

Court No. - 18**Case :-** WRIT - C No. - 54917 of 2017**Petitioner :-** Jagdamba Prasad**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Pankaj Kumar Gupta**Counsel for Respondent :-** C.S.C.**Hon'ble Neeraj Tiwari,J.**

Heard learned counsel for the petitioner and learned standing counsel for State- respondents.

Present petition has been filed with following relief;

"(i) a writ, order or direction in the nature of Certiorari quashing the impugned order dated 17.10.2017 passed by Sub Divisional Magistrate, Meja, Allahabad, respondent no. 5."

Learned counsel for the petitioner submitted that license of fair price shop was issued to the petitioner on 22.3.2001 which, he was running smoothly. Due to village *party bandi*, a criminal case being case crime no. 391 of 2017, under Sections 147, 148, 149, 323, 504, 506, 307, 308, 452 I.P.C. was registered against the petitioner. He next submitted that considering the registration of criminal case against the petitioner, his license of fair price shop was cancelled by Sub Divisional Magistrate-respondent no. 5 vide order dated 17.10.2017. Against which, he has preferred present writ petition and after hearing the parties, Court has stayed the suspension order vide order dated 30.11.2017. He next submitted that till date, neither any enquiry has been initiated nor any proceeding is pending against the petitioner and in the aforesaid criminal case, petitioner has already been enlarged on bail. He next submitted that Government Order dated 17.08.2002 prohibits for allotment of fair price shop to a person against whom a criminal case is registered, but that is having no provision to cancel the license of fair price shop in case of involvement in a criminal case after allotment. There is no allegation of misuse of food grains or black marketing of the same and the only ground of suspension of license of fair price shop is pendency of criminal case against the petitioner. He next submitted that this Court in the matter of **Anil Kumar Dubey Vs. State of U.P. and others; (Civil Misc. Writ Petition No. 16723 of 2010)** decided on 17.01.2011 has considered this aspect that even after submission of charge sheet, Court is of the view that mere pendency of criminal case and filing of charge sheet cannot be a ground for cancellation of license of fair price shop until there is order of conviction, therefore, suspension order is bad and

Learned standing counsel has vehemently opposed, but could not dispute the factual and legal submission made by learned counsel for the petitioner before this Court.

I have considered the rival submissions made by the counsel for the parties and perused the record. Facts of the case are undisputed that license of fair price shop was issued to the petitioner on 22.3.2001 and due to only lodging of FIR against the petitioner, his license of fair price shop was suspended by respondent no. 5 vide order dated 17.10.2017, which was also stayed by this Court vide order dated 30.11.2017. Further, after suspension of shop, no enquiry has been initiated.

The very same issue was before this Court in the matter of **Anil Kumar Dubey (Supra)** and after considering the judgement of Division Bench in the matter of **Raj Kumar Vs. State of U.P. and others (Civil Misc. Writ Petition No. 55977 of 2006) decided on 10.10.2006**, Court has allowed the writ petition, setting aside the order of cancellation of license of fair price shop by Sub Divisional Magistrate as well as appellate order passed by Divisional Commissioner.

Relevant paragraphs of the aforesaid judgement are being quoted herein below;

"Division Bench of this court in Civil Misc. Writ Petition No. 55977 of 2006 (Raj Kumar Vs. State of U.P. and others), decided on 10.10.2006 has taken the view that mere lodging of the first information report is not a sufficient ground for cancelling the fair price shop license and the authority cancelling the fair price shop agreement is required to apply mind. Coupled with this this court in Civil Misc. Writ Petition No. 43133 of 2008 (Ram Sewak Vs. State of U.P. and others) decided on 27.8.2008 has taken the view which is being extracted below:-

" The petitioner is a fair price shop licensee. He is aggrieved by an order of the Up Zila Adhikari, Etah dated 18.7.2008 by which his fair price shop agreement has been cancelled. The ground stated in the order is that a first information report in Case Crime No. 661 of 2006, under Sections 147, 148, 149, 341, 436, 506, 427 I.P.C., 3 P.P.R. Act and 7 Criminal Law Amendment Act has been lodged against him. Reference has been made in the order to the government order dated 17.8.2002 that no criminal case should be pending against a person. It is not alleged in the order that the petitioner had concealed pendency of any criminal case against him in obtaining the allotment. No doubt the District Supply Officer is not required to conduct any detailed inquiry but a prima facie inquiry to satisfy himself about the truth of the allegations of irregularity alleged against the licensee has to be made. This is also provided under the government order dated 29.7.2004 of which reference is made in the case of Harpal Vs. State of U.P. and others 2008 (3) A.D.J. 36.

Counsel for the petitioner also relied upon a decision of this Court in Raj

Kumar Vs. State of U.P. in Writ Petition No. 55977 of 2006 decided on 10.10.2006 by a Division Bench of this Court. It was held that mere lodging of the first information report is not a sufficient ground for canceling the fair price shop licence and the authority canceling the fair price shop agreement is required to apply mind. There is nothing in the order to indicate that the Up Ziladhikari has applied mind to the truth or falsity of the allegations against the petitioner. For these reasons the order passed by the Up Ziladhikari, Etah cannot be sustained and it is set aside. It is open to the respondents to initiate fresh proceedings against the petitioner in case the petitioner has played any fraud or has concealed any fact in obtaining the allotment of the shop. If the petitioner has committed breach of any government order and in case it is found that the petitioner committed any irregularity in the distribution of essential commodities it will be open to the respondents to pass a fresh order.

With these observations the writ petition is disposed of."

In the present case, as the order in question has been passed on account of complicity of the petitioner in criminal case and charge sheet filed against him and till date no order of conviction has been passed, then in such a situation order of cancellation is not at all subscribed by law and same is clerly transgression and over stepping of jurisdiction.

Consequently, orders dated 21.1.2009 passed by the Sub Divisional Magistrate, Tehsil Sadar, District Mirzapur and order dated 11.3.2010 passed by the Divisional Commissioner, Vindhyachal Mandal, Vindhyachal are hereby quashed and set aside.

Consequently, writ petition is allowed."

In present case also, license of fair price shop was cancelled only on the ground of lodging of FIR as well as pendency of criminal case. Apart from that there is no allegation with regard to black marketing or misuse of food-grains, therefore, this cannot be a ground for cancellation of license of fair price shop.

Accordingly, under such facts of the case as well as law laid down by this Court referred hereinabove, impugned order dated 17.10.2017.2017 passed by Sub Divisional Magistrate-responent no. 5 is hereby quashed and writ petition is **allowed**.

This Court vide order dated 30.11.2017 has stayed the effect and operation of the order dated 17.10.2017 passed by respondent no. 5 and petitioner is running the fair price shop as on date, therefore, no further order is required for reinstatement of license and fair price shop.

Order Date :- 1.12.2021

Arvind