



2026:AHC:64510

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 1448 of 2026

M/s Mahalaxmi Self
Help Group

.....Petitioners(s)

Versus

State of Uttar Pradesh
and 4 others

.....Respondents(s)

Counsel for Petitioners(s)	: Satyawan Shahi
Counsel for Respondent(s)	: Ajendra Kumar, C.S.C. Krishna Kant Singh

Along With

Writ - C No. - 1444 of 2026

Raj Kumar Alias Raju

.....Petitioners(s)

Versus

State Of U.P. And 2 Others

.....Respondents(s)

Court No. - 35

HON'BLE KUNAL RAVI SINGH, J.

1. Both the writ petitions were connected by means of an order dated 20.01.2026. Learned counsel for the respective parties have submitted that, as a purely legal question is involved in both the writ petition, therefore both the petitions can be heard together at the admission stage itself without filing any counter affidavit. Therefore, with the consent of the counsel for the parties, both the writ petitions are being heard and decided at the admission stage itself. Respective written submissions have been filed on behalf of the parties,

which have been taken on record. Supplementary written arguments on behalf of state respondents have also been taken on record.

WRIT C No. 1448 of 2026; M/s Mahalakshmi Self Help Group vs. State of U.P. and 4 others.

2. Heard learned counsel for the petition of Mr. Satyavan Shahi and Shri Surya Bhan Singh Learned Standing Counsel on behalf of the State respondents. Mr. Ajendra Kumar has appeared on behalf of Respondent no. 4/ caveator. The present writ petition has been filed for the following reliefs :

“1. Issue a writ, order or direction in the nature of certiorari quash the impugned order dated 19.12.2025 (Annexure No.5) passed by respondent no.2.

II. Issue a writ, order or direction in the nature of mandamus commanding the respondent to supply the essential commodities to the petitioner forthwith and when it falls dues.

III. Issue any other writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the present case.

IV. Award costs to the petitioner from the contesting respondents.”

FACTS:

3. The original allottee of the fair price shop (hereinafter referred to as the “shop”) was the respondent no. 4. His license was suspended by means of order dated 07.10.2023. After an inquiry being conducted, the license of respondent no. 4 for running the shop was canceled by means of order dated 19.06.2024. The cancellation order was subjected to an appeal dated 18.07.2024 filed before the Commissioner, Aligarh Mandal, Aligarh. During the pendency of the appeal, the shop was allotted to the petitioner by means of an order dated 03.12.2024. The appeal was allowed by means of an order dated 19.12.2025, and the cancellation order was set aside by the Commissioner. The license of respondent 4 was restored and respondent 4 was directed to comply with the terms of the license. The petitioner was not made a party in the appeal by respondent 4 as the appeal was filed before the subsequent allotment to the petitioner. No impleadment application was also filed by the petitioner in the appeal. Aggrieved by the order passed in appeal, the subsequent allottee i.e. the petitioner has preferred the present writ petition.

Arguments on behalf of Petitioner in Writ C No. 1448 of 2026; M/s Mahalakshmi Self Help Group:

4. Learned counsel appearing on behalf of the petitioner has made the following submission:

- (i) The petitioner was a subsequent allottee of the fair price shop after the license of respondent 4 was canceled. The petitioner completed all the formalities, and there is no allegation of irregularity against the petitioner.
- (ii) The petitioner was not heard during the pendency of the appeal. The petitioner is a necessary party in the appeal, as has been held by the Supreme Court in ¹*Ram Kumar vs. State of U.P. and others* as well as the judgment of this Court in ²*Yogendra Prasad vs. State of U.P. and others*.
- (iii) Since the appellate court did not hear the petitioner, the appellate order is vitiated. The writ petition should be allowed, and the appeal heard again after impleading the petitioner.
- (iv) The impugned order is also bad on merits as the appellate Court did not appreciate the facts in the correct perspective and the findings recorded by the appellate Court are illegal.

Arguments on behalf of Respondent No. 4:

5. Learned Counsel for the respondent 4 has made the following submissions :

- (i) The allotment order in favour of the petitioner contained a condition that the allotment shall be subject to the orders of the Court.
- (ii) The petitioner had knowledge of the pendency of the appeal before the Commissioner as the proposal of the Gaon Sabha about fresh allotment was always subject to the condition that if the license of the original allottee is restored, then the subsequent allotment would be cancelled.
- (iii) The petitioner did not file any impleadment application in the appeal, as the petitioner was under an obligation to file an impleadment application in the appeal.
- (iv) The petitioner has no legal right to continue after restoration of the license of respondent 4, as the Supreme Court in ³*Poonam vs. State of U.P. and others* has held that the subsequent allottee has no independent right to challenge the proceedings.

¹ (2023) 16 SCC 691

² 2022 SCC Online All 2046.

³ (2016) 2 SCC 779

(v) Since the petitioner did not file any impleadment application, no right accrues to the petitioner to challenge the appellate order. Reliance has been placed upon :

- (a) ⁴*Rajesh Kumar Vs. State of U.P. and others*
- (b) ⁵*Smt. Reena Devi vs. State of U.P.*
- (c) ⁶*Dinesh Kumar vs. State of U.P*

Arguments on behalf of State respondents:

6. Shri Surya Bhan Singh, Learned Standing Counsel has made the following submissions :

(i) The appeal against the cancellation order of the agreement of the fair price shop is filed under section 13 of the U.P. Essential Commodities (Regulations of Sales and Distribution) Control Order, 2016, before appellate authority. Section 13 (4) of the U.P. Essential Commodities (Regulations of Sales and Distribution) Control Order, 2016, states that, "*No appeal shall be disposed of unless the aggrieved person has been given a reasonable opportunity of being heard.*"

(ii) That after cancellation of the shop of original allottee, if the fair price shop is allotted to subsequent allottee, then undoubtedly, the interest of subsequent allottee is involved with the fair price shop and the subsequent allottee may be considered as aggrieved person and in such circumstances in accordance with the section 13 (4) of The U.P. Essential Commodities (Regulations of Sales and Distribution) Control Order, 2016, the subsequent allottee is an aggrieved person and the opportunity of hearing may be provided to him before deciding the statutory appeal by the appellate authority.

(iii) The Supreme Court in *Ram Kumar (supra)* has held that the subsequent allottee is a necessary party to the proceedings and the subsequent allottee has to be heard in the appeal. The same has also been stated in :

- (a) ⁷*Sumitra Devi Vs. State of U.P. and others*
- (b) ⁸*Pawan Chaubey Vs. State of U.P.*
- (iv) *Ram Kumar (supra)* has been followed by this Court in *Yogendra Prasad (supra)*.

⁴ *Writ C No. 3876 of 2023*

⁵ *Writ C No. 6304 of 2019*

⁶ *Writ C No. 8032 of 2017*

⁷ *Special Leave to Appeal (C) Nos. 37283-37284 of 2012*

⁸ *(2023) 16 SCC 698*

(v) In ⁹*Hiramani Yadav Vs. State of U.P. and 4 others*, the case of ¹⁰*Rajesh Vs. State of U.P. and others* were overruled, and it was held that the case of *Ram Kumar (supra)* is very specific and categorical regarding the right of a subsequent allottee to be impleaded and heard.

(vi) The subsequent allottee is a necessary and proper party who has a legal right to be impleaded in the statutory appeal as well as in the writ petition.

WRIT C No. 1444 of 2026; Raj Kumar alias Raju vs. State of U.P. and others.

7. Heard learned counsel for the petition of Mr. Anshul Kumar Singhal and Learned Standing Counsel on behalf of the State respondents. Ms. Jigyasa Singh along with Mr. Shri Ram Rawat have appeared for Respondent no. 3/ caveator. The present writ petition has been filed for the following reliefs :

“(i) Issue a writ order or direction in the nature of Certiorari calling for record and to quash the Impugned Order dated 28.10.2025 passed by Additional Commissioner (Administration)/ Deputy Commissioner (Food) Agra Region Agra in Appeal No. 00577 of 2019 (Computer Case No. C201901000000577) (*Bane Singh Vs. State of U.P. and others*) (Annexure-1 to this writ petition).

(ii) To issue any other writ order or direction which this Hon'ble court may deem fit and proper in the circumstances of the case.

(iii) To award cost of the writ petition to the Petitioner.”

FACTS:

8. The original allottee of the fair price shop (hereinafter referred to as the “shop”) was the respondent no. 3. After an inquiry was conducted, the license of respondent no. 3 for running the shop was cancelled by means of an order dated 01.12.2018. The said shop was attached to another licensee as an interim measure. The cancellation order was subjected to an appeal dated 05.03.2019 filed before the Commissioner, Agra Region, Agra. During the pendency of the appeal, the shop was allotted to the petitioner by means of an order dated 31.12.2019 and the interim measure was cancelled. The appeal was allowed by means of order dated 28.10.2025 and the cancellation order was set aside by the Addl. Commissioner as a result of which the license of respondent 3 was restored. The petitioner was not made a party in the appeal by respondent 4, as the appeal was filed before the subsequent allotment to the petitioner. No impleadment application was also filed by the petitioner in the appeal.

⁹ *Special Appeal Defective No. 619 of 2025*

¹⁰ *Writ c No. 4483 of 2024*

Aggrieved by the order passed in appeal the subsequent allottee i.e. the petitioner has preferred the present writ petition.

Arguments on behalf of Petitioner in Writ C No. 1444 of 2026; Raj Kumar @ Raju:

9. Learned counsel appearing on behalf of the petitioner has made the following submission:

(i) The subsequent allotment was not a stop gap arrangement and the shop was allotted to the petitioner after due proposal and selection by the Committee.

(ii) The petitioner was neither made a party in the appeal even though the allotment was made subsequent to the cancellation of the license nor was the petitioner heard in the appeal which is in violation of the judgment of *Pawan Chaubey (supra)*, *Ram Kumar (Supra)*, *Yogendra Prasad (supra)* and *Hiramani Yadav (supra)*.

(iii) The condition that the allotment would be subject to the Court proceedings was noticed in *Pawan Chaubey* and the Supreme Court held that it would not limit the right of the petitioner to appear and contest the proceedings.

(iv) The condition that the allotment is subject to the Court's order is only with regard to intimation of the pendency of any proceedings so as to represent the subsequent allottee to implead himself in the proceedings. However, without the details of pending proceedings, the condition becomes obsolete.

(v) The respondent 3 being '*Dominus Litus*' is required to implead the petitioner in the appeal proceedings.

(vi) The judgment of *Rajesh (supra)* has been overruled in *Hiramani Yadav (supra)* and as such is not a good law anymore.

(vii) The judgment of *Poonam (supra)* has been clarified in *Pawan Chaubey (supra)* and the view stated in *Pawan Chaubey (supra)* has been followed in *Ram Kumar (supra)*.

Arguments on behalf of respondent no. 3 :

10. Ms. Jigyasa Singh and Mr. Shri Ram Rawat, learned counsels appearing on behalf of the respondent 3 have made the following submission:

(i) The Government order dated 05.08.2019 is clear that subsequent allotment would be subject to the outcome of the appeal, and in case the appeal is allowed, then no claim of the subsequent allottee would be valid. Thus, the subsequent allottee has no right to challenge the appellate order.

(ii) The original allottee is not responsible for impleading the subsequent allottee, as the original allottee remains unaware of the process of allotment. Thus, there is no onus on the original allottee to implead the subsequent allottee.

(iii) Since the subsequent allotment is subject to Court proceedings, the onus is on the subsequent allottee to get himself impleaded in the appeal. Since the subsequent allottee is claiming the right to be heard, the impleadment should be made by the subsequent allottee.

(iv) Since no impleadment application was filed, the petitioner has lost his claim for being heard. No right accrues in his favour to challenge the appellate proceedings.

(v) The petitioner is neither a necessary party nor a proper party as held by the Supreme Court in *Poonam (supra)*. The petitioner only has a right to be heard.

(vi) Since the State authorities were heard, therefore the subsequent allottee cannot aver better pleading than what was stated by the State.

(vii) The ratio of *Pawan Chaubey (supra)* and *Abhishek Gupta vs. State of U.P.* are based on different facts, hence they are not applicable in the present set of circumstances.

(viii) In ¹¹*Pooja Bharti vs. Addl. Commissioner, food Azamgarh Division and others* this Court has held that if the impleadment application has not been filed before the appellate Court, then the subsequent allottee has no right to file the writ petition.

Arguments on behalf of State respondents :

11. Shri Surya Bhan Singh, Learned Standing Counsel has adopted the same arguments that have been advanced in Writ C No. 1448 of 2026 for the State respondents and submitted that the same arguments be considered in this writ petition as well.

POINTS OF DETERMINATION:

¹¹ *Writ C No. 35493 of 2025*

12. Heard the rival submissions and perused the records of both the writ petitions. Based on the submission and records annexed, the following points of determination are framed for adjudication of the dispute.

- (I) Whether the subsequent allottee has any right to be heard in the appellate proceedings on the ground that the subsequent allottee is a necessary party to the appeal?
- (II) The onus of impleading the subsequent allottee, whether the allotment is before or after the filing of the appeal, is on which party to the *lis*?

DISCUSSION:

13. Learned counsel for the respective parties have relied upon various judgments of the Supreme Court as well as this Court to show what is the right of the subsequent allottee about appellate proceedings/ writ proceedings. It would be useful to refer to the judgments in a chronological manner so that the reasoning of both the Courts can be decisively stated.

SUPREME COURT JUDGMENTS:

14. In *Sumitra Devi vs. State of U.P. and others (supra)* the appeal of the original allottee was dismissed. During the pendency of the writ petition, the subsequent allottee filed an impleadment application but no orders were passed on it. The writ petition was allowed and the license was restored. The subsequent allottee filed a review which was dismissed which led to the filing of the SLP. The Supreme Court held that the writ petition could not have been decided without hearing the subsequent allottee as his rights were being affected.

15. In *Poonam (supra)*, the subsequent allottee was impleaded in the appeal before the Commissioner and heard on merit before the appeal was allowed. The writ petition filed by the subsequent allottee was dismissed that a subsequent allottee had no independent right. The SLP (later converted into civil appeal) was dismissed by the Supreme Court on the ground that the subsequent allottee had no independent legal right to continue the proceedings as he was heard at the appellate stage.

16. In *Pawan Chaubey (supra)*, the subsequent allottee made an application for impleadment in the writ proceedings but it was not considered.

Upon the writ being allowed and the order of cancellation of license of original allottee being set aside, the subsequent allottee filed the SLP (later converted into civil appeal). The Supreme Court after considering *Poonam (supra)* and *Sumitra Devi (supra)* held that if the subsequent allottee has not been heard at any stage then the subsequent allottee has a right to be heard. The Court distinguished *Poonam (supra)* on the ground that in the said case, the subsequent allottee was heard at every stage and hence there is no independent right in favour of the subsequent allottee.

17. In *Ram Kumar (supra)*, the subsequent allotment was made during the pendency of the appeal. No impleadment application was filed by the subsequent allottee in the appeal. In the writ petition by the original allottee a false averment was made that there was no allotment. The subsequent allottee challenged the order setting aside the cancellation by filing the SLP (later converted into civil appeal). The Supreme Court while allowing the appeal held that the subsequent allottee is a necessary party without whom the appeal and the writ petition could not have been heard. The Supreme Court relied upon the abovementioned cases to come to the conclusion that a subsequent allottee is a necessary party in the proceedings.

HIGH COURT JUDGMENTS:

18. In *Reena Devi vs. State of U.P. and others*, the question arose whether a subsequent allottee could challenge the appellate order in favour of the original allottee. The Court while relying upon *Poonam (supra)* held that the subsequent allottee has no right to file the writ petition. However, this judgment was before the judgment of *Ram Kumar (supra)*.

19. In *Yogendra Prasad (supra)*, the writ petition filed by the subsequent allottee was allowed after noticing the abovementioned Supreme Court cases. The Court held that even if the subsequent allottee was given license after due process during the pendency of the appeal, the subsequent allottee has a right to be heard in light of *Ram Kumar (supra)*.

20. In *Rajesh Kumar (supra)*, the writ petition filed by the subsequent allottee was dismissed on the ground that the allotment of the petitioner was subject to the outcome of litigation and once the appeal was allowed the

petitioner would have no right. The allotment was contingent upon the outcome of the appellate proceedings and hence no right accrued. Even though *Ram Kumar (supra)* was considered by the Court but the Court relied upon the judgment of *Poonam (supra)* to dismiss the writ petition.

21. In *Dinesh Kumar (supra)*, the impleadment of the subsequent allottee was sought in the writ petition filed by the original allottee which was rejected on the ground that the subsequent allottee is neither necessary party nor a proper party relying upon *Ram Kumar (supra)* and *Rajesh Kumar (supra)* and thereafter the writ petition was allowed.

22. In ¹²*Smt. Kalawati vs. State of U.P. and others*; the writ petition of the subsequent allottee was dismissed on the ground that as the allotment was a contingent allotment and not a regular allotment hence no right accrues.

23. In *Rajesh (supra)*, the writ petition filed by the subsequent allottee was dismissed on the ground that the subsequent allottee did not get himself impleaded in the appellate proceedings therefore there is no right to challenge the appellate order allowing the appeal setting aside the cancellation order. The Court after considering the Supreme Court judgment noted above was of the opinion that once the impleadment application was not filed by the subsequent allottee then there is no right to challenge.

24. It is worthwhile to note that the judgment of *Rajesh (supra)* was passed taking into consideration that no impleadment application was filed in the appellate stage by the subsequent allottee hence there is no right to challenge as the onus was on the subsequent allottee to get himself impleaded. However, the Division Bench has overruled the judgment holding that it does not lay down the correct interpretation of law in light of *Ram Kumar (supra)*. Therefore, what flows is that the right of subsequent allottee to be heard is protected even if the subsequent allottee did not file any impleadment application before the Commissioner. His right to challenge the appellate order in absence of any impleadment application is also protected.

¹² *Writ C No. 9059 of 2023*

25. In ***Hiramani Yadav (supra)***, a Division Bench of this Court after taking into consideration ***Ram Kumar (supra)*** and ***Rajesh (supra)*** held that the decision of ***Rajesh*** does not lay down the correct position of law with regard to right of subsequent allottee. The Court after allowing the special appeal, remanded the matter back for consideration after impleading the appellant as a part in the writ proceedings.

26. In ***Smt. Pooja Bharti (supra)***, the writ petition filed by the subsequent allottee challenging the appellate order was dismissed relying upon ***Ram Kumar (supra)*** on the ground that since no impleadment application was filed by petitioner hence there is no right to challenge the order. The subsequent allotment order was created during the pendency of the appeal.

27. In ¹³***Nav Durga Mahila Swayam Sahayata Samooh vs. State of U.P. and others***, the writ petition filed by the subsequent allottee was dismissed on the ground that no impleadment application was moved by the subsequent allottee during the pendency of the appeal and as such no right accrued in favour of the subsequent allottee.

28. In ¹⁴***M/s Sajid vs. State of U.P. and others; along with other connected matters***; the Court allowed the petitions filed by the original allottee with a further direction to restore the fair price shop license. One of the connected petitions was ***Dinesh Kumar and others vs. State of U.P. and others***. The subsequent allottee, who was not a party in the writ petition, challenged the judgment by means of ***Special Appeal No. 908 of 2025*** which was dismissed by the Court. Challenging the order in the Special Appeal, a SLP (later converted into Civil Appeal) was filed before the Supreme Court registered as ¹⁵***Abhishek Gupta Vs. Dinesh Kumar and others***. The Civil appeal was allowed by the Supreme Court holding non-impleadment of the subsequent allottee affected the material rights of the subsequent allottee, and the order of the single judge is liable to be invalidated. The Court further directed that the Special Appeal, along with the Leave to Appeal application, be heard by the Division Bench.

¹³ Writ c No. 36697 of 2025

¹⁴ Writ C No. 38609 of 2019

¹⁵ Civil Appeal No. 14545-14546/ 2025

29. What can reasonably be inferred from the above noted judgments of the Supreme Court is that the Court protected the right of subsequent allottee to be heard in the appeal proceedings/ writ proceedings. The ratio of the judgment of the Supreme Court in *Ram Kumar (supra)* as well as *Abhishek Gupta (supra)* is conclusive and unequivocal to the point that the subsequent allottee has to be made a party in the appellate proceedings and writ petitions and in case the same is not done then the subsequent allottee can challenge the orders. For ready reference the relevant paragraph of *Ram Kumar (supra)* is quoted below:

“13. It could thus be seen that this Court had held that, even if a subsequent allottee does not have an independent right, he/she still has a right to be heard and to make submissions defending the order of cancellation.

14. It is further to be noticed that in the said case, i.e., *Pawan Chaubey (supra)*, the order of appointment of the appellant therein was subject to the outcome of the proceedings pending in court. The case at hand stands on a much better footing. The appellant herein had been selected by the Tehsil Level Selection Committee in its meeting dated 19th April 2018 and thereafter, he was appointed as Fair Price Dealer vide order of the Competent Authority dated 15th May 2018, on a regular basis.

15. In this background, we find that the appellant was a necessary party to the proceedings before the High Court. The present appeal deserves to be allowed on this short ground. However, there is another more serious ground on which the present appeal deserves to be allowed.

Similarly, the paragraphs of *Abhishek Gupta (supra)* are quoted below:

“19. For the foregoing reasons, we hold that where an allegation of non-joinder of a necessary party is raised in an intra-court appeal, the High Court, if satisfied that such allegation has merit, should either remand the matter to the Single Judge or decide it on the merits. Such an approach while not militating against the object and purpose of Rule 5 would, at the same time, accord with the maxim *ubi jus, ibi remedium*.”

Thus, the law as envisaged in *Ram Kumar (supra)* is the law of the land and it has to be followed. Therefore, any proceedings initiated by the original allottee would stand vitiated in case the subsequent allottee is not made a party. Even in writ proceedings the same ration would be applicable.

30. While examining the judgments of this Court, there appears to be some variance with regard to the correct interpretation of ratio as laid down in *Ram*

Kumar (supra). Some of the judgments have held that in case the subsequent allottee did not file any impleadment application then the right to challenge the appellate order would not accrue with the subsequent allottee. The judgments of *Rajesh Kumar (supra)*, *Dinesh Kumar (supra)*, *Smt. Kalawati (supra)*, *Rajesh (supra)*, *Smt. Pooja Bharti (supra)*, *Nav Durga Mahila Swayam Sahayata Samooh (supra)* are to the effect that:

- (i) subsequent allottee has no right to challenge the appellate order if no impleadment was filed and;
- (ii) the condition in the subsequent allotment stipulates that the license is subject to the Court proceedings.

These judgments must be examined in light of *Hiramani Yadav (supra)* in which the Division Bench of this Court has repelled both the above noted contentions. The Court held that even in cases where impleadment application was not filed by the subsequent allottee, even then the right to challenge the order of appellate authority still accrues to the subsequent allottee. Thus, in light of the judgment in *Hiramani Yadav* and *Abhishek Gupta*, it is the considered view of this Court that the above noted judgments of this Court do not hold to be the correct law and hence no reliance can be placed upon them to defeat the right of the subsequent allottee to participate or challenge the proceedings.

31. The Supreme Court in its various judgment has not decided the question of onus of impleadment is on which party. The Supreme Court has decided the larger question of right of the subsequent allottee. The judgments of this Court in *Rajesh (supra)*, *Smt. Pooja Bharti (supra)*, *Nav Durga Mahila Swayam Sahayata Samooh (supra)* are to the effect that in case the subsequent allottee did not file any impleadment application, then the right to challenge the appellate order is lost. However, the judgment of *Rajesh (supra)* was overruled by the Division Bench, thus the above-noted judgments lose their efficacy as binding precedents. Furthermore, in *Abhishek Gupta (supra)*, the Supreme Court also protected the right of a subsequent allottee who was not a party in the appeal or writ. Thus, the question about onus is open to interpretation.

32. Before this Court deals with the legal issue of onus, it would be appropriate to refer to the Control Order and Government Orders through

which such rights are created. It would be equally important to refer to the process by which such allotments are made.

33. The appointment and regulation of fair price shops is being done in accordance with the provisions of section 7 of The U.P. Essential Commodities (Regulations of Sales and Distribution) Control Order, 2016 by which it is provided that the State Government shall issue directions under section 3 of the Act to such number of fair price shop in an area and in the manner as it may deem fit.

34. The detailed procedure for allotment of the fair price shop is described in Section (III) of Government Order dated 05.08.2019. The allotment of fair price shop is done in accordance with the provisions of clause III of the Government Order dated 05.08.2019. For reference the relevant provision is quoted below:

“(III) ग्रामसभाओं में उचित दर दुकानों के चयन की प्रक्रिया :-

(1) ग्रामसभाओं के उपर्युक्तानुसार चिन्हाकन के पश्चात ग्रामीण क्षेत्र में राशन की दुकानों का चयन ग्राम सभा की खुली बैठक में प्रस्ताव पारित करके किया जायेगा। तदनुसार पारित प्रस्ताव को सम्बन्धित खण्ड विकास अधिकारी द्वारा पारित होने की तिथि से अधिकतम दो सप्ताह के भीतर उप जिलाधिकारी की अध्यक्षता में गठित तहसील स्तरीय चयन समिति को नियुक्ति हेतु विचारार्थ प्रेषित किया जायेगा।

तहसील स्तरीय समिति द्वारा उक्त प्रस्ताव पर विलम्बतम 15 दिवस में निर्णय ले लिया जायेगा। प्रस्ताव स्वीकृति की स्थिति में इसी अवधि में उप जिलाधिकारी द्वारा नियुक्ति आदेश जारी कर दिया जायेगा एवं अस्वीकृति की स्थिति में उक्त अवधि में ही प्रस्ताव सकारण वापस प्रेषित कर दिया जायेगा”

“After the identification by Gram Sabhas as mentioned above, the selection of ration shops in the rural area will be done by passing a resolution in an open meeting of the Gram Sabha. Accordingly, the passed resolution will be sent by the concerned Block Development Officer for consideration for appointment to the Tehsil level selection committee, constituted under the chairmanship of the Sub-Divisional Magistrate, within a maximum of two weeks from the date of passing.

The Tehsil level committee will take a decision on the said proposal within a maximum of 15 days. In case of approval of the proposal, the appointment order will be issued by the Sub-Divisional Magistrate within this period, and in case of disapproval, the proposal will be sent back with reasons within the said period.”

(English translation by Court)

In case of any dispute with regard to the proposal to be forwarded or if no proposal can be made then the relevant process is provided in clause VI of the Government order.

35. A perusal of the Government Order shows that after identification of the shops, the process of allotment has to be done in an open meeting of the members of the Gaon Sabha and thereafter once a resolution is passed for allotment, it is forwarded to the concerned Block Development Officer who shall in turn place it before the Tehsil Level Selection Committee headed by the concerned Sub Divisional Magistrate. the order of approval of the license is to be granted by the Sub Divisional Magistrate.

36. The process of suspension/ termination of license is given in another Government Order dated 05.09.2019. Clause 6 of the said Government order reads as follows:

“6- उचित दर दुकान का निरस्तीकरण-

(1) उचित दर विक्रेता के विरुद्ध लगाये गये आरोप सिद्ध पाये जाने की दशा में प्रकरण की गम्भीरता के दृष्टिगत अनुबन्ध पत्र का निरस्तीकरण एक स्वतः स्पष्ट स्पीकिंग आदेश के माध्यम से किया जायेगा, जिसमें निरस्तीकरण के निर्णय तक पहुंचने के पूर्व विक्रेता के सम्बन्ध में कृत समस्त कार्यवाही का विवरण होगा, जिसमें शिकायतों की जाँच, आरोपों का विवरण, विक्रेता द्वारा प्रस्तुत स्पष्टीकरण व उसके परीक्षण में पायी गयी स्थिति, नैसर्गिक न्याय का अनुपालन किये जाने की स्थिति का भी स्पष्ट वर्णन किया जायेगा और स्पीकिंग आदेश के माध्यम से निरस्तीकरण आदेश जारी किया जायेगा।

(2) उचित दर दुकानों पर कार्यवाही के सम्बन्ध में मात्र प्राथमिकी दर्ज होने के कारण उचित दर विक्रेता के अनुज्ञप्ति के निरस्तीकरण की कार्यवाही नहीं की जायेगी, वरन् सम्बन्धित उचित दर विक्रेता के वितरण की सम्यक प्रकार से जांच करने के पश्चात् विविध प्रस्तरों में विहित व्यवस्था का अनुपालन सुनिश्चित करते हुये कार्यवाही की जायेगी।

(3) यदि दण्ड स्वरूप दुकानदार की निलम्बित दुकान निरस्त की जाती है, तो निरस्तीकरण आदेश की तिथि से अधिकतम एक माह के अन्दर नये उचित दर के दुकानदार की नियुक्ति अनिवार्य रूप से हो जानी चाहिए ताकि दुकान की सम्बद्धता जल्दी से जल्दी समाप्त हो सके।

(4) नियुक्ति प्राधिकारी (जिला पूर्ति अधिकारी/सम्बन्धित उप जिलाधिकारी) उपरोक्त आदेशों का कड़ाई से पालन करेंगे और कार्यवाही के लिए ऊपर दी गयी समय सारिणी को सुनिश्चित करेंगे। समय सारिणी के अनुसार जाँच की कार्यवाही एक माह में तथा दुकान के निरस्तीकरण की स्थिति में एक और माह में नयी नियुक्ति के लिये निर्धारित है। अतः निलम्बित/निरस्त दुकान का किसी अन्य दुकान से सम्बद्धीकरण अधिकतम दो माह के लिए होगा।”

“6- Cancellation of Fair Price Shop-

(1) In case the charges against the fair price shop seller are proved, the cancellation of the agreement letter will be done through a self-explanatory speaking order, keeping in view the seriousness of the case, which will contain the details of all the actions taken in respect of the seller before reaching the decision of cancellation, in which the investigation of complaints, details of the charges, the explanation submitted by the seller and the situation found in its examination, the situation of compliance with natural justice will also be clearly described and the cancellation order will be issued through a speaking order.

(2) In relation to the action on fair price shops, the proceedings for cancellation of the license of the fair price shop seller will not be taken merely because of the registration of a First Information Report (FIR), but after proper investigation of the distribution by the concerned fair price

shop seller, action will be taken ensuring compliance with the system prescribed in various paragraphs.

(3) If the suspended shop of the shopkeeper is cancelled as a punishment, then the appointment of a new fair price shopkeeper must be made within a maximum period of one month from the date of the cancellation order so that the attachment of the shop can be terminated as soon as possible.

(4) The appointing authority (District Supply Officer/concerned Sub-Divisional Magistrate) will strictly comply with the above orders and will ensure the timeline given above for the action. According to the timeline, the investigation proceedings are scheduled for one month and in case of cancellation of the shop, another month is scheduled for a new appointment. Therefore, the attachment of a suspended/cancelled shop with any other shop will be for a maximum of two months.”

(English translation by Court)

37. A perusal of the above shows that in case of cancellation of the shop, the new allotment has to be made within a period of one month from the date of cancellation of the shop. Interim attachment with another shop can only continue for a period of two month.

38. The process with regard to filing of appeals is also provided in clause 8 of the Government Order. The same is reproduced below:

“8- उचित दर दुकानों के विरुद्ध की गयी दण्डात्मक कार्यवाही के विरुद्ध अपील-

(1) निलम्बन/निरस्तीकरण आदेश के विरुद्ध केवल अपील लम्बित रहने की स्थिति को उक्त आदेश के विरुद्ध स्थगन नहीं माना जा सकता और वैकल्पिक व्यवस्था करना राज्य का दायित्व है। वैकल्पिक व्यवस्था करते समय जनहित को प्राथमिकता दिये जाने की प्रधानता है, न कि लाईसेन्स धारक के निजी हित को। जनहित, सम्बन्धित क्षेत्र के लाभार्थियों को अनुमन्य खाद्यान्न की समुचित/सुगम उपलब्धता में निहित है और इसकी पूर्ति हेतु, उचित दर दुकान के निलम्बन निरस्तीकरण की स्थिति में, राज्य (अर्थात् सक्षम अधिकारियों) द्वारा निलम्बित/निरस्त दुकान के राशन कार्ड धारकों को निकटवर्ती दुकान से सम्बद्ध किया जा सकता है अथवा आवश्यक होने पर अपील में होने वाले निर्णय के अधीन रखते हुए नई दुकान की नियुक्ति पर विचार किया जा सकता है।

(2) उचित दर दुकानों के निलम्बन/निरस्तीकरण आदेशों के विरुद्ध सक्षम अपीलीय प्राधिकारी के स्तर पर अपील लम्बित होने की दशा में निलम्बित/निरस्त दुकान के सापेक्ष वैकल्पिक व्यवस्था के रूप में उक्त दुकान के कार्डधारकों को निकटवर्ती दुकान में सम्बद्ध करने अथवा अपीलीय प्राधिकारी द्वारा स्पष्ट स्थगन आदेश पारित न किये जाने की स्थिति में लम्बित अपील में होने वाले निर्णय के अधीन नये दुकानदार की नियुक्ति करने हेतु सक्षम अधिकारियों द्वारा स्वविवेक से निर्णय लिया जायेगा और ऐसा निर्णय लेते समय सम्बन्धित क्षेत्र के लाभार्थियों के व्यापक हित एवं उन्हें अनुमन्य खाद्यान्न की समुचित/सुगम उपलब्धता को सुनिश्चित कराने की अपरिहार्यता को प्राथमिकता दी जायेगी।

(3) निलम्बन/निरस्तीकरण आदेश के विरुद्ध अपील लम्बित होने तथा अपीलीय प्राधिकारी द्वारा कोई स्थगन आदेश पारित न किये जाने की दशा में स्थानीय आवश्यकता के दृष्टिगत यदि नयी दुकान आवंटित की जाती है तो ऐसे आवंटन आदेशों में

स्पष्ट उल्लेख किया जाये कि उक्त आवंटन प्रत्रगत अपील में होने वाले अन्तिम निर्णय के अधीन होगा और अपीलीय प्राधिकारी द्वारा यदि अपील स्वीकार करते हुए पूर्व आवंटित के पक्ष में निर्णय पारित किया जाता है तो नये आवंटित विक्रेता का कोई दावा मान्य नहीं होगा।

(4) उचित दर विक्रेता के विरुद्ध कार्यवाही समयबद्ध रूप से पूर्ण की जाए साथ ही निलम्बन /निरस्तीकरण आदेशों के विरुद्ध दाखिल अपीलों के बारे में भी सक्षम अपीलीय प्राधिकारी द्वारा ऐसी अपीलों/स्थगन प्रार्थना पत्रों का शीघ्रातिशीघ्र निस्तारण सुनिश्चित किया जायेगा। ताकि लम्बे समय तक अपील के लम्बित रहने के कारण सम्बन्धित पक्षकारों को असमन्जसपूर्ण स्थिति का सामना न करना पड़े और उस क्षेत्र के सार्वजनिक वितरण प्रणाली के लाभार्थियों को आवश्यक वस्तुओं/खाद्यान्न की निर्वाध आपूर्ति को सुनिश्चित किया जा सके”

“8- Appeal against punitive action taken against fair price shops-

(1) The mere pendency of an appeal against a suspension/cancellation order cannot be considered a stay against the said order, and it is the responsibility of the State to make alternative arrangements. While making alternative arrangements, priority is to be given to the public interest, not to the private interest of the license holder. The public interest lies in the proper/easy availability of permissible food grains to the beneficiaries of the concerned area, and to fulfil this, in the event of suspension/cancellation of a fair price shop, the state (i.e., the competent authorities) may attach the ration card holders of the suspended/cancelled shop to a nearby shop or, if necessary, the appointment of a new shop may be considered, subject to the decision to be made in the appeal.

(2) In case an appeal against the suspension/cancellation orders of fair price shops is pending at the level of the competent appellate authority, a decision will be taken at the discretion of the competent authorities to attach the cardholders of the said shop to a nearby shop as an alternative arrangement for the suspended/cancelled shop, or in the absence of a clear stay order passed by the appellate authority, to appoint a new shopkeeper subject to the decision to be made in the pending appeal. While taking such a decision, priority will be given to the wider interest of the beneficiaries of the concerned area and the indispensability of ensuring the proper/easy availability of permissible food grains to them.

(3) In case an appeal against the suspension/cancellation order is pending and no stay order has been passed by the appellate authority, if a new shop is allotted in view of the local requirement, then it should be clearly mentioned in such allotment orders that the said allotment will be subject to the final decision to be made in the pending appeal, and if the appellate authority accepts the appeal and passes a decision in favour of the previously allotted person, then no claim of the newly allotted vendor will be valid.

(4) The proceedings against the fair price vendor should be completed in a time-bound manner, and similarly, the competent appellate authority shall ensure the expeditious disposal of such appeals/stay applications filed against suspension/cancellation orders.”

(English translation by Court)

39. A perusal of the above shows that in case of pendency of appeal against suspension/ cancellation, new arrangements including fresh allotment can be made. However, the fresh allotment would be subject to the outcome of the appeal and the subsequent allottee would have no right in this regard. The

process of fresh allotment will be initiated suo moto by the concerned authorities.

40. Thus, in light of the above discussed two Government Orders, it is clear that the allotment is made by passing a resolution in an open meeting of the Gaon Sabha. Once the resolution is made, the same is forwarded to the Block Development Officer who in turn places it before the Sub Divisional Magistrate concerned for his approval via the Tehsil Level Selection Committee. In the even of suspension/ cancellation an appeal can be filed under clause 8 of the relevant Government Order and during the pendency of the appeal, if no stay order is granted, then the shop can be attached to some other shop or a fresh allotment can be made. The fresh allotment can be made by the concerned authorities suo moto. Thus, the selection process consisting of resolution being passed in open meeting of Gaon Sabha forwarding the same to Block Development officer and its approval by Sub Divisional Magistrate in Tehsil level Selection Committee has to be followed again. The eligibility of proposed candidate is examined by the Tehsil Level Selection Committee and on its recommendation, the allotment order is passed by Sub Divisional Magistrate with direction to complete the necessary formalities for the fair price shop and after completion of the same by the selected candidate, the order for lifting and distribution of the food grains and essential commodities is passed by the Sub Divisional Magistrate. Thereafter, the selected fair price shop dealer obtains the food grains from F.C.I. godown and distribute the same within cardholders in accordance with the settled procedure by the department.

41. Thus, in light of the above discussion the legal question of onus is to be seen. While examining the onus, two situations would arise which have to be dealt with:

(I) When the appeal is filed before the subsequent allotment is made:

In a situation where the appeal is filed immediately after the cancellation order is passed and the subsequent fresh allotment is made thereafter then as per the government order, the subsequent allotment is subject to the Court proceedings. The particular wording of the government order are “उक्त आवंटन प्रश्नगत अपील में होने वाले अन्तिम निर्णय के अधीन होगा” [said allotment will be subject to the final decision to be made in the

pending appeal] meaning thereby that the subsequent order of allotment must contain the details of the appeal that has been filed so as to enable the subsequent allottee to have knowledge about the appeal as the appeal is preferred to the Divisional Commissioner.

In both the writ petitions, the order of fresh allotment states that “यह नियुक्ति मा० सक्षम न्यायालय के आदेशों के अधीन होगी। [said allotment will be subject to the final decision to be made in the pending appeal (**English translation by Court**)]” but the allotment orders do not state the pending appeal number. The Government order in this regard is very clear in as much as it states that the allotment shall be subject to the concerned appeal. Since the allotment orders do not disclose the appeal number pending before the concerned Divisional Commissioner, therefore it cannot be inferred that the subsequent allottee has knowledge of the pending appeal.

As detailed in the government order and also stated in the allotment letter, the fresh allotment is made after obtaining a proposal from the concerned Gaon Sabha which is passed in the open meeting. After approval by the Sub Divisional Magistrate, an order is passed for lifting of the food grains and its distribution in the village. Thus, it can be inferred that the original allottee will have knowledge of the fresh allotment made as the distribution of the food grains starts immediately after fresh allotment. Thus, in the view of this Court, the first onus of impleading the subsequent allottee in this situation will be upon the original allottee as in case impleadment is not done, then the subsequent allottee has a right to challenge any order in favour of the original allottee.

(II) When the appeal is filed after the subsequent allotment is made:

In such a situation, there can be no dispute with regard to the knowledge of allotment as the process of allotment abovementioned is carried out. It can be inferred that the original allottee will have knowledge of the fresh allotment made as the distribution of the food grains starts immediately after fresh allotment. It can also be inferred that the appeal has been filed to protect the rights of the original allottee viz-a-viz the subsequent allottee. Thus, in the view of this Court, the onus of impleading the subsequent allottee in this situation will also be upon the original allottee as in case impleadment is not done, then the subsequent allottee has a right to challenge any order in favour of the original allottee.

42. Thus, in both the scenarios, the first onus of impleading the subsequent allottee is on the original allottee, may it be in the appeal proceedings or the writ proceedings.

43. The Court is also conscious of the fact that in the appeal before the Divisional Commissioner, the State of U.P. along with other subordinate authorities are a necessary party. The Court is flooded with a spate of litigation in which the technical issues with regard to opportunity of hearing are raised. The most common cause of action is non-impleadment of the subsequent allottee. This issue can easily be rectified at the admission/ final hearing of appeal itself by calling for a report from the concerned authority with regard to any proposal for any fresh allotment. In case a fresh allotment is made, then the subsequent allottee should be made a party and be heard by the appellate authority. Thereafter, the challenge to the appellate order is on merits and not technicalities of opportunity of hearing. This would also ensure that the ratio of *Ram Kumar (supra)* is implemented in letter and spirit.

ANSWERS TO THE POINTS OF DETERMINATION:

(I) With regard to whether the subsequent allottee has any right to be heard in the appellate proceedings on the ground that the subsequent allottee is a necessary party to the appeal, the answer is in affirmative holding that the subsequent allottee is a necessary party and has a right to be heard in appeal/ writ proceedings.

(II) With regard to the onus of impleading the subsequent allottee, whether the allotment is before or after filing of the appeal, is on which party to the *lis*, in the view of the Court in both the scenarios, the first onus of impleading the subsequent allottee is on the original allottee, may it be in the appeal proceedings or the writ proceedings.

CONCLUSIONS:

44. In light of the findings and the views given above, the following conclusions are drawn:

(I) **WRIT C No. 1448 of 2026; M/s Mahalakshmi Self Help Group vs. State of U.P. and 4 others:**

The writ petition is **allowed**. The impugned order dated 19.12.2025 passed by Deputy Commissioner, Food and Civil Supplies in ¹⁶*Naresh Kumar vs. District Supply Officer, Etah and others*, is set aside. The petitioner is directed to place on record before the appellate Court, a copy of this order along with an application for impleadment within a period of two weeks from today. Furthermore, a direction is issued to the appellate Court to implead the petitioner herein in the appeal and thereafter decide the appeal, expeditiously, preferable within a period of three months from the date of production of certified copy of this order after given due opportunity of hearing to both the allottees. There shall be no order as to costs.

(II) WRIT C No. 1444 of 2026; Raj Kumar alias Raju vs. State of U.P. and others:

The writ petition is **allowed**. The impugned order dated 28.10.2025 passed by Addl. Commissioner (Admn)/ Deputy Commissioner, Food in ¹⁷*Bane Singh vs. State of U.P. and others* is set aside. The petitioner is directed to place on record before the appellate Court, a copy of this order along with an application for impleadment within a period of two weeks from today. Furthermore, a direction is issued to the appellate Court to implead the petitioner herein in the appeal and thereafter decide the appeal, expeditiously, preferably within a period of three months from the date of production of certified copy of this order after given due opportunity of hearing to both the allottees. There shall be no order as to costs.

(III) Further directions for effective implementation of the judgment and order of Ram Kumar (supra):

In light of the discussions and findings above, it is an appropriate case that further directions be issued to all the Divisional Commissioners of the State of U.P. to ensure effective compliance of the judgment and order of *Ram Kumar (supra)*. Therefore, the following directions are issued:

- (a)** In the event of any appeal being filed against the cancellation of fair price shop license, the respective appellate authority shall at the time of admission/ final hearing of appeal, call for a report from the concerned Sub Divisional Magistrate with regard to any fresh allotment of the fair price shop in question.

¹⁶ Appeal no. 875 of 2024

¹⁷ Appeal no. 577 of 2019

- (b)** In the event of a fresh allotment of the shop in question, the subsequent allottee shall be given a notice with regard to the pendency of the appeal. The notice shall be served through the concerned Sub Divisional Magistrate to negate any chances of non-delivery of notice.
- (c)** The notice shall state the date on which the subsequent allottee shall appear before the appellate Court.
- (d)** The subsequent allottee shall be given an opportunity of hearing before the appeal is finally decided.

45. Registrar (Compliance) is directed to send a copy of this judgment and order to all the concerned Divisional Commissioners for necessary compliance forthwith.

(Kunal Ravi Singh, J.)

March 28, 2026
Sumit S