

**Court No. - 10**

**Case :-** WRIT - C No. - 4169 of 2018

**Petitioner :-** Devi Shankar Tiwari

**Respondent :-** State Of U.P. And 3 Ors

**Counsel for Petitioner :-** Surendra Kumar Chaubey, Nikhil Kumar

**Counsel for Respondent :-** C.S.C., R. B. Yadav, Ram Babu Yadav

**Hon'ble Siddhartha Varma, J.**

Heard learned counsel for the parties.

On 05.01.2017 upon an information being provided the Tehsildar, the Supply Inspector and the Lekhpal reached the shop of the petitioner to inspect as to whether the petitioner had in his stock the foodgrain which he had lifted on 04.01.2017. Upon inspection they found that there were 107 Qtls. of Wheat, 55 Qtls. of Rice and 6.5 Qtls. of Sugar in the shop at the time when the inspection was done. It was also found from the stock register that the petitioner infact had lifted Antyodya wheat to the tune of 17.60 Qtls., Antyodya rice to the tune of 13.20 Qtls.; patra grahasti wheat 94.40 Qtls.; patra grahasti rice to the extent of 13.20 Qtls. and sugar to the tune of 8.90 Qtls. and, therefore, short fall was in the following manner; rice 21 Qtls., wheat 4.80 Qtls. and sugar 2.40 Qtls. It was, therefore, concluded that the petitioner had indulged in black marketing. A First Information Report was also got lodged under Section 3/7 of the Essential Commodities Act, 1955. The petitioner's fair price shop was also suspended and a show cause notice was issued to the petitioner to explain the short fall. He was also required to submit the stock and sale register of the past three months. The petitioner upon receiving the show cause notice on 7.1.2017

wrote to the Sub-Divisional Officer, Tehsil and District Bhadohi that infact the inspection was done while he was not present and if a proper inspection would have been done in his presence then it would have become clear that the foodgrain and sugar which was found short was infact stored in a neighboring room. This application that the petitioner had filed on 7.1.2017 was also accompanied by an affidavit. On 15.01.2017, the petitioner once again made a request for inspecting the neighboring room. The request was reiterated on 24.06.2017. Thereafter, the Sub-Divisional Officer upon taking permission from the District Magistrate passed an order 21.07.2017 by which the petitioners' fair price shop license was cancelled.

Aggrieved by the order dated 21.7.2017, the petitioner filed an Appeal on 7.9.2017. When the Appeal was dismissed on 21.12.2017, the instant writ petition was filed.

Contentions of the learned counsel for the petitioner were to the following effect:-

i. When the inspection was made on 5.1.2017, the petitioner was not present and when, however, the show cause notice was served upon him, then on the very next day i.e. 7.01.2017, he had requested for one more inspection. On 15.1.2017 and on 24.06.2017, he submits that when the inspection was not done he repeated his request. He submitted that had an inspection been done it would have become crystal clear that infact the foodgrain, which in the show cause notice was alleged was sold in the open market, was infact stored in the petitioner's neighboring room. The stock in the shop and the stock in the stock register tallied with each other.

ii. Before the order dated 21.07.2017, was passed, the

petitioner was never afforded any opportunity to place his evidence on record. Learned counsel for the petitioner submits that had an opportunity to place his evidence on record been provided the petitioner would have brought evidence on record which would have abundantly made things clear that had the stored items in the adjacent rooms been taken into account then the stored foodgrain would have tallied with the stock in the stock register.

iii. Learned counsel for the petitioner submitted that the enquiry, therefore, was vitiated as per the Government Orders dated 29.07.2004 and 16.10.2014.

iv. Learned counsel for the petitioner further submitted that the show cause notice did not elaborate as to what would be the punishment given to the petitioner in case the enquiry went against the petitioner.

v. The presence of the petitioner on 05.01.2017 was not required at the shop since the petitioner's date of distribution was 9.1.2017. This date was fixed by the District Magistrate, Bhadohi. Learned counsel for the petitioner further submitted that the allegation made in the Fard Baramadgi and Supurdginama and also in the communication dated 05.01.2017, which was sent to the District Magistrate for a permission, a wrong averment was made that the petitioner was present at the time of the inspection. Learned counsel for the petitioner submitted that had an enquiry taken place then he would have proved to the hilt that the petitioner infact was not present on 5.1.2017 and infact the shop was got opened by a key, which was available with the wife of the petitioner.

vi. The factum of presenting the applications on 6.1.2017, 15.1.2017 and 24.06.2017 was stated in paragraphs 9, 10 and 11 of the writ petition. These paragraphs have been replied to in paragraph 7 of the Counter Affidavit. Since the learned counsel for the petitioner read out the contents of the paragraph 7 of the Counter Affidavit, the same is being reproduced here as under :-

*"It is submitted that the petitioner in order to save his skin submitted an application on 7.1.2017 and an affidavit on 15.01.2017 wherein the petitioner planted an idea that during the inspection, he went to the house of his maternal uncle and the short quantity of foograins / scheduled commodities was stored at another place which was not got inspected hence he was requested that the same may also be inspected."*

Learned counsel for the petitioner submitted that in the Counter Affidavit there was no denial of the fact that the petitioner had in fact made a request for inspection of the neighboring room.

Learned Standing Counsel in reply, however, pointing out to the paragraph paragraph 7 along with the annexures at pages 14 and 15 of the Counter Affidavit submitted that the petitioner in fact was present at the time of inspection on 5.1.2017 and on that date he did not make any request for an inspection of the adjacent room.

Having heard the learned counsel for the petitioner and learned Standing Counsel, the Court is of the view that when after the petitioner had submitted his reply on 7.1.2017 after the show cause notice was served upon him on 6.1.2017, no enquiry had taken place. Had an enquiry taken place it would have been clarified as to whether the petitioner was present on 5.1.2017 at the shop or not. Further the Court is of the view that when

the petitioner had made a request on 7.1.2017, 15.01.2017 and 24.06.2017 that the authorities may make a fresh inspection of the adjacent room then the fresh inspection ought to have been made. Under what circumstances a fresh inspection was not made is absolutely not clear from the record. Infact the averments in paragraph 7 of the Counter Affidavit are absolutely vague. The filing of the applications was not denied. However, it has been stated that the applications were moved to save the petitioner.

Under such circumstances, when there was no inspection and also when there was no proper enquiry as per the Government Orders dated 29.07.2004 and 14.10.2004, the Court is of the view that the order impugned dated 21.07.2017 passed by the Sub-Divisional Officer, Bhadohi and the order dated 21.12.2017 passed by the Commissioner, Vindhyachal Division, Mirzapur cannot be sustained in the eyes of law and are, therefore, quashed.

Accordingly, the writ petition is **allowed**.

**Order Date :- 22.10.2021**

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