

Reserved on 09.02.2022
Delivered on 16.02.2022

Case :- WRIT - C No. - 22891 of 2019

Petitioner :- Radhey Shyam

Respondent :- State of U.P. Thru. Prin. Secy. Food And Civil
Supplies Lucknow

Counsel for Petitioner :- Rakesh Kumar Srivastava, Veerendra
Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. The present writ petition has been filed seeking quashing of the order dated 29.7.2019 passed by the Joint Commissioner (Food), Lucknow Division, Lucknow in Appeal No.01512 of 2019, which was preferred by the petitioner against the order dated 27.5.2019 passed by the District Supply Officer, Lakhimpur Kheri cancelling the license of the fair price shop of the petitioner situated in Nagar Panchayat, Dhauraha. District Lakhimpur Kheri. The order dated 27.5.2019 is also impugned in the present writ petition.

2. The petitioner was given the license to run the fair price shop relating to Nagar Panchayat, Dhauraha. The petitioner was required to distribute the scheduled commodities and Kerosene Oil to the card holders (Antyodaya and Patra Grahasti Yojana) regularly at the rate prescribed by the State Government.

3. On 6.4.2019, upon receiving information, local police caught seven bags of wheat being carried away in Nagar Panchayat, Dhauraha for black marketing. Sub-Divisional Magistrate, Dhauraha got the inquiry conducted by the Regional Supply Inspector, who made inspection on the same day in presence of Sri Ram Narayan, local resident, Sri Anil Kumar Pandey, Sub-Inspector, Police Station Dhauraha, Sri Krishna Dutt, another local resident and Sri Suraj Gupta, son of the petitioner.

4. During the inquiry, certain discrepancies were found in the distribution of essential commodities in stock register and the details recorded in E-Pos machine for distribution of the food grains. Upon comparing, the details of the food grains received by the petitioner and distributed to the card holders, shortage of 3.27 Quintals of wheat and excess of 1.27 Quintals of rice was found. Statements of 38 Antyodaya and Patra Grahasti Yojana card holders were recorded, who alleged irregularities in distribution of the essential commodities by the petitioner from the fair price shop. An FIR dated 9.4.2019 came to be registered against the petitioner under Section 3/7 of Essential Commodities Act being FIR No.0204 of 2019 after taking approval of the District Magistrate, Lakhimpur Kheri.

5. Petitioner filed Writ Petition No.10652 (MB) of 2019 before this Court challenging the FIR No.0204 of 2019 against him. The said writ petition was disposed of vide order dated 16.4.2019 granting protection to the petitioner in light of the judgment of the Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar*, (2014) 8 SCC 273.

6. On 19.4.2019, suspension order dated 15.4.2019 suspending the license of the fair price shop of the petitioner passed by the District Supply Officer, Lakhimpur Kheri was served upon the petitioner. The petitioner was issued show cause notice requiring him to submit his explanation within one week along with records relating to the distribution of the essential commodities from the fair price shop. On 30.4.2019 petitioner submitted his explanation to the show cause notice before the District Supply Officer, Lakhimpur Kheri along with relevant records and requested for revocation of the suspension order dated 15.4.2019. He also requested for distribution of the essential commodities and Kerosene Oil to the petitioner's fair price shop.

7. Thereafter, the petitioner filed Writ Petition No.14195 (MS) of 2019 assailing the suspension order dated 15.4.2019. During the pendency of the said writ petition, the District Supply Officer, Lakhimpur Kheri cancelled the license of the fair price shop of the

petitioner vide order dated 27.5.2019. The aforesaid writ petition was also dismissed vide order dated 28.5.2019 granting liberty to the petitioner to assail the order dated 27.5.2019 before the appropriate authority.

8. The petitioner, thereafter, filed Writ Petition No.16885 (MS) of 2019 impugning the order dated 27.5.2019. However, the said writ petition was disposed of vide order dated 4.6.2019 with liberty to the petitioner to prefer a statutory appeal under Clause 13(3) of the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 (for short 'Control Order, 2016') with direction to the appellate authority to decide the appeal by a reasoned and speaking order. In pursuance to the liberty granted by this Court vide order dated 4.6.2019, petitioner filed an appeal before the appellate authority on 12.6.2019, which was dismissed by the appellate authority vide order dated 29.7.2019.

9. Sri R.K. Srivastava, learned counsel for the petitioner has submitted that along with the suspension order dated 15.4.2019, copy of the complaint and the alleged inquiry report was not furnished to the petitioner although it was mandatory and obligatory to provide copies of the same. He has further submitted that the whole basis of suspension of the license of the fair price shop vide order dated 15.4.2019 and thereafter cancellation of the license vide order dated 27.5.2019 is FIR dated 9.4.2019 registered against the petitioner under Section 3/7 of Essential Commodities Act. He has submitted that Full Bench of this Court in *Writ Petition No.8033 of 2013, Bajrangi Tiwari Vs. Commissioner Devi Patan Mandal, Gonda and others*, has held that fair price shop agreement should not be suspended/cancelled simply on the basis of the FIR registered against the fair price shop holder. The order cancelling the license of the fair price shop as well as appellate order have been passed contrary to the dictum of this Court in the case of Bajrangi Tiwari (supra).

10. Learned counsel for the petitioner has placed reliance on the Government Order dated 29.7.2004 and submitted that inquiry

proceedings of the suspended fair price shop should be concluded within a period of one month by giving opportunity of hearing to the concerned fair priced shop holder. The said Government Order also provides that after completion of such inquiry proceedings within a maximum period of one month, the competent authority should take a final decision on merits by passing a speaking order. In the present case, the inquiry could not be concluded within the time span as provided in the above Government Order from the date of suspension of the license of the fair price shop i.e. on 15.4.2019. He has, therefore, submitted that on this ground also, the suspension order is liable to be quashed.

11. Learned counsel for the petitioner has also placed reliance on the Government Order dated 16.10.2014, which was issued in compliance of the order dated 15.9.2014 passed by this Court in Writ Petition No. 56415 (MS) of 2012, Smt. Lalita Devi Vs. State of U.P. and others. The said Government Order provides that in addition to the conditions as laid down in the Government Order dated 29.7.2004, while conducting inquiry, the entries made in the ration cards by the fair price shop holder are to be taken into consideration by verifying the same with the entries made in the relevant regular register. In order to ensure that the inquiry is made in a transparent manner, opportunity of cross-examination should be given while recording the statements of the concerned persons. He has also submitted that in the present case no opportunity was given to the petitioner for cross-examining the witnesses nor oral hearing was given to the petitioner during the course of inquiry.

12. Learned counsel for the petitioner has also submitted that no opportunity of hearing was given to the petitioner before cancellation order dated 27.5.2019 was passed. It is, therefore, submitted that the impugned order cancelling the fair price shop license of the petitioner is *de hors* the provisions of the Government Orders dated 29.7.2004 and 16.10.2014 and the same is liable to be set aside. It is further submitted that the appellate authority has not recorded reasons and all

grounds and pleas taken by the petitioner and the written arguments submitted by the petitioner have not been considered. The appellate authority has not given cogent and convincing reasons while passing the impugned order.

13. In support of his contention, learned counsel for the petitioner has placed reliance on the following judgments:-

“Puran Singh Vs. State of U.P. and others, 2010 (3) ADJ 659 (FB);

Writ-C No.12737 of 2013, Ashok Kumar Tiwari Vs. State of U.P. and others, decided on 28.11.2014;

Writ-C No.3611 of 2014, Sanjay Kumar Vs. State of U.P. and two others, decided on 5.2.2016”

14. On the other hand, Sri Saharsha, learned counsel representing the State authorities has submitted that on receiving information on 6.4.2019, local police seized seven bags of wheat being carried away in Nagar Panchayat, Dhauraha meant for distribution among the card holders from the fair price shop of the petitioner. The Sub-Divisional Magistrate, Dhauraha got the inquiry conducted by the Regional Supply Inspector, who made inspection in presence of the two local residents, Sub-Inspector of the police station concerned and the son of the petitioner. Certain discrepancies were found in the details of distribution of the essential commodities and the stock register and the details recorded in E-Pos machine. He has also submitted that 38 card holders had given statements alleging serious irregularities in distribution of the food items. The petitioner did not cross-examine any of the said witnesses, who made statements against him. He has further submitted that after the inspection was made and preliminary inquiry report was submitted regarding the irregularities, an FIR came to be registered against the petitioner on 9.4.2019 with approval of the District Magistrate, Lakhimpur Kheri. The petitioner was given full opportunity to show cause within one week against the irregularities found in the inquiry. The petitioner was also given full opportunity

before cancelling the license of fair price shop vide order dated 27.5.2019. It has further been submitted that cancellation of the license of the fair price shop was in accordance with law, which was also affirmed by the appellate authority vide impugned order dated 29.7.2019.

15. Sri Saharsha has also submitted that inquiry against the petitioner started on 6.4.2019 and the same got culminated with cancellation order dated 27.5.2019. The inquiry was concluded strictly in accordance with Paragraph 8(8) of the Control Order, 2016. Under the said provision, the inquiry related to irregularity in distribution of scheduled commodities by the licensee of the fair price shop is to be concluded within a maximum period of two months.

16. Sri Saharsha has, therefore, submitted that two competent authorities on the basis of the facts, evidence and relevant provisions of the Control Order, 2016 have concluded that the petitioner had not carried out the terms and conditions of the license and he has not distributed the essential commodities properly from the fair price shop in accordance with the provisions of the terms and conditions of the license and provisions of the Control Order, 2016. It is, therefore, submitted that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the concurrent finding of fact recorded by the two competent authorities and, therefore, the writ petition is liable to be dismissed.

17. In support of his contention, Sri Saharsha, learned counsel representing the State authorities has placed reliance on the following judgments:-

“Writ-C No.15420 of 2020, Najakat Ali Vs. State of U.P. and four others, and other connected writ petitions, decided on 22.10.2021;

Writ-C No.58035 of 2017, Smt. Meena Devi Vs. State of U.P. and four others, decided on 30.7.2018.”

18. I have heard the submissions advanced on behalf of the learned counsel for the petitioner as well as by the learned counsel for the opposite parties.

19. There can be no manner of doubt that a licensee of fair price shop is required to distribute the essential commodities strictly in accordance with the terms and conditions of the license and the provisions of the Control Order, 2016. If during the course of inquiry, it is found that the licensee has violated the terms and conditions of the license or the provisions of the Control Order, 2016, his license is liable to be cancelled. If in the inquiry, it is established that the licensee was not carrying out the obligations under the license as per the terms and conditions, this Court in exercising the Writ jurisdiction could be slow to interfere in the orders passed by the competent authority and the appellate authority.

20. In the case of *Puran Singh* (supra), the questions which were referred for decision by the Full Bench, are as under :-

"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 Pramod Kumar v. State of U.P. and others, 2006 (10) ADJ 610 (DB) and Harpal v. State of U. P. and another, 2008 (3) ADJ 36 (DB) lay down the correct law that opportunity is must; or

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

21. The Full Bench in the case of *Puran Singh* (supra) held that power of suspension is certainly vested with the licensing authority, but while exercising the power to suspend the license of fair price shop, care is to be taken that the order is speaking one. The Full Bench has specifically held that it would be incorrect to hold that when preliminary inquiry of fact finding is held without giving any opportunity, the fair price shop is not to be suspended. It was further held that if the opportunity before passing the order of suspension is

held to be mandatory, then the very purpose for which the authorities have been given power i.e. to ensure the fair and smooth distribution of the food grains would stand diluted and immediate public interest would suffer. Paragraphs 35 to 50 of the aforesaid judgment are extracted herein-below:-

“35. Para 4 and 5 of the Government Order clearly permits full-fledged 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.

36. Thus on an overall view in the matter it is clear that apart from the powers so conferred even in the Government Order dated 29.7.2004 for suspension of the license, now in terms of the agreement between the parties (para 22 of the draft agreement) and on the basis of the provisions as contained in Clause 22 of the Distribution Order, 2004 ,the safe interpretation is that authority can exercise the powers of suspension of the license, pending proceedings for cancellation which is subject to the result of the appellate authority i.e. Commissioner of the Division.

37. Besides taking the aforesaid view, this can also be added that if the grievance is about the exercise of powers on some wrong fact/premises then apart from the procedure of approaching the appellate authority as the proceedings pursuant to the action of suspension remains pending before the licensing authority, aggrieved can straightaway approach to that authority also for redressal of his grievance.

38. It is not to be emphasised 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 a particular class in context of which we are considering the issue.

39. *These are not those kind of cases where the applicant is to claim violation of any of his rights and the exercise not permitted under the relevant provisions. Here is the case where applicant himself has signed draft agreement permitting the authority to exercise power of suspension. The suspension of license is just as interim measure, subject to final satisfaction of the licensing authority. Petitioner if is aggrieved of wrong facts/grounds on which order is passed and on that basis if he can come to this Court then why he can not approach the same authority apprising him about the mistake committed by him r immediately to the appellate authority. This Court cannot be expected and cannot be requested by the petitioner to be the fact finding enquiry/court and thus if the order of suspension is founded on incorrect facts then it is all the more reason for the applicant to apprise the concerned authority to have a fresh look into the matter in the light of the facts and details so supplied by him who can be in a better position to analyse the details so as to take the correct decision.*

40. *Certainly the order of the licensing authority has to be reasoned, and speaking and the charges/ground on which the order of suspension is to be passed are to be mentioned. A non speaking order, sometimes may speak of arbitrary exercise. Unless the facts/grounds and the irregularities/charges on which the order of suspension is based is mentioned in the order one may not be in a position to form any opinion and that may be argued to be unjust exercise. It is to rule out this element even the Government Order dated 29.7.2004 which has been referred in decisions relied upon by the petitioner side there is requirement as noted in proviso to clause 2(Kha).*

41. *If the argument of learned counsel for the petitioner of providing an opportunity before passing order of suspension is accepted to be mandatory then the very purpose for which the authorities have been given power i.e. to ensure the fair and smooth distribution of commodities will stand diluted and immediate public interest will suffer.*

42. *If a serious charge of malpractice, non supply, overcharging of the price, closer 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.

43. At this place we are to hurriedly refer to the cases on which reliance has been placed by the learned Government side.

44. So far the decision given by the Bench of this Court in the case of Gopi (Supra) we are to observe that the Bench has taken note of the provisions of the Distribution Order of 2004. By referring to various clauses of this order, Court noted the need of setting fair price shop, its running, monitoring, the condition to be observed by an agent, penalty and the provisions of the appeal. It is by referring to various provisions, this Court took the view that it will be wrong to add or read the principles of natural justice by implication at the stage of suspension of the fair price shop.

45. It has been further held by the Bench that power of suspension if exercised in public interest does not by itself cause prejudice to the licensee. These kind of licenses does not fall within a category of fundamental right to carry on their business as provided in Article 19(1)(g) of the Constitution of India.

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 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.”

47. Similar is the position of the decision given by this Court in the case of Kallu Khan (Supra).

48. In the aforesaid decision the Bench took into account the public distribution system and its importance for which the arrangement was brought in. It was finally held that respondents cannot be held to be under an obligation to provide opportunity of hearing before passing the order of suspension.

49. *In view of the aforesaid it is clear that in the Government Order dated 29.7.2004 there is no contemplation of any notice and opportunity before suspending the fair price shop, rather there is a clear stipulation that the authority can pass the order of suspension at the time of surprise inspection and otherwise also if complaint of serious irregularity is received. Opportunity will be required only before order of cancellation. This is also clearly provided in the Distribution Order, 2004, the provisions of which has an overriding effect on the Government Order dated 29.7.2004. In terms of the Distribution Order of 2004 parties are to sign draft/agreement with a clear stipulation of the power of the authority to pass the order of suspension.*

50. *On the basis of the above analysis we answer both the questions so referred as below :*

(I) Before suspension of fair price agreement it is not mandatory to give an opportunity of hearing and thus on the plea of its violation, the order of suspension is not liable to be set aside.

(ii) Division Bench judgments in Pramod Kumar Vs. State of U.P. and others reported in 2007 (1) ALJ 407 and Harpal Vs. State of U.P. and another reported in 2008 (4) ALJ 10 holding that opportunity is must does not lay down the correct law.

Division Bench judgment in the case of Gopi Vs. State reported in 2007 (5) ALJ 367 lays down the correct law that grant of opportunity is not necessary.”

22. Thus, in view of the aforesaid, this Court does not find any substance in the contention raised by the learned counsel for the petitioner that before suspension of the fair price shop agreement, the petitioner was not given opportunity of hearing and thus, the suspension order dated 15.4.2019 was bad in law and is hereby rejected.

23. In the case of *Ashok Kumar Tiwari (supra)*, this Court while relying on the judgment of this Court in the *Puran Singh (supra)* has held that full-fledged inquiry is mandatory for cancelling the fair price shop license. Relevant paragraph of the said judgment is extracted herein-below:-

“Learned counsel for the petitioner has placed reliance upon paragraph 35 of the judgment of the Full Bench of this Court in the case of Puran Singh vs. State of U.P. and others (2010 (3) ADJ 659 (FB)) which reads as under:

“35. Para 4 and 5 of the Government Order clearly permits full-fledged 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.”

In view of the decision in Puran Singh (supra) a full-fledged enquiry is necessary before cancelling the agreement and in my view it would require service of the charges, along with material in support of each charge, upon the delinquent. The information about the place and date of enquiry to the delinquent. Recording of statements of persons on whose complaint enquiry has started or in a case of sue motu enquiry, recording of statements of the required persons as per wisdom of the enquiry officer in the presence of the delinquent. Thereafter, each charge has to be discussed and proved separately.”

24. In the case of *Sanjay Kumar (supra)*, a coordinate Bench of this Court by placing reliance on the Government Order dated 29.7.2004 has held that it is obligatory upon the authority to hold a full-fledged inquiry against the fair price shop dealer, after serving of the charge sheet with regard to the date and place where the hearing should take place and to give an opportunity of hearing. It was further held that this would be in addition to the show cause notice issued for the purposes of suspension of the license of the fair price shop. It was also held that in view of the Full Bench decision of this Court in the case of *Puran Singh (supra)*, if such procedure is not followed, then it would be held that full-fledged inquiry was not conducted as provided in paragraphs 4 and 5 of the Government Order dated 29.7.2004 and the order would be bad in law.

25. It would not be out of place to mention here that the judgment in the case of *Ashok Kumar Tiwari (supra)* and *Sanjay Kumar (supra)* were rendered taking into consideration the Government Orders dated

29.7.2004 and 16.10.2014 and the latest Control Order, 2016 was not considered.

26. In the case of *Smt. Meena Devi (supra)*, a coordinate Bench of this Court specifically held after considering the Full Bench decision of this Court in the case of *Puran Singh (supra)* that the licensee of a fair price shop 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 license/agreement is bound by the conditions mentioned therein including all such conditions which the Government chooses to impose during the currency of such license. A need for fairness in procedure adopted for suspension and cancellation of such license/agreement would not mean that these licenses 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. In the said judgment, judgments passed in the case of *Ashok Kumari Tiwari (supra)* and *Sanjay Kumar (supra)* have been distinguished in paragraphs 19 to 21, which read as under:-

“19. It is this observation of the Hon'ble Full Bench regarding the “fullfledged 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 carryout 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 aforesaid 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 cooperate 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 affair price shop license and appointing agents for distribution of essential commodities and had emphasized that a license is given for the benefit of ordinary citizens, the beneficiaries of the Public Distribution System.”

27. In the aforesaid case, this Court has held that observation in paragraph 35 of the judgment in the case of *Puran Singh* (supra) that a full-fledged inquiry in the matter of misconduct of a licensee in distribution of scheduled commodities should be held, does not mean that full-fledged opportunity to the licensee to cross-examine the witnesses fixing, date, time and place of the inquiry etc. as provided in respect of disciplinary inquiry against Government servants.

28. Learned Single Judge in paragraph 50 of the aforesaid judgment had held that judgments rendered by a coordinate Bench of this Court in the case of *Gyan Singh Vs. State of U.P. and others*, decided on 12.9.2012, *Ashok Kumar Pandey Vs. State of U.P. and others*, decided on 13.12.2012 and *Abu Baker Vs. State of U.P. and others*, 2010 (6) ADJ 339 were clearly *per incuriam* as no such provision exists in the Government Order dated 29.7.2004 for fixing date, place and time for inquiry/oral hearing and giving opportunity to the licensee to cross-examine the witnesses. Paragraphs 50 and 51 of the said judgment are extracted herein-below:-

*“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."

29. In the case of *Najakat Ali* (supra), a coordinate Bench of this Court considered and decided the following two questions as mentioned in paragraph 23, which read as under :-

"(I) Whether after issuance of Control Order 2016, having been issued in the light of Act of 2013 and Act of 2016, the earlier Government Order of 2004 stood superseded and repealed?"

(ii) Whether any benefit can be extended to the dealers/licensee of the Government Orders dated

29.7.2004 and 16.10.2014, when their license has been cancelled under the new scheme of 2016, which provides for complete mechanism in itself?”

30. Central Government has enacted National Food Security Act, 2013 (for short ‘the Act of 2013’) keeping in mind Article 47 of the Constitution of India, which mandates the States with duty to raise the level of nutrition and standard of living and to improve public health. Act of 2013 has been implemented with the object of providing food and nutritional security to the citizens by ensuring access to adequate quantity of food at affordable price in order to ensure life with dignity. The Government has implemented Targeted Public Distribution System under which the food-grains are provided to the “eligible household” at subsidized rates which includes people Below Poverty Line, including Antyodaya Anna Yojana and Above Poverty Line households. The State Government to implement the provisions of the Act of 2013, has framed Uttar Pradesh State Food Security Rules, 2015. The Central Government thereafter has enacted The Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

31. After the enactment of Act of 2013 and the Rules by the State Government in 2015, the State Government has issued Control Order, 2016 superseding the earlier Government Order dated 20.12.2004 as well as other Government Orders.

32. Sub-clause (7) of Clause 8 of the Control Order, 2016 provides mechanism for inquiry in case of irregularity of distribution by a fair price shop owner including the provision of suspension etc., which reads as under :-

“8. Operation of fair price shops-- (1) The fair price shop owner shall disburse food grains to the ration card holders as per his entitlement under the Targeted Public Distribution System.

(2) A ration card holder may draw his full entitlement of food grains in more than one installment.

(3) The fair price shop owner shall not retain the ration cards after the supply of the food grains.

(4) The license issued by the State Government to the fair price shop owner shall lay down the duties and responsibilities of the fair price shop owner, which shall include, inter alia, –

(i) Sale of food grains as per the entitlement of ration cardholders under the Targeted Public Distribution System at the prescribed retail issue price;

(ii) display of information on a notice board at a prominent place in the shop on daily basis regarding (a) entitlement of food grains, (b) scale of issue, (c) retail issue prices, (d) timings of opening and closing of the fair price shop including lunch break, if any, (e) stock of food grains received during the month, (f) opening and closing stock of food grains, (g) the mechanism including authority for redressal of grievances with respect to quality and quantity of food grains under the Targeted Public Distribution System and (h) toll-free helpline number;

(iii) maintenance of the records of ration card holders, e.g. stock register, issue or sale register shall be in the form prescribed by the State Government including in the electronic format in a progressive manner;

(iv) display of samples of food grains being supplied through the fair price shop;

(v) production of books and records relating to the allotment and distribution of food grains to the inspecting agency and furnishing of such information as may be called for by the designated authority;

(vi) the shop keeper shall in the end of each month submit a detailed description of receipt of food grain and other essential commodities, actual distribution during the month and remaining balance of stock to designated officer who will send a compilation of all such certificates under his area of appointment to the competent authority;

(vii) opening and closing of the fair price shop as per the prescribed timings displayed on the notice board.

(5) Any ration card holder desirous of obtaining extracts from the records of a fair price shop owner may make a written request to the owner along with the deposit of the fees specified by order by the State Government. The fair price shop owner shall provide such extracts of records to

the ration card holder within fourteen days from the date of receipt of a request and the said fee:

Provided that the State Government may prescribe the period for which the records are to be kept for providing the ration cardholder by the fair price shop owner.

(6) The State Government shall prescribe the procedure to be followed by the designated authority in cases where the fair prices hop owner does not provide the records in the manner referred in sub-clause (5) to the ration card holder in the stipulated period and the designated authority in each case shall ensure that the records are provided to the ration card holder without any undue delay.

(7) The Competent Authority shall take prompt action in respect of violation of any condition of license including any irregularity committed by the fair price shop owner, which may include suspension or cancellation of the fair price shop owner's license.

An inquiry regarding irregularities in distribution by a fair price shop owner shall be conducted by the Designated officer or by the District Magistrate. After inquiry, if the license of fair price shop owner is suspended along with a show cause notice by the competent authority, then the reply/explanation of show cause notice by fair price shop owners will be examined by an officer atleast one rank above the inquiry officer. If the preliminary enquiry had been conducted by a district level officer, then the explanation by fair price shop owners shall be examined by another district level officer.

(8) The maximum period within which proceedings relating to enquiry into irregularities committed by the fair price shop owner shall be concluded, resulting in any action as under sub-clause (7) shall be two months.

(9) In case of suspension or cancellation of the agreement, the Competent Authority shall make alternative arrangements for ensuring uninterrupted supply of food grains to the eligible households:

Provided that in case of cancellation of the agreement of the fair price shop owner, new agreement shall be issued within a month of cancellation.

(10) The State Government shall furnish complete information on action taken against a fair price shop

owner under this clause annually to the Central Government in the format at Annexure-V."

33. A coordinate Bench of this Court in the case of *Najakat Ali* (supra) has held that after issuance of the Control Order, 2016, the earlier Government Orders of 2004, 2014 and 2015 stood repealed and would not occupy the field of laying down the procedure with respect to suspension and cancellation of the fair price shop. The entire procedure has been prescribed in the Control Order, 2016. Now, the inquiry is to be conducted by the designated officer regarding irregularities/malpractices of the dealer as per the provisions of sub-clause (7) of Clause 8 of the Control Order, 2016, which provides that if the license of the fair price shop is suspended, he has to be issued show cause notice and explanation/reply of the show cause notice is to be examined by an officer one rank above the inquiry officer. It has been further held that *Puran Singh's* (supra) judgment was delivered considering the Government Order dated 29.7.2004, which since has been repealed. In paragraphs 94 to 96, a coordinate Bench of this Court in the aforesaid case held as under :-

"94. As the existence of agent/dealer arise from the agreement executed between them and the State, any failure on their part or term of license being violated, the matter has to be dealt with by the authority within the scope and ambit of the Act/Control Order under which the same has been executed. The argument advanced that the petitioners have vested right is not correct as the license granted to a dealer/agent does not fall within the ambit of fundamental right to carry on their business, as provided under Article 19(1)(g) of the Constitution.

95. While dealing with the matter of suspension or cancellation of a license, the authority have to confine themselves to the violation of the condition of license and sub-clause (7) of Clause 8 of Control Order, 2016 protects the interest of agent/dealer by affording an opportunity once an inquiry is conducted and any material coming on record against the term of condition of license, the same being suspended and a show cause notice is to be issued seeking reply/explanation.

96. The principle of audi alteram partem is complied once the notice is issued and an opportunity is provided to a

dealer/agent to submit his reply and the same being considered by the authorities. The claim that a full fledged inquiry be conducted providing opportunity of cross-examination of witness, copy of documents, complaint and consideration of subsequent affidavits, if filed in favour of the dealer, by the authorities cannot be accepted, as it is not a departmental or regular inquiry under Article 311 of the Constitution of India and is only a inquiry of summary nature where in case of violation of terms of conditions of license, action is initiated and opportunity, as provided under the Control Order, 2016, is given before the license is cancelled.”

34. It has been further held that under the Control Order, 2016, specific provision having been made for consideration of reply/explanation pursuant to the suspension, the requirement of *audi alteram partem* having been afforded to a dealer appointed under an agreement, can not claim that a regular inquiry to be conducted giving opportunity for examination of documents, cross-examination of witnesses, providing copy of the inquiry report and taking of affidavits, as provided under the departmental inquiry.

35. Thus, this Court does not find substance in the submission of learned counsel for the petitioner that petitioner was not afforded full-fledged inquiry and opportunity of cross-examination etc. was not provided to him and, therefore, the order passed by the licensing authority and the appellate authority are bad in law. The authorities have to act in accordance with the provisions contained in sub-clause (7) of Clause 8 of the Control Order, 2016. The dealer does not have a vested right to carry on the license of fair price shop. The licensee is an agent of the Government and the distribution of the essential commodities from the fair price shop should be strictly in accordance with the terms and conditions of the license. Any violation of conditions, would result in proceedings for suspension and revocation of such license.

36. Learned counsel for the petitioner has not been able to point out that the procedure prescribed under sub-clause (7) of Clause 8 of the

Control Order, 2016 has not been followed or complied with in case of the petitioner.

37. Giving a license for a fair price shop, is a privilege conferred by the State on a person. It is a largesse, which is given of discretion vested in the authority to a person. There are serious allegations against the petitioner, which have been proved during the course of inquiry and, the petitioner was unable to produce any document or evidence in support of his defence in respect of the allegations levelled against him.

38. Two competent authorities under the relevant statute, have not found the case of the petitioner *bona fide* in respect of his defence regarding the serious allegations and, they have concurrently held that petitioner can not be allowed to run the fair price shop of the Village Panchayat and it has been cancelled. Petitioner does not have any fundamental right for fair price shop license. Petitioner was required to run the fair price shop in accordance with the terms and conditions of the license and the provisions of the Control Order, 2016 issued in this respect. Two competent authorities have found that petitioner was wanting in running the fair price shop and he was not carrying out the terms and conditions of the license properly, therefore, the petitioner's license has been cancelled. This Court while exercising the powers under Article 226 of the Constitution of India, can not re-appreciate the evidence, which has been considered by the two competent authorities and, therefore, this Court does not find any ground for interfering with the impugned orders.

39. Thus, writ petition lacks merit and substance, which is hereby *dismissed*.

(Dinesh Kumar Singh, J.)

Order Date: 16th February, 2022
Rao/-