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(vii) The bidder or his allottee shall be liable to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed, charge or imposed on that plot or on the building construction."

113. It appears from the record that a sale deed dated 22.01.2007 was executed between the GDA and the petitioner through their authorised representatives in respect of the plot in question. Clause 8 of the terms and conditions of the sale deed is as follows:-

"8. यह कि क्रेता समय समय पर गाजियाबाद विकास प्राधिकरण बोर्ड एवं शासनादेश द्वारा जारी किये गये नियमों विनियमों एवं प्रविधानों का पालन करता रहेगा।"

114. Thereafter, a supplementary sale deed was executed between the GDA and the petitioner on 02.07.2010 for an additional area of land admeasuring 5099.97 sq. mts. for which the entire amount was deposited by the petitioner. Clause 8 of the supplementary sale deed is as follows:-

"8. यह कि क्रेता समय समय पर गाजियाबाद विकास प्राधिकरण बोर्ड एवं शासनादेश द्वारा जारी किये गये नियमों विनियमों एवं प्रविधानों का पालन करता रहेगा।"

115. The demand for imposition of infrastructure surcharge by the GDA has already been upheld in the leading writ petition above and as such the reasons are not reiterated here for the sake of brevity. The relevant clauses of the sale deeds bind

the petitioner to the various Government Orders, bye-laws etc. of the GDA as in force. The petitioner cannot claim any estoppel against the GDA with regard to the demand for infrastructure surcharge as the same is being demanded pursuant to the First Government Order.

116. In view of the discussion hereinabove, the demand for infrastructure surcharge from the petitioner, by means of the impugned orders, is justified.

117. Accordingly, the writ petition is dismissed.

(2022)02ILR A795

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 16.12.2021

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Writ C No. 5031 of 2014

Mahipal

...Petitioner

Versus

State Of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Sri Manu Saxena

Counsel for the Respondents:

C.S.C., Smt. Archana Tyagi, Sri Pankaj Tyagi

A. Essential Commodity – Fair Price Shop licence – Cancellation – Complaint by the persons, who were not the card-holder – Locus standi of complainant – No finding recorded in the impugned order – Effect – Held, once the complainants are not found the card holders of the petitioner's shop, they cannot be treated as aggrieved person – In the light of the settled law, this Court is of the firm view that only

aggrieved person can file complaint and in the present case complainants are not the aggrieved person – High Court set aside the impugned order. (Para 17)

Writ petition allowed. (E-1)

List of Cases cited:

1. Mahendra Singh Vs St. of U.P. through Principal Secretary, Department of F & C Supply, U.P. at Lucknow & ors.; 2017 (120) ALR 866
2. Smt. Reeta Singh Vs State of U.P. through Secretary, Food and Civil Supply, Lucknow & ors.; 2020 (149) RD 748
3. Naval Kishore & ors. Vs St. of U.P. & ors.; 2017 (122) ALR 121
4. Writ-C No. 45899 of 2017; Zakir Vs St. of U.P. & ors. decided on 17.11.2021
5. M Venkataramana Hebbar (Dead) By LRS. Vs M. Rajagopal Hebbar & ors.; (2007) 6 SCC 401
6. Tribhuwan Nath Srivastava Vs Chairman and Managing Director I.O. Bank & ors.; 2003 (4) AWC 3055

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. This Court vide order dated 04.12.2021 directed the learned counsel for the petitioner to inform Sri Pankaj Tyagi and Ms. Archana Tyagi, learned counsel for the caveator in writing that on the next date of listing, case shall be heard in first call irrespective of presence of counsel for the caveator.

3. Pursuant to the aforesaid order, Sri Manu Saxena, learned counsel for the petitioner has given notice to Sri Pankaj Tyagi and Ms. Archana Tyagi, who received the same on 06.12.2021, but they are not present, therefore, case be decided on merits. The notice dated 06.12.2021 is taken on record.

4. Present writ petition has been filed for quashing the order dated 10.10.2011 passed by respondent no. 3 by which licence of fair price shop of the petitioner was cancelled and order dated 12.12.2013 passed by respondent no. 2 by which appeal filed by petitioner has been dismissed affirming the order of the respondent no. 3.

5. Learned counsel for the petitioner submitted that petitioner was running fair price shop. His licence of fair price shop was suspended by respondent no. 3 vide order dated 17.08.2011 and he was directed to submit reply. Petitioner filed explanation/objection in which he stated that complainants Ishwar Singh, Madan, Ali Hasan, Devi Singh, Ramdhan, Naresh, Sompal, Prem and Rajveer are not BPL Card holders of any shop and Ashok, Megha, Chandra Bhan, Bija, Palla and Raju are not card holders of the petitioner's shop. His reply was recorded and names and details of alleged complainants are mentioned by respondent no. 3 in the impugned order dated 10.10.2011, but while cancelling the licence of fair price shop of the petitioner, no finding was recorded and licence of fair price shop was cancelled only on the ground that petitioner has annexed the affidavits of certain card holders in his favour, which were denied by them. Against the said order, petitioner preferred Appeal No. 2 of 2013-14 before the respondent no. 2-Commissioner, Saharanpur Division, Saharanpur, which was dismissed vide order dated 12.12.2013. Like respondent no. 3, the respondent no. 2 has also recorded same finding and referred the names and details of the complainants, who are not having locus standi. He has also not returned any finding and affirmed the order of respondent no. 3 by which licence of fair price shop of the petitioner

was cancelled. In paragraphs 5, 6, 7 and 17 of the writ petition, petitioner has taken specific ground that some of the alleged complainants are neither card holders of petitioner's shop or any other shop. He further stated that no complaint has been filed against the petitioner by any card holders. He next submitted that in the counter affidavit, there are vague denial of the facts mentioned in paragraphs 5, 6, 7 and 17 of the writ petition which amounts to admission of facts. He lastly submitted that petitioner has taken specific ground that complainants are having no locus standi and, therefore, any complaint filed by them cannot be maintained on their behalf. Therefore, the impugned orders dated 10.10.2011 passed by respondent no. 3 and 12.12.2013 passed by respondent no. 2 are bad in law and liable to be quashed.

6. In support of his contention, learned counsel for the petitioner has placed reliance upon several judgments of the Apex Court as well as this Court in the cases of *Mahendra Singh Vs. State of U.P. through Principal Secretary, Department of F & C Supply, U.P. at Lucknow and others, 2017 (120) ALR 866, Smt. Reeta Singh Vs. State of U.P. through Secretary, Food and Civil Supply, Lucknow and others, 2020 (149) RD 748, Naval Kishore and others Vs. State of U.P. and others, 2017 (122) ALR 121, Zakir Vs. State of U.P. and 4 others, passed in Writ-C No. 45899 of 2017, decided on 17.11.2021, M Venkataramana Hebbar (Dead) By LRS. Vs. M. Rajagopal Hebbar and others, (2007) 6 Supreme Court Cases 401, Tribhuwan Nath Srivastava Vs. Chairman and Managing Director I.O. Bank and others, 2003 (4) AWC 3055.*

7. Learned Standing Counsel vehemently opposed the submissions

advanced by learned counsel for the petitioner and submitted that after adopting due procedure of law and considering the reply of the petitioner as well as statements given by the persons, who have filed their affidavits, impugned orders have rightly been passed, but could not demonstrate from the orders or counter affidavit about denial of contentions raised by the petitioner in paragraphs 5, 6, 7 and 17 of the writ petition nor any finding returned by respondent nos. 2 and 3 upon the grounds taken by petitioner about locus standi of the complainants.

8. I have considered the submissions raised by learned counsel for the parties and perused the record. The sole contention of the petitioner is that the complainants, who are not the aggrieved as they are not card holders, therefore, having no locus standi to file complaint. Petitioner has taken specific ground before the respondent nos. 2 and 3 and also before this Court, but the respondent nos. 2 and 3 have not returned any finding even not a single word and straightway cancelled the licence of fair price shop of the petitioner only on the ground of certain alleged forged affidavits. Once the petitioner has taken ground that the complainants are not the persons aggrieved, it is required on the part of the authorities concerned to first consider the objection raised by petitioner and then pass reasoned order, which is absolutely lacking in the present case. He has taken this specific ground in different paragraphs of the writ petition, but in the counter affidavit, there are very vague denial of the substantial facts, which amounts to admission.

9. I have also considered the judgments relied upon by learned counsel for the petitioner.

10. In the case of **Mahendra Singh (supra)**, this Court has taken clear cut view that objections and grounds taken before the authorities must be dealt with in impugned order. Paragraph 8 of the said judgment is quoted below:-

"8. In my opinion non consideration of the petitioner's reply in respect of the charges levelled against him amounts to denial of effective opportunity of hearing which further amounts to breach of principle of natural justice. Therefore, the writ petition is being entrained in view of the law laid down by the Apex Court in Whirpool Corporation v. Registrar of Trade Marks."

11. This Court in the matter of **Smt. Reeta Singh (supra)** has also taken the same view. Paragraph 10, 11 and 13 of the said judgment are quoted below:-

"10. It is settled proposition of law that when an explanation is called and explanation is submitted raising certain pleas, the same is liable to be considered by the concerned authority before passing the order and recording a finding is must which may indicate the application of mind of the concerned authority and as to how he had come to conclusion but no such finding or reasons have been recorded by the opposite party no.3.

11. On being challenged in appeal, the appellate authority has also not recorded any finding in regard to the pleas raised by the petitioner and without recording any finding the appellate authority observed that the case law relied by the learned counsel for the petitioner is not applicable. The appellate authority also went a step ahead in recording a finding that the petitioner had not submitted the

documents required by the concerned authority while no such finding was recorded by the opposite party no.3. The appellate authority could have recorded such finding but only after verifying from the records and in such a situation the appellate authority should have recorded a finding as to what documents were submitted by the petitioner.

13. In view of above, this Court is of the considered opinion that the impugned orders have been passed without considering the objections raised by the petitioner as well as the grounds raised in the appeal, therefore the same are non reasoned and non speaking and without application of mind hence not sustainable in the eyes of law and are liable to be quashed with a direction to the opposite party no.3 to consider and pass a fresh order in accordance with law."

12. This Court in the case of **Naval Kishore (supra)** is of the firm view that only aggrieved person can file complaint. Paragraph 4 and 5 of the said judgment are quoted below:-

"4. These submissions were denied by counsel for respondent no. 5, who submitted that petitioner has no locus standie to prefer this writ petition. He contended that the petitioner was only the complainant on whose complaint inquiry was initiated against respondent no. 5. After initiation of said inquiry, petitioner has no right to interfere either during inquiry or in appeal. He relied upon judgment passed by Divison Bench of this Court : [2008(4) ADJ 559 (DB), Amin Khan v. State of UP and others and [2016(6) ADJ 122], Sriram Prasad and another v. State of UP and others.

5. The meaning of the expression person aggrieved will have to be ascertained with reference to the purpose and the provisions of the statute. One of the meanings is that person will be held to be aggrieved by a decision if that decision is materially adverse to him. The restricted meaning of the expression requires denial or deprivation of legal rights. The expression person aggrieved means a person who has suffered a legal grievance i.e a person against whom a decision has been pronounced which has lawfully deprived him of something or wrongfully refused him something. The petitioner is not an aggrieved person by merely filing a complaint. The order of revocation of cancellation of fair price shop license do not affect him in any manner."

13. In the case of **Zakir (supra)**, this Court is of the same view that only aggrieved person can file complaint. Relevant paragraph of the said judgment is quoted below:-

"In all the three cases referred herein above, Court has taken constant view that only aggrieved person, who has participated in the process of allotment of fair price shop can file appeal. Any appeal filed by stranger/ outsider is not maintainable. In present case too, undisputedly respondent no. 5 was never participant in the process of allotment of fair price shop, therefore, this Court is also of the same view that he is not the person aggrieved and cannot file appeal against the order of Sub Divisional Magistrate. It is required on the part of respondent no. 2 to first consider about the maintainability of appeal and return findings upon the ground taken by the petitioner in reply of appeal. In case, it was found that appellant is not the aggrieved person, appeal has to be

rejected on the this ground alone, but here while partly allowing the appeal, respondent no. 2 has committed error of law as undisputedly appellant was not the "person aggrieved". Therefore, impugned order dated 22.08.2017 passed by respondent no. 2 is bad and liable to be set aside."

14. The Apex Court in the matter of **M Venkataramana Hebbar (supra)** is of the considered view that there must be specific and factual denial in the counter affidavit and vague and evasive denial amounts to admission by respondent. Paragraphs 12 and 13 of the said judgment is quoted below:-

"12. The contract between the parties, moreover was a contingent contract. It was to have its effect only on payment of the said sum of Rs. 15,000/- by the plaintiff and other respondents by the defendant Nos. 1 to 3. It has been noticed hereinbefore by us that as of fact, it was found that no such payment had been made. Even there had been no denial of the assertions made by the appellant in their written statement in that behalf. The said averments would, therefore, be deemed to be admitted. Order VIII Rule 3 and Order VIII Rule 5 of the Civil Procedure Code read thus:-

"3. Denial to be specific. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

5. Specific denial. [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or

stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against person under disability.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

[(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub- rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]"

13. Thus, if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved."

*15. In the matter of **Tribhuwan Nath Srivastava** (supra), this Court has recorded its view about vague and evasive denial and held that specific averments and denial are required. Paragraphs 29 and 30 of the said judgment are quoted below:-*

"29. It has been stated in para 22 of the writ petition that the petitioner never served in specialized areas like Foreign Exchange or in Overseas Credit and had never been given training in 'these fields, and hence the averments in the impugned order are baseless. The reply to para 22 of the writ petition is contained in para 13 of the counter-affidavit which is a very vague averment. No specific denial has been made to the petitioner's averments that he had not been given training in Foreign Exchange or in Overseas Credit and he had no experience in these fields.

30. Under Order VIII, Rule 5, C.P.C., if a specific averment in a petition has not been specifically denied in reply, it will be deemed to have been admitted. Although the C.P.C. does not in terms apply to writ proceedings, in our opinion, the general principles of the C.P.C. applied. Hence, Order VIII, Rule 5, C.P.C. is applicable to writ proceedings also. The petitioner's averments in paragraphs 15, 20, 43, 45, 46, 47, etc. of the writ petition have mentioned the names and details of a large number of officers who were Ineligible for grant of V.R.S. but they have been granted the same."

16. In the present case too, petitioner has taken specific ground before the respondent nos. 2 and 3 that complainants are not the card holders either in Gram Sabha or shop of the petitioner, but without returning any finding upon that, impugned orders have been passed. This Court is also of the firm view that once the objection has been taken by the petitioner, respondent nos. 2 and 3 ought to return its finding while not accepting the objection, but in the present case, same is absolutely lacking as no finding has been recorded. Therefore, impugned orders dated 10.10.2011 and

12.12.2013 are bad in law and liable to be set aside.

17. Secondly once the complainants are not found the card holders of the petitioner's shop, they cannot be treated as aggrieved person. In light of the settled law, this Court is of the firm view that only aggrieved person can file complaint and in the present case complainants are not the aggrieved person. Therefore, on this ground too, impugned orders dated 10.10.2011 and 12.12.2013 are bad in law and liable to be set aside.

18. Further, petitioner in the writ petition specifically pleaded that complainants are not card holders either in Gram Sabha or shop of the petitioner, but there is very vague denial in counter affidavit not supported with any documentary evidence or relevant facts. In light of Order 8 Rule 5 Civil Procedure Code as well as law laid down, this Court is of the firm view that there must have been specific denial supported with relevant documents and facts. In lack of specific denial it would be treated admission. Therefore, on this ground too, impugned orders dated 10.10.2011 and 12.12.2013 are bad in law and liable to be set aside.

19. Accordingly, under such facts of the case, writ petition is **allowed**. Writ of certiorari is issued quashing the impugned orders dated 10.10.2011 passed by respondent no. 3 and 12.12.2013 passed by respondent no. 2.

20. The respondents are directed to restore the licence of fair price shop of the petitioner and ensure supply of essential commodities to the petitioner's fair price shop for distribution.

21. No order as to costs.

(2022)02ILR A801
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.01.2022

BEFORE

THE HON'BLE JAYANT BANERJI, J.

Writ C No.10015 of 2021

M/s LML Ltd., Kanpur ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Sri Shubham Agarwal, Sri Amar Gupta, Sri Anuj Aggarwal, Sri Divyam Agarwal, Sri Navin Sinha

Counsel for the Respondents:

C.S.C., Ms. Bushra Maryam

A. Labour Law – UP Industrial Dispute Rules, 1957 – Rule 40 – Suo moto reference by the State Government – Workman's right of representation – Held, clause (i) of sub-rule (1) of Rule 40 of the U.P. Rules gives discretion to the workmen for opting for representation by the persons mentioned therein – The contention regarding non-entitlement of the respondent-Union to represent the interest of the workmen before the Industrial Tribunal would not be acceptable. (Para 19)

B. Labour Law – UP Industrial Dispute Act, 1947 – Sections 2(n) and 6-K – Lay off – Lay off compensation – Entitlement of workmen – Petitioner-company had gone into liquidation – Effect – Settlement occurred – Lay off compensation not duly paid to the workmen – Consequence – Industrial Tribunal answered the reference which pertained to the validity of the lay-off by means of the award and has recorded a definite finding about the lay-off being unjustified and illegal – Tribunal analyzed the settlement only for