

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11549/2008

(From the judgement and order dated 05/10/2007 in CMWP No. 60414/2006 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

KAUSHAL KUMAR Petitioner(s)

VERSUS

STATE OF U.P.& ORS. Respondent(s)

(With prayer for interim relief)

Date: 27/11/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE T.S. THAKUR

For Petitioner(s) Mr. Yatender Sharma, Adv.
Mr. Prashant Kumar, Adv.

For Respondent(s) Mr. S.R. Singh, Sr. Adv.
Mr. Rajiv Dubey, Adv.
Mr. Kamendra Mishra, Adv.
Ms. Savitri Pandey, Adv.
Mr. Anil Kumar Jha, Adv.
Mr. Abhishth Kumar ,Adv

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.
(Neetu Khajuria) (Mithlesh Gupta)
Sr.P.A. Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2009
(Arising out of SLP (C) NO. 11549 OF 2008)

Kaushal Kumar ...Appellant (s)

Versus

State of U.P. and others ...Respondent(s)

O R D E R

Leave granted.

This appeal is directed against order dated 5.10.2007 passed by the Division Bench of the Allahabad High Court, whereby the writ petition filed by the appellant for quashing the orders passed by Sub-Divisional Magistrate, Gautam Budh Nagar (respondent No.4 herein) canceling the licence of fair price shop at Village Devta, Gautam Budh Nagar which was allotted to him in 1995 and grant thereof to respondent No.5 was dismissed mainly on the ground that the appellant had not challenged order dated 26.7.2006.

We have heard learned counsel for the parties and carefully scrutinized the records.

A perusal of the record shows that by an order dated 10.1.2006, respondent No.4 suspended the appellant's licence. After about two months, the said respondent cancelled the licence. Appeal preferred by the appellant against that order was allowed by Joint Commissioner Food, Meerut (Commissionerate) Meerut, but the appellate order was not implemented by respondent No.4. This compelled the appellant to file Writ Petition No. 27732/2006 which was disposed of by a Division Bench of the High Court with a direction to respondent No.4 to decide representation dated 19.4.2006 made by the appellant for implementation of the order passed by Joint Commissioner Food, Meerut.

In the purported compliance of the direction given by the High Court, respondent No.4 passed order dated 26.7.2006 whereby he again cancelled the licence of the appellant and rejected representations dated 19.4.2006, 22.4.2006, 25.4.2006, 11.5.2006, 20.5.2006, 8.6.2006 and 21.6.2006 made by him. Soon thereafter, respondent No.4 issued order dated 2.9.2006 whereby he appointed respondent No.5 as fair price shop dealer at Village Devta, Gautam Budh Nagar.

The appellant challenged the appointment of respondent No.5 in Writ Petition No. 60414/2006. During the course of

hearing of that petition, counsel representing respondent No.5 produced photostat copy of order dated 26.7.2006 passed by respondent No.4 cancelling the licence of the appellant. Thereupon, the appellant's counsel made a request and he was allowed three days' time to file supplementary affidavit along with copy of representation dated 19.4.2006 and order dated 26.7.2006. As a sequel to this, the appellant filed supplementary affidavit wherein he asserted that notice referred to in order dated 26.7.2006 was not served upon him and the order was also not communicated to him. Simultaneously, he made a prayer for quashing of order dated 26.7.2006.

After taking cognizance of the supplementary affidavit, the High Court passed order dated 10.11.2006 whereby the writ petition of the appellant was admitted and operation of orders dated 26.7.2006 and 2.9.2006 was stayed with a direction to restore the fair price shop to the appellant in terms of order dated 17.4.2006 passed by the appellate authority. However, the writ petition was finally dismissed by the impugned order mainly on the ground that order dated 26.7.2006 has not been challenged. In our opinion, Division Bench was not justified in dismissing the writ petition on the premise that order dated 26.7.2006 passed by respondent No.4 cancelling the licence of the appellant was not challenged and no prayer had been made for quashing the same. The Division Bench ought to have taken cognizance of the supplementary affidavit filed by the appellant in furtherance of order dated 6.11.2006 passed by the Court and the fact that in the supplementary affidavit, he had not only averred that the said order had not been communicated to him, but also made a prayer for quashing of the same. The failure of the Division Bench to notice the supplementary affidavit filed by the appellant has resulted in manifest injustice to him and on this ground alone the order under challenge is liable to be set aside.

In the result, the appeal is allowed, the impugned order is set aside and the matter is remitted to the High Court for

fresh disposal of Writ Petition No. 60414/2006.

The appellant

may, if so advised, amend the writ petition and incorporate specific prayer for quashing order dated 26.7.2006 in addition to order dated 2.9.2006.

.....J.
(G.S. Singhvi)

.....J.
(T.S. Thakur)

New Delhi
November 27, 2009