

**Court No. - 30**

**Case :-** WRIT - C No. - 14162 of 2021

**Petitioner :-** Durvin Singh

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

**Counsel for Petitioner :-** Sanjeev Kumar Pandey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Ajay Bhanot,J.**

1. Complaints were made by the petitioner against the respondent No.4-fair price shop dealer of village Nagla Bhagat, Tehsil and District Etah, alleging malpractices in distribution of essential commodities on various dates. An enquiry was caused to be conducted into the aforesaid complaints. The enquiry report indicted the fair price shop dealer on certain charges, which led to the termination of his fair price shop licence. The fair price shop licence of the respondent No.4 was cancelled by order dated 24.07.2020. The fair price shop dealer took the order of cancellation in appeal before the appellate authority. The Deputy Commissioner (Food and Civil Supplies), Aligarh Division, Aligarh by order dated 08.03.2021 passed in Appeal No. 00354 of 2020 (Computerized Case No. C202018000000354(Anar Singh Vs. State of U.P. and others) has reversed the order of termination dated 24.07.2020 and reinstated the respondent no. 4 as the fair price shop dealer.

2. The petitioner is aggrieved by the order dated 08.03.2021 passed by the Deputy Commissioner (Food and Civil Supplies), Aligarh Division, Aligarh in the

aforesaid appeal. The petitioner is the complainant.

3. Learned Standing Counsel for the respondent-State contested the locus standi of the petitioner to maintain the writ petition. He relied on judgements handed down by this Court in the case of ***Ashfaq Vs. State of U.P. and others***, reported at **2008(4) ADJ 416** and in the case of ***Sriram Prasad and another Vs. State of U.P. and others***, reported at **2016 (6) ADJ 122** and in the case of ***Dharam Raj Vs. State of U.P. and others***, reported at **2010 (2) AWC 1878 (LB)** and ***Gram Vikash Sewa Samiti Vs. State of U.P. and Others*** passed in ***Writ C No. 19941 of 2018*** and ***Nazuk Vs. State of U.P. and others***, reported at **2019 (12) ADJ 832**. The writ petition is not maintainable. Various provisions of the National Food Security Act, 2013 are also relied upon.

4. Heard the learned counsel for the parties.

5. The locus standi of the petitioner who was the complainant to maintain a instant writ petition against an order of the licensing authority or appellate court, has been dealt with in a judgment passed by this Court in the case of ***Gram Vikash Sewa Samiti Vs. State of U.P. and Others*** in ***Writ C No. 19941 of 2018*** entered on 30.08.2019. The judgement shall be reproduced in the succeeding paragraphs.

6. The statutory proceedings against the respondent no. 4 have run their course and arrived at a terminus. The

question now arises whether the petitioner, who is a complainant, can continue the litigation any further and is entitled to maintain and prosecute the instant writ petition.

7. Complainant is very often a card holder and beneficiary of the welfare schemes. Malpractices indulged by the fair price shop dealers directly and adversely impact such complainant. He is an aggrieved party. The right to obtain food-grains and essential commodities at controlled prices and the entitlements to the benefits of various distribution schemes are vested in the card holders by the National Food Security Act, 2013 (hereinafter referred to as the 'Act of 2013') and the Rules framed there-under. Irregularities committed by the fair price shop dealer in distribution of essential commodities leads to denial of statutory rights. The card holder and his family members come within the meaning of aggrieved persons as defined in the Act of 2013. Such card holder being aggrieved person is entitled to get his complaint verified against the defaulting fair price shop dealers. An inquiry can be initiated on the complaint. The card holder-complainant may tender evidence in the enquiry.

8. The assertion of the right by a complainant ensures transparency in the distribution of food-grains and enforces accountability in the functioning of the fair

price shop dealer. The right of a card holder and other aggrieved persons to complain against denial of essential commodities/food-grains under beneficent schemes covered by the Act of 2013 is recognized by the legislature. However, there are limits. The right of the complainant to prosecute his complaint does not extend to persecute the fair price shop dealer. The complainant cannot prolong the litigation endlessly.

9. The fair price shop has a certain purpose to fulfill. The fair price shop dealer has definite rights, which he can assert.

10. The fair price shop dealership is the agency through which the food-grains and essential commodities are distributed to the cardholders. It is the instrument through which the National Food Security Act, 2013 is implemented. The fair price shop is a pivot in the distribution chain of essential commodities.

11. The fair price shop dealer has to be held accountable but not made vulnerable. In the former case, the purpose of appointment of a fair price shop dealer will be fortified in the latter event it will be frustrated.

12. An unscrupulous complainant can exploit a fair price shop dealer with the threat of interminable litigation and the reality of endless prosecution of complaints. Such a situation would impede the

functioning of a fair price shop dealership and cause disruption in supply of essential commodities.

13. Clearly red lines have to be drawn. The courts have to distinguish a bona-fide complainant from a professional blackmailer, a deprived card holder from a chronic litigant. Conduct is the key to the distinction. Litigation is not the sport of the complainant and the courts cannot be made the play-field.

14. Once the complainant has been verified, the inquiry set on foot of such complaint has to be completed. In case such inquiry returns an indictment of the conduct of the fair price shop dealer, the license holder is required to be noticed by the license authority. The complainant certainly has a right to lead evidence against the dealer and in support of his complaint in the enquiry process.

15. After the licensing authority issues a notice to the license holder, the law will take its course. It becomes a lis between the two contracting parties namely, the fair price shop licence and the State. The complainant cannot be a party to the lis as it is not a party to the contract. Action has to be taken against the license holder in terms of the contract, the provisions of the Control Order and Government Orders regulating the field. The licensee has full liberty to assert his rights in the aforesaid proceedings. The licensee can refute the charges laid out against him. He can carry any adverse

order in appeal as per law. The complainant is ousted from the proceedings after the conclusion of the inquiry. The complainant can have no say in the quantum of punishment or nature of penalty which is imposed by the licensing authority upon the fair price shop licence holder. The complainant or the card-holder has no privity of contract with the State or the fair price shop dealer. In this view also the complainant cannot be permitted to exercise rights, beyond the limits set out earlier in the judgement. Any further enlargement of the rights of the complainant would fetter the contractual choices of the parties to the contract and interfere in the efficiency of the public distribution system.

16. It would be apposite to fortify the above findings with some cases in point.

17. This Court in the case of ***Dharm Raj (supra)*** while non suiting a complainant to prosecute a writ petition against a dealer, recognized the right of a complainant to be a witness in an enquiry against the fair price shop dealer but declined to accept his locus to prosecute a writ petition against such dealer:

*"15. In Jasbhai Motibhai Desai v. Roshan Kumar Hazi Bashir Ahmad and Ors. reported at AIR 1976 SC 578, the Apex Court has held that only a person who is aggrieved by an order, can maintain a writ petition. The expression "aggrieved person" has been explained by the Apex Court observing that such a person must show that he has a more particular or peculiar interest of his own beyond that of the general public in seeing that the law is properly administered. In the said case, a cinema hall owner had challenged the sanction of setting up of a rival cinema hall in the town contending that it would adversely affect monopolistic commercial interest, causing pecuniary harm and loss of business from competition. The Hon'ble Apex Court observed as under:*

Such harm or loss is not wrongful in the eye of law because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Judicially, harm of this description is called *damnum sine injuria*. The term *injuria* being here used in its true sense reason why law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large. In the light of the above discussion, it is demonstratively clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully effect his title to something. He has not been subjected to legal wrong. He has suffered no grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a "person aggrieved" to challenge the ground of the no objection certificate."

***In Northern Plastics Ltd. v. Hindustan Photo Films Mfg Co. Ltd. and Ors.*** reported at (1997) 4 SCC 452, the Hon'ble Supreme Court again considered the meaning of "person aggrieved" and "locus of a rival Government undertaking" and held that a rival businessman cannot maintain a writ petition on the ground that its business prospects would be adversely affected.

16. The view taken by us that the petitioner is not a person aggrieved, thus he has no locus standi to file the present writ petition thereby challenging the order dated 16.3.2009 passed by Sub-Divisional Magistrate, Jaisinghpur, district Sultanpur is also supported by the decision of this Court in the case of *Suresh Singh v. Commissioner Moradabad Division*, reported at 1993 (1) AWC 601, where it was held that in an inquiry under Section 95(g) of the U.P. Panchayat Raj Act, 1947, the complainant who was Up-Pradhan could be a witness in an inquiry but had no locus standi to approach this Court against the order of the State authorities, for the reasons that none of his personal statutory right are affected.

17. As such the petitioner has no focus standi to file the present writ petition under Article 226 of the Constitution of India. Even otherwise having regard to the facts and circumstances of the case, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India."

18. The aforesaid view also finds support from various authorities of this Court including the case of ***Sriram Prasad (supra)*** where this Court while considering the locus standi of the petitioner held as under:

"13. In the case of *R. v. London Country Keepers of the peace of Justice*, (1890) 25 Qbd 357, the Court held:

"A person who cannot succeed in getting a conviction against another may be annoyed by the said findings. He may also feel that what he thought to be a breach of law was wrongly held to be not a breach of law by the Magistrate. He thus may be said to be a person annoyed but not a person aggrieved, entitle to prefer an appeal against such order."

14. The petitioner complainant shall have an opportunity during the course of regular enquiry to lead oral and documentary evidence if provided under the rules, but would have no locus to assail the final order passed by the authority on the complaint".

19. There is another critical aspect to this issue. The card holders have been vested with entitlements under the National Food Security Act, 2013. The Act of 2013 is a comprehensive scheme and provides for a complete machinery to enforce the rights and entitlements of the cardholders. The card-holders, who are denied their entitlements can assert their rights under the National Food Security Act, 2013. The card holders have adequate and efficacious remedies under the Act of 2013. The authorities under the National Food Security Act, 2013, in the State of U.P. have been created with the promulgation of The Food Security (Assistance to State Governments) Rules, 2015. Some of the relevant provisions of the Act of 2013 and the Rules which have a direct bearing on the rights and remedies of the card holders are extracted hereunder:

20. Chapter II of the Act of 2013, defines the rights and creates the entitlements in favour of the card-holders. The provisions are detailed below:

***"3. Right to receive foodgrains at subsidised prices by persons belonging to eligible households under Targeted Public Distribution System.-(1) Every person belonging to priority households, identified under sub-section (1) of section 10, shall be entitled to receive five kilograms of foodgrains per person per month at subsidised prices specified in Schedule I from the State Government under the Targeted Public Distribution System:***

*Provided that the households covered under Antyodaya Anna Yojana shall, to such extent as may be specified by the Central Government for each State in the said scheme, be entitled to thirty-five kilograms of foodgrains per household per month at the prices specified in Schedule I:*

*Provided further that if annual allocation of foodgrains to any State under the Act is less than the average annual offtake of foodgrains for last three years under normal Targeted Public Distribution System, the same shall be protected at prices as may be determined by the Central Government and the State shall be allocated foodgrains as specified in Schedule IV.*



**Explanation.--** For the purpose of this section, the "Antyodaya Anna Yojana" means, the scheme by the said name launched by the Central Government on the 25th day of December, 2000; and as modified from time to time.

(2) The entitlements of the persons belonging to the eligible households referred to in sub-section (1) at subsidised prices shall extend up to seventy-five per cent. of the rural population and up to fifty per cent. of the urban population.

(3) Subject to sub-section (1), the State Government may provide to the persons belonging to eligible households, wheat flour in lieu of the entitled quantity of foodgrains in accordance with such guidelines as may be specified by the Central Government.

**4. Nutritional support to pregnant women and lactating mothers.**—Subject to such schemes as may be framed by the Central Government, every pregnant woman and lactating mother shall be entitled to--

(a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and

(b) maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being in force shall not be entitled to benefits specified in clause (b).

**5. Nutritional support to children.**—(1) Subject to the provisions contained in clause (b), every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:--

(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II: Provided that for children below the age of six months, exclusive breast feeding shall be promoted;

(b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards specified in Schedule II.

(2) Every school, referred to in clause (b) of sub-section (1), and anganwadi shall have facilities for cooking meals, drinking water and sanitation:

Provided that in urban areas facilities of centralised kitchens for cooking meals may be used, wherever required, as per the guidelines issued by the Central Government.

**6. Prevention and management of child malnutrition.**—The State Government shall, through the local anganwadi, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II.

**7. Implement of schemes for realisation of entitlements.**—The State Governments shall implement schemes covering entitlements under sections 4, 5 and section 6 in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government.

21. Section 8 of the Act of 2013 provides for food security allowance to persons who have for any reason are denied their entitlement of food grains under the enactment. The Act of 2013 in this manner appropriately compensates the cardholders for denial of food grains. The grievance of the ration card holder is adequately redressed by the aforesaid provision. As a sequitor the provision also limits the rights of a card holder to prolong litigation and maintain the writ petition. This provision being relevant is extracted below:

**8. Right to receive food security allowance in certain cases.**-In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapter II, such persons shall be entitled to receive such food security allowance from the concerned State Government to be paid to each person, within such time and manner as may be prescribed by the Central Government."

22. Chapter VII of the Act of 2013 is devoted to the establishment and functioning of a grievance redressal mechanism including a forum of appeal for the cardholders. The relevant provisions are reproduced hereunder:

**"14. Internal grievance redressal mechanism.**- Every State Government shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed.

15. (1) The State Government shall appoint or designate, for each district, an officer to be the District Grievance Redressal Officer for expeditious and effective redressal of grievances of the aggrieved persons in matters relating to distribution of entitled foodgrains or meals under Chapter II, and to enforce the entitlements under this Act.

(2) The qualifications for appointment as District Grievance Redressal Officer and its powers shall be such as may be prescribed by the State Government.

(3) The method and terms and conditions of appointment of the District Grievance Redressal Officer shall be such as may be prescribed by the State Government.

(4) The State Government shall provide for the salary and allowances of the District Grievance Redressal Officer and other staff and such other expenditure as may be considered necessary for their proper functioning.

(5) The officer referred to in sub-section (1) shall hear complaints regarding non

*distribution of entitled foodgrains or meals, and matters relating thereto, and take necessary action for their redressal in such manner and within such time as may be prescribed by the State Government.*

*(6) Any complainant or the officer or authority against whom any order has been passed by officer referred to in sub-section (1), who is not satisfied with the redressal of grievance may file an appeal against such order before the State Commission.*

*(7) Every appeal under sub-section (6) shall be filed in such manner and within such time as may be prescribed by the State Government.*

*16. (1) Every State Government shall, by notification, constitute a State Food Commission for the purpose of monitoring and review of implementation of this Act.*

*(2) The State Commission shall consist of--*

*(a) a Chairperson;*

*(b) five other Members; and*

*(c) a Member-Secretary, who shall be an officer of the State Government not below the rank of Joint Secretary to that Government:*

*Provided that there shall be at least two women, whether Chairperson, Member or Member-Secretary:*

*Provided further that there shall be one person belonging to the Scheduled Castes and one person belonging to the Scheduled Tribes, whether Chairperson, Member or Member-Secretary.*

*(3) The Chairperson and other Members shall be appointed from amongst persons--*

*(a) who are or have been member of the All India Services or any other civil services of the Union or State or holding a civil post under the Union or State having knowledge and experience in matters relating to food security, policy making and administration in the field of agriculture, civil supplies, nutrition, health or any allied field; or*

*(b) of eminence in public life with wide knowledge and experience in agriculture, law, human rights, social service, management, nutrition, health, food policy or public administration; or*

*(c) who have a proven record of work relating to the improvement of the food and nutrition rights of the poor.*

*(4) The Chairperson and every other Member shall hold office for a term not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:*

*Provided that no person shall hold office as the Chairperson or other Member after he has attained the age of sixty-five years.*

*(5) The method of appointment and other terms and conditions subject to which the Chairperson, other Members and Member-Secretary of the State Commission may be appointed, and time, place and procedure of meetings of the State Commission (including the quorum at such meetings) and its powers, shall be such as may be prescribed by the State Government.*

*(6) The State Commission shall undertake the following functions, namely:--*

- (a) monitor and evaluate the implementation of this Act, in relation to the State;*
- (b) either suo motu or on receipt of complaint inquire into violations of entitlements provided under Chapter II;*
- (c) give advice to the State Government on effective implementation of this Act;*
- (d) give advice to the State Government, their agencies, autonomous bodies as well as non-governmental organisations involved in delivery of relevant services, for the effective implementation of food and nutrition related schemes, to enable individuals to fully access their entitlements specified in this Act;*
- (e) hear appeals against orders of the District Grievance Redressal Officer;*
- (f) prepare annual reports which shall be laid before the State Legislature by the State Government.*

*(7) The State Government shall make available to the State Commission, such administrative and technical staff, as it may consider necessary for proper functioning of the State Commission.*

*(8) The method of appointment of the staff under sub-section (7), their salaries, allowances and conditions of service shall be such, as may be prescribed by the State Government.*

*(9) The State Government may remove from office the Chairperson or any Member who--*

- (a) is, or at any time has been, adjudged as an insolvent; or*
- (b) has become physically or mentally incapable of acting as a member; or*
- (c) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or*
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or*
- (e) has so abused his position as to render his continuation in office detrimental to the public interest.*

*(10) No such Chairperson or Member shall be removed under clause (d) or clause (e) of sub-section (9) unless he has been given a reasonable opportunity of being heard in the matter.*

*20. (1) The State Commission shall, while inquiring into any matter referred to in clauses (b) and (e) of sub-section (6) of section 16, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, and, in particular, in respect of the following matters, namely:--*

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) discovery and production of any document;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning any public record or copy thereof from any court or office; and*
- (e) issuing commissions for the examination of witnesses or documents.*

*(2) The State Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal*

*Procedure, 1973."*

23. Chapter XI of the Act of 2013 creates a comprehensive system of accountability. The provisions speaking to transparency and accountability are extracted below:

*"27. Disclosure of records of Targeted Public Distribution System.-All Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to the public, in such manner as may be prescribed by the State Government.*

*28. Conduct of social audit.-(1) Every local authority, or any other authority or body, as may be authorised by the State Government, shall conduct or cause to be conducted, periodic social audits on the distribution System and other welfare schemes, and cause to publicise its findings and take necessary action, in such manner as may be prescribed by the State Government.*

*(2) The Central Government may, if it considers necessary, conduct or cause to be conducted social audit through independent agencies having experience in conduct of such audits.*

*29. (1) For ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system, every State Government shall set up Vigilance Committees as specified in the Public Distribution System (Control) Order, 2001, made under the Essential Commodities Act, 1955, as amended from time to time, at the State, District, Block and fair price shop levels consisting of such persons, as may be prescribed by the State Government giving due representation to the local authorities, the Scheduled Castes, the Scheduled Tribes, women and destitute persons or persons with disability.*

*(2) The Vigilance Committees shall perform the following functions, namely:--*

*(a) regularly supervise the implementation of all schemes under this Act;*

*(b) inform the District Grievance Redressal Officer, in writing, of any violation of the provisions of this Act; and*

*(c) inform the District Grievance Redressal Officer, in writing, of any malpractice or misappropriation of funds found by it."*

24. Section 33 provides for penalties and states thus:

*"33. Any public servant or authority found guilty, by the State Commission at the time of deciding any complaint or appeal, of failing to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignoring such recommendation, shall be liable to penalty not exceeding five thousand rupees:*

*Provided that the public servant or the public authority, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed."*

25. The scheme of the Act of 2013 establishes the fact that the rights of the card holder are primarily to

receive the food grains, essential commodities and other benefits under various schemes. This right does not extend to make a preference to receive such food-grains from a particular person nor does it entitle the card holder interfere in the day to day running of the fair price shops.

26. In a prescient judgement which predates the Act of 2013, but remains relevant till date, this Court declined to permit a card-holder to choose a dealer or seek cancellation of his licence. In the case of **Ashfaq (supra)**, this Court crystallized the rights of a card-holder/complainant and held thus:

*"A person, holding a ration card, is a consumer of the scheduled commodities under the Public Distribution Scheme. If he is not distributed the scheduled commodities according to his entitlement at a fair price, he may make a complaint to the food officer. The food officer is required to take an action on such complaint in accordance with the agreement with the authorised agent under clause 25 of the control order. The ration card holder is not an adversary or the controller of the scheme of distribution of scheduled commodities to the poor persons. He does not have right to either appeal against the order of suspension or cancellation of an authorisation or to file a writ petition challenging the order by which the Commissioner or the Food Commissioner, as the case may be, has allowed the appeal or has remanded the same for fresh consideration in accordance with the law. As a consumer, his rights cannot be raised to the status of choosing a dealer or to seek the cancellation of the licence of the dealer. His right is confined, to his entitlement of the scheduled commodities at specified price."*

27. The holdings in **Ashfaq (supra)** is fully consistent with the provisions of the Act of 2013.

28. The rights of ration card holder are defined, regulated but also restricted by the National Food Security Act, 2013 and the Rules framed thereunder. The card-holder can also be granted compensation or allowance for denial of the entitlements under the Act of 2013. However, card-holder cannot decide the

quantum of punishment to be imposed on a defaulting fair price shop dealer, as per the provisions of the Act of 2013. This function falls in the jurisdiction of the authorities under the Act, the Uttar Pradesh Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016, and the Government Orders holding the field. The preceding paragraphs catalogue the rights and remedies of eligible persons under the Act. They also detail the jurisdiction and obligation of the authorities under the Act. No further right to the ration card-holder is vested by the legislature. No additional right to the ration card holder or complainant can be granted by the courts.

29. The pleadings in the writ petition do not state that the petitioner is a ration card holder. The petitioner as a complainant does not have the locus standi to file the instant writ petition.

30. In wake of the preceding discussion, the writ petition is not maintainable at the instance of the petitioner and he has no right to seek cancellation of the licence of the fair price shop dealer.

31. The writ petition is dismissed.

**Order Date :- 19.7.2021**

Dhananjai