

# **Bajrangi Tiwari vs The Commissioner Devi Patan Mandal ... on 5 March, 2018**

**Author: Ritu Raj Awasthi**

**Bench: Ritu Raj Awasthi**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

AFR

Court No. - 18

Writ Petition No. 8033 (MS) of 2013

Bajrangi Tiwari

Vs.

The Commissioner Devi Patan Mandal Gonda And Another

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.,Nitin Srivastava

Hon'ble Ritu Raj Awasthi,J.

Heard Mr. Vijay Kumar Tiwari, learned counsel for the petitioner as well as Mr. Kuldeep Singh, learned Standing Counsel and perused the records.

The writ petition has been filed challenging the orders dated 27.7.2011 as well as 30.7.2013, whereby the fair price shop licence of petitioner has been cancelled and the appeal preferred against the said order has been rejected.

Learned counsel for the petitioner submits that the fair price shop licence of petitioner was earlier suspended on 18.11.2010. The petitioner feeling aggrieved preferred appeal under Clause 28 (3) U.P. Essential Commodities Distribution Order, 2004 which was allowed vide order dated 21.12.2010 and the fair price shop license was restored. Now, on the same allegations another complaint was made on 3.5.2011. In this complaint allegations were made regarding non-distribution of essential commodities by the petitioner during the period December, 2009 to March, 2011. The complainant had earlier lodged FIR against the petitioner under Section 307 IPC. In fact, the petitioner has enmity with the complainant, namely, Nanbabu Gautam and Munna Lal Gautam. They had lodged false case registered as case Crime No. 267 of 2011, under Sections 147, 148, 149, 504, 352, 324, 307 IPC and Section 3 (2) (v) SC/ST Act. The fair price shop licence of petitioner was suspended vide order dated 14.6.2011 and thereafter vide order dated 29.7.2011 the fair price shop licence of petitioner was cancelled. The appeal preferred thereafter before the Divisional Commissioner was dismissed vide judgment and order dated 30.7.2011.

The contention of learned counsel for petitioner is that the licence of fair price shop cannot be cancelled merely on lodging of a criminal case against him. The order impugned dated 29.7.2011 is, therefore, not sustainable in the eyes of law. In support of his submissions, learned counsel for petitioner relies on the judgment dated 30.10.2009 of this Court in the case of Jagdish Narian Mishra Vs. State of U.P. and others<sup>1</sup> and Smt. Raj Kumari Singh Vs. State of U.P. and others<sup>2</sup>.

It is submitted that the petitioner had taken specific ground in this regard in his appeal, however, the appellate court has failed to take into consideration the aforesaid judgments and has not properly decided the said issue.

It is also contended that the fair price shop licence of petitioner cannot be cancelled taking into consideration the Government Order dated 17.8.2002 as it relates to the procedure prescribed for allotment of fair price shop licence and it does not deal with the suspension or cancellation of fair price shop licence.

Submission is that suspension and cancellation of fair price shop license is governed by the Government Order 29.7.2004 and U.P. Essential Commodities Distribution Order, 2004. Neither the Government Order dated 29.7.2004 nor the U.P. Essential Commodities Distribution Order, 2004 provides that on lodging of a criminal case fair price shop licence can be cancelled. It is contended that the Division Bench of this Court in the case of Harpal Vs. State of U.P. and others<sup>3</sup> has considered the import of Government Order dated 29.7.2004 and has held that the procedure prescribed in the said Government Order is mandatory in nature and requires to be followed while passing the cancellation order. As per Government Order dated 29.7.2004 a fair price shop licence can be cancelled only on the basis of an enquiry held against the licensee.

The contention is that the impugned order has been passed without holding any enquiry and merely on lodging of a criminal case against the petitioner and, as such, the procedure prescribed under the Government Order dated 29.7.2004 has not been followed, hence the cancellation order is not sustainable in the eyes of law.

It is also submitted that the judgment of this Court in the case of Ranjit Singh Vs. State of U.P. and others<sup>4</sup> does not lay down the correct law as the Court while delivering the judgment in the case of Ranjit Singh (supra) has not considered the import of Government Order dated 29.7.2004 and has also not considered the earlier judgments of this Court including the judgment in the cases of Jagdish Narian Mishra (supra), Rajkumari Singh (supra) and all other judgments which have been passed relying on the aforesaid judgments.

Contention is that in view of the law laid down by Full Bench of this Court in the case of Tuples Educational Society and another Vs. State of U.P. and another<sup>5</sup> the judgment in the case of Ranjit Singh (supra) does not lay down any precedent and it is per incuriam. In this regard paragraphs 126 and 128 of Full Bench judgment has been relied by learned counsel for the petitioner.

In this regard, learned counsel for the petitioner has also placed reliance on the Division Bench judgment of this Court in the case of Gopi Vs. State of U.P. and others<sup>6</sup> while emphasizing that the judgment passed by this Court in the case of Ranjit Singh (supra) is per incuriam and not binding on this Court and need not to be followed.

Learned counsel for petitioner emphasized that mere lodging of a first information report does not mean that the fair price shop licensee was not having a good reputation. In this regard, learned counsel for the petitioner has relied on the judgment dated 10.8.2016 of this Court in the case of Lalta Prasad Vs. State of U.P. and others<sup>7</sup>.

Mr. Kuldeep Singh, learned Standing Counsel, on the other hand, while defending the orders impugned, has submitted that the petitioner was not having a good reputation as criminal case was filed against him which was registered as case Crime No. 267 of 2011, under Sections 147, 148, 149, 504, 352, 324, 307 IPC read with Section 3 (ii) (V) SC/ST Act.

Submission is that it is the basic requirement for grant of fair price shop licence that a person should have a good reputation. Para 10 of Government Order dated 17.8.2002 provides the essential requirements and conditions for grant of fair price shop licence. It provides that a person must have good reputation and should not have been involved in any criminal case. No criminal case should have been lodged against him and he should not have been convicted by any criminal Court.

It is further submitted that in the case of Ranjit Singh (supra) the Division Bench of this Court while considering the suspension of a fair price shop licence has specifically observed that the policy of the Government appears to be that people of clean image and good character may run fair price shops for the reason that if the shops are allotted to the criminals, it will result in its misuse and the poor public at large would be deprived of the beneficial scheme. It has also been observed that any allottee of a fair price shop who is granted licence for running such shop has to conduct himself in a selfless manner throughout the period of licence is in force; in case an allottee indulges into a criminal act or criminal case is registered against him or punished for a criminal offence, even after the allotment of the shop, the provision of Section 10 of the Government Order dated 17.8.2002 would be applicable.

Submission is that in view of law laid down by Division Bench of this Court in the case of Ranjit Singh (supra) there is no infirmity or illegality in the order impugned and it does not require any indulgence by this Court.

It is also pointed out that relying on the judgment in the case of Ranjit Singh (supra) Division Bench of this Court in the case of Awadhesh Kumar Vs. State of U.P. and others<sup>8</sup> vide judgment and order dated 29.11.2016 has upheld the Government order dated 17.8.2002.

It is also submitted that so far as the judgment in the case of Harpal Singh (supra) is concerned that relates to a case where on the basis of preliminary enquiry suspension order was passed. The Division Bench of this Court in the case of Brij Lal V. State of U.P. and others<sup>9</sup> vide judgment and order dated 25.3.2015 has held that at the stage of preliminary enquiry no opportunity is required to be given to a delinquent licensee. The judgment in the case of Harpal Singh (supra) and has clarified the position in this regard.

It is to be noted that considering the aforesaid submissions this Court vide order dated 8.2.2017 had noted that there are conflicting judgments on the point as to whether licence can be suspended/cancelled merely on lodging of a first information report against a licensee or not and referred the matter to be considered and decided by the Larger Bench. This Court formulated following questions for consideration by the Larger Bench:

- "1. Whether the fair price shop licence can be cancelled merely on lodging of a criminal case against the licensee?; and
2. Whether, while passing any such order the Government Order dated 17.8.2002, particularly para-10 of said Government Order would be applicable/considered or not?"

The Larger Bench headed by Hon'ble the Chief Justice vide order dated 26.10.2017 has answered the referred questions and has held that licence of fair price shop cannot be cancelled merely on lodging of FIR against the licensee. It has also been held that the Government Order dated 17.8.2002 relates to allotment of a fair price shop and hence the same cannot be referred to in suspension/cancellation of licence. It is the Government Order dated 29.7.2004 (wrongly typed as 29.7.2014) according to which the suspension/cancellation of fair price shop licence can take place. Relevant paragraphs of the judgment is reproduced below:

"14. Looking into the meaning of word, 'discretion', as explained, above, and also looking to the fact that the Government order dated 29.7.2014, as a policy, requires such a discretion to be exercised in suspension/ cancellation of a licence. The answer to the two questions referred to this Court are answered as follows:-

- (i) The answer is no. Licence of a fair price shop cannot be cancelled merely on lodging of FIR against the licensee.

(ii) The answer is no. The Government order dated 17.8.2002 relates to allotment of a fair price shop and hence the same cannot be referred to in suspension/cancellation of licence. It is the Government order dated 29.7.2014 according to which the suspension/cancellation of a fair price shop licence can take place. "

In the present case, perusal of the impugned order dated 27.7.2011 clearly indicates that the fair price shop licence of petitioner has been cancelled merely on lodging of a criminal case registered as case Crime No. 267 of 2011, under Sections 147, 148, 149, 504, 352, 324, 307 IPC read with Section 3 (ii) (V) SC/ST Act. It does not indicate that any opportunity whatsoever was provided to petitioner or any enquiry was held prior to passing of the impugned order.

The Government Order dated 29.7.2004 clearly provides the procedure according to which in case any complaint is received against a licensee a preliminary enquiry shall be held. In case in the preliminary enquiry some serious irregularities prima facie are found which may require cancellation of fair price shop; then, a show cause notice as to why fair price shop licence shall not be cancelled shall be issued to the licensee requiring him to submit his explanation. Thereafter, the licence of fair price shop may be suspended by passing a speaking order. The detailed enquiry thereafter shall be held and after giving opportunity of hearing to the licensee necessary orders for cancellation of fair price shop licence may be passed.

In the present case, no such procedure as prescribed under the Government Order dated 29.7.2004 was followed.

In view of above, I am of the considered view that the fair price shop licence of petitioner could not have been cancelled merely on lodging of a criminal case. Moreover, the cancellation of fair price shop licence of petitioner is not sustainable in the eyes of law as it has been done without following the due procedure as prescribed under the Government Order dated 29.7.2004. The appellate Court has not considered the above legal position while deciding the appeal preferred by the petitioner and has wrongly come to conclusion that no interference is required in the impugned order dated 27.7.2011, as such, the impugned order dated 30.7.2013 is also not sustainable in the eyes of law.

In this view of the matter, the orders impugned dated 27.7.2011 and 30.7.2013 are hereby set-aside.

The writ petition is allowed. Consequences shall follow.

[Ritu Raj Awasthi, J.] Dated: 5th March, 2018 Santosh/-