cards have also be examined besides the Stock Register, Sale Register and the Distribution Certificate issued by the Village Level Vigilance Committee and Official Observer appointed for supervising such distribution. A duty has been cast upon the Licensing Authority to consider the explanation along with documentary evidence submitted by the licensee himself and then to pass a reasoned and speaking order thereon.

49. In the said government order the then Principal Secretary (Food & Civil Supplies) after referring to the interim order dated 15.09.2014 in writ petition No. 56415 of 2012: Smt. Leela Devi Vs. State of U.P. and others has mentioned that at the time of examining the evidence produced by the licensee, the complainants and all other concerned parties should be heard and should also be cross examined so that the fairness of procedure adopted by the Licensing Authority is prima facie visible and unnecessary litigation is avoided. This order has been issued by the Principal Secretary in terms of the interim order passed in Smt. Leela Devi's case.

50. The judgment rendered by Coordinate Benches before the issuance of this order dated 16th October, 2014 Viz. Gyan Singh Vs. State of U.P. and others decided on 12.09.2012, in Ashok Kumar Pandey Vs. State of U.P. and others decided on 13.12.2012 on the basis of the judgment in Abu Baker Vs. State of U.P. and others, reported in 2010 (6) ADJ 339 decided on 23rd of February, 2010, which is the first judgment wherein relying upon D.K. Yadav Vs. J.M.A. Industries, (1999) 3 SCC 259 and National Building Construction Corporation Vs. S. Raghunathan: (1998) 7 SCC 66, the observation was made that the inquiry was vitiated because the statements of Cardholders were recorded behind the back of licensee and neither copies of the statements of the aforesaid witnesses was furnished to the petitioner nor he was given any opportunity to cross examine the witness so examined, were clearly per incuriam as no such provision existed in the government order dated 29.07.2004 at the time for fixing date, place and time of inquiry/oral hearing and giving opportunity for the licensee to

cross examine the witnesses/complainants.

51. This Court is of the considered opinion that a fair price shop licence is only an agent for distribution of scheduled commodities under the Public Distribution System. Such a licensee being only an agent acts for the principal i.e. the Government with a fixed rate of commission on the amount of allocation of essential commodities and their distribution by weight. The Public Distribution System has been envisaged by the government only to help the poor and needy. It is honest tax-payer's money which is used to subsidize the price of such essential commodities so that they come within the reach of poor and needy and they are able to feed themselves and their family in a respectable fashion and are not led to mendicancy and starvation. The principal remaining the State Government, and the licensee being only an agent, the principal is entitled to take away the licence in case of irregularity in distribution. Of course, there should exist valid reasons for taking away of such licence and some opportunity of hearing is required to be given to the agent in case of complaints being received against him. However, there is no fundamental right nor any Constitutional right for such a licensee akin to Article 311 of the Constitution of India. Even in the case of government servants protected under Article 311 of the Constitution of India the degree of proof required for establishment of guilt is that of "preponderance of probability".

52. This Court does not find any good ground to show interference in the orders impugned so as to exercise its extra ordinary jurisdiction placing reliance upon the Whirlpool Corporation Vs. Registrar of Trade-marks, (1998) 8 SCC 1. The petitioners may avail the statutory remedy of filing appeal under para 13 of the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016.

53. Both the writ petitions are dismissed.

Order Date :- 30.07.2018 LBY