

# **M/S Maruph Meat Shop And Another vs State Of Up And 4 Others on 28 July, 2022**

**Author: Sunita Agarwal**

**Bench: Sunita Agarwal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 39

Case :- WRIT - C No. - 4419 of 2022

Petitioner :- M/S Maruph Meat Shop And Another

Respondent :- State Of Up And 4 Others

Counsel for Petitioner :- Shamsuddin Ahmad

Counsel for Respondent :- C.S.C.,Rahul Singh Dahiya

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

Learned counsel for the petitioners prays for and is granted permission to add proper prayer to the prayer clause in the writ petition during the course of the day.

The present petition has been filed by two persons who were issued license for retail sale of meat and meat products, including poultry and game by the competent authority namely, respondent no.5 herein. The license issued to petitioner no. 1 was operative till 20.07.2022 whereas, the license issued to the petitioner no.2 is valid till 02.01.2023.

The challenge is to the suspension orders passed by respondent no.5 dated 31.12.2021 and 13.12.2021 of suspension of the license of both the petitioners herein.

It is stated in the writ petition that the impugned suspension order in respect of petitioner no. 2 is not available on Internet nor the said suspension order has ever been served upon him, and hence he is not in a position to append the same. The suspension order with respect to petitioner no. 1 has been appended at Page No. '28' of the paper-book.

A perusal of the suspension order dated 31.12.2021 appended at Page No.'28' of the paper-book indicates that the license of petitioner no. 1 has been suspended on the basis of a letter dated 12.12.2021, submitted by the Station House Officer, Police Station- Dehat, District- Bijnor.

In the written instructions supplied by the learned Standing Counsel under the order passed by this Court, it is evident that the suspension orders with respect to both the petitioners have been issued on account of lodging of the First Information Report against them under Sections 429, 269 of I.P.C. and also other section related to U.P. Prevention of Cow Slaughter Act, 1955.

In none of the paragraphs of the written instructions, it is stated that inquiry has been conducted by the licensing authority before passing the suspension orders. It is, thus, an admitted fact that the license of both the petitioners had been suspended only on the basis of the information provided by the Station House Officer, Police Station- Dehat, District Bijnor about lodging of the First Information Report against both the petitioners herein.

At this stage, learned counsel for the petitioners has invited the attention of the Court to Clause 2.1.8 of the Food Safety and Standards (Licensing And Registration Of Food Businesses) Regulations, 2011, which reads as under:-

"2.1.8 Suspension or cancellation of Registration Certificate or license (1) The Registering or Licensing Authority in accordance with the provisions of section 32 of the Act may, after giving the concerned Food Business Operator a reasonable opportunity of being heard, suspend any registration or license in respect of all or any of the activities for which the registration/license has been granted under these Regulations after recording a brief statement of the reasons for such suspension, if there is reason to believe that the Food Business Operator has failed to comply with the conditions within the period mentioned in any Improvement Notice served under Section 32 of the Act. A copy of such statement shall be furnished to the concerned Food Business Operator whose Registration or license has been suspended.

(2) The registering or Licensing Authority, as the case may be, may direct an inspection of the Food Business Operator's premise(s) within a reasonable period which shall not be less than 14 days from the date of order of suspension.

(3) In the event that the Registering or Licensing Authority is of the opinion, on a review of the inspection report, that the Food Business Operator has still failed to rectify the defects or omissions or comply with the conditions of the improvement notice causing the suspension, such authority may cancel the license/registration of the Food Business Operator after giving him an opportunity to show cause as

provided under Section 32 (3) of the Act.

(4) Notwithstanding anything contained in these Regulations, the Registering or Licensing Authority may suspend or cancel any registration or license forthwith in the interest of public health for reasons to be recorded in writing.

(5) A suspension or cancellation of registration or license under these Regulations shall not entitle the Food Business Operator for any compensation or refund of fee(s) paid in respect of the registration certificate or license or renewal thereof.

(6) After a period of 3 months from the date of cancellation under Regulation 2.1.8 (3) above the Food Business Operator may make fresh application for Registration or license to the concerned authority if all observations made in the improvement notice have been complied with."

By placing Sub-Clause (1) of Clause 2.1.8 of Regulation, 2011, it is argued by learned counsel for the petitioners that the suspension orders cannot be sustained as they had been passed in utter violation of the said provision, inasmuch as, no opportunity had been granted to the petitioners, at any stage of the proceeding i.e. before passing the suspension orders.

In rebuttal, learned counsel for the respondents argued that Sub-Clause (1) of Clause 2.1.8 is not applicable in the case of the petitioners, inasmuch as, the said provision relates to the provisions of Section 32 of the Food Safety and Standards Act, 2006 and in case of failure of the businessman (Food Business Operator) to show any improvement, the opportunity of hearing is required to be given.

He further submits that the suspension orders, in this case, have been passed for the reason that both the petitioners have violated the terms and conditions of the license by indulging in illegal slaughtering of cattle, which had resulted in lodging of the First Information Report against them.

Testing these submissions of the learned counsel for the parties and perusal of the record, we may note that there is no other provisions in the Regulations, 2011 which has been framed in exercise of the powers conferred by (o) of Sub-Section 2 of Section 92 read with Section 31 of the Food Safety and Standards Act, 2006 which regulates the registration and license for food business in the country in accordance with the provisions as contained in Chapter II, Clause 2.1.

The provision for suspension or cancellation of registration certificate or license has been provided only in Clause 2.1.8 contained in Chapter II which has been extracted above.

The said provision is the provision which entitles the registering/licensing authority to suspend or cancel the license either by granting a reasonable opportunity of hearing in accordance with Clause (1) or forthwith in the interest of public health in accordance with Sub-Clause (5).

In any case, the licensing or registering authority cannot suspend or cancel the license granted to the food business Operator without giving a reasonable opportunity of being heard and passing a reasoned and speaking order in accordance with the provisions of Clause 2.1.8.

The proper course for respondent no. 5 was to issue notice to both the petitioners to submit their explanation after receipt of the report of the Station House Officer. As this has not been done, the suspension orders are found to be in utter violation of the provisions of the Regulations, 2011 and, therefore, cannot be sustained.

Noticing the above, we may further record that though the license for business issued in the name of the petitioner no. 1 has expired on 27.7.2022 but if the suspension order is allowed to stand it may harm him in future. We, therefore, direct that the licensing authority/respondent no.5 shall take a fresh decision by issuing proper notice to both the petitioners herein, giving them reasonable opportunity of hearing before taking a final decision.

The exercise so to be undertaken by the respondent no. 5, has to be completed within a period of four weeks from the date of receipt of the copy of this order. It goes without saying that both the petitioners would be under obligation to submit their reply to the notice, once issued to them within the time period given in the notice itself and they shall cooperate in the inquiry.

In case of any resistance of the petitioners or their act of avoiding the inquiry, it would be open to the respondent no. 5 to proceed ex-parte order.

In any case the respondent no. 5 is under obligation to pass a reasoned and speaking order in accordance with law dealing with all points of objection raised by the petitioners.

It is lastly provided that the suspension orders passed against the petitioners shall be subject to the fresh order to be passed by respondent no.5 under the direction given above.

It is further clarified that the petitioners herein are not allowed to run their business till a fresh decision is taken by the competent authority.

The writ petition is accordingly, disposed of.

Order Date :- 28.7.2022 S.K.