

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 55/2008

% **Date of decision : 28th March, 2008**

M/s Suresh Kumar Gupta Appellant
Through Mr.Pradeep Gupta with Ms.Laxmibai
Leitanthem, Advocates

versus

The Commissioner of Food & Supplies & anr. Respondents
Through Mr.S.D. Salwan with Mr.Neeraj
Choudhary, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

DR. MUKUNDAKAM SHARMA, CJ :

1.The present appeal is directed against the judgment passed by the learned Single Judge on 1st November, 2007 whereby the writ petition filed by the appellant as a writ petitioner was dismissed.

2. The appellant herein was issued a Fair Price Shop licence in 1979 for Majlis Park. In terms of the said licence, the appellant was required to be engaged in the sale of controlled commodities, offered through the

Public Distribution System. The appellant operated the said licence till 2000. A plea was taken in the writ petition filed by the appellant that from 25th July, 2000 to 25th January, 2001, he was seriously ill and was, therefore, unable to operate the licence or offer Public Distribution System commodities for sale to the public. The appellant was served a memo dated 23rd November, 2000, which was replied to by the appellant by submitting a reply on 28th January, 2001 wherein he stated that he was suffering from Typhoid. On 11th March, 2003 a notice was issued to him directing him to show cause as to why his licence should not be cancelled. The same was replied to by the appellant. Even subsequent thereto another show cause notice was issued on 5th January, 2005, by the respondent as against which reply was also filed. An order was passed by the respondent on 26th May, 2005 whereby the licence granted to the appellant was cancelled. The said order was passed pursuant to show cause notice dated 11th March, 2003, which was based on the report that the aforesaid Public Distribution System shop was neither functioning nor the appellant had submitted any draft for lifting SFAs since long. After making a reference to the aforesaid, the following order was passed:

“It has been reported by the FSO circle-56 that M/s Suresh Kumar Gupta FPS No.5368 situated at A-69 Majlis Park, Delhi under circle No.56 is neither functioning nor submitted any draft for lifting SFAs since long.

A show cause notice No.AC(N)/F&S/2001/404/ dated 11.3.03 was issued by the then AC(N) to appear before him on 21.3.03 and again reminder issued vide No.AC(N) F&S/2005/86 dated 5.1.05 for final appearance on 20.1.05.

Sh. Suresh Kumar Gupta, proprietor of FPS present before the then AC(N) on 1.2.05 and submitted his written reply. In his defense, he has stated that his FPS was not functioning since Oct, 2000 due to his illness but in support of his version, he submitted only "copy of medical certificate" about the treatment taken by him in the month of Oct, 2000 in which he was advised three months rest up to 25.10.2000 by a BHM doctor and except this, he has not submitted further any evidence about non-functioning of his FPS. Neither he has applied for any kind of leave during the said period in view of department's instruction No.F.28/4/97 /F&S/P&S/1105 dated 15.7.99 about grant of leave to PDS units.

Vide departments order dated 12.10.04 and 11.11.04, worthy CFS has already issued directions that PDS units which are neither functioning nor submitting any draft for period of more than three months be cancelled forthwith.

On going through carefully the written reply filed by the licensee, his verbal arguments / averments made before the then AC(N) recorded in the case file on 1.2.05 and available relevant past record now placed before me for deciding the case, I am of the considered view that merely on production of a medical certificate and that too from a private doctor, the grounds for non-functioning of FPS by him do not justify and hence it will not be in "public interest" to

allow him to continue FPS further and the ends of justice will be met in case his authorization is cancelled in view of directions issued by the department as mentioned above.

Accordingly I, O.P. Dewan AC (North) in exercise of the powers conferred upon me under the relevant provision of Delhi specified articles (R&D) order 1981 hereby cancel the authorization of FPS No.5368 of M/s Suresh Kumar Gupta with immediate effect."

3. Being aggrieved by the aforesaid order, the appellant preferred an appeal to the Commissioner, who by his order dated 3rd November, 2005 rejected the same. In the said order, the Commissioner held that the explanation given by the appellant for his inability to operate the licence for the six months period between 25th July, 2000 to 25th January, 2001 was unsatisfactory, since he claimed illness only after receipt of the notice and not prior to the same. The main ground on which the Commissioner dismissed the appeal was on the basis of his information that the appellant had not operated the Public Distribution System shop for more than five years, although he had deposited the enhanced security amount of Rs.4500/-.

4. Being aggrieved by the said order, a writ petition was filed. The learned Single Judge considered the contentions raised before him in-depth and thereafter passed a reasoned order dismissing the writ petition. The learned Single Judge on appreciation of the records held

that the appellant did not operate the Fair Price Shop for about five years, which is unacceptable when one views this from the larger perspective of the public interest in ensuring periodic and regular supplies to the consumers. Reference was also made to one of the replies to the show cause notice wherein the appellant had taken up a plea that lifting the stocks of Public Distribution System was unviable because the prices of Public Distribution System items had become uneconomic. Therefore, the intention of the appellant was found to be unacceptable and an afterthought.

5. Being aggrieved by the said order passed by the learned Single Judge, the present appeal was filed on which we have heard the learned counsel appearing for the parties. Similar pleas were also raised before us. The counsel appearing for the appellant submitted before us that the appellant was unwell and was suffering from different ailments between the period from 2000 – 2005 and, therefore, it was not possible for him to lift the Public Distribution System items. He also drew our attention to the Circular dated 22nd March, 2004 and by making reference to paragraph 2 thereof, he submitted that even if the licence for Fair Price Shop was lying non-functional for one reason or the other even for a period longer than three years, one time opportunity should be granted to such licensees, to apply within three months from the date of issuance of those instructions for revival of

their old licences. It was also submitted by him that there were sufficient reasons given by the appellant for non-functioning during the aforesaid five years.

6.The aforesaid submissions made before us were considered by us in the light of the records. The original records were also placed before us for our perusal. A bare reference to the aforesaid Circular dated 22nd March, 2004 would clearly establish that such one time opportunity could be granted to a licensee for revival of the old licence provided cancellation procedure had not been initiated. In our considered opinion, even on the face of the provisions enumerated in paragraph 2 thereof, the benefits of the Circular could not be given to the appellant as the cancellation procedure was initiated prior to the issuance of the aforesaid Circular. The said position is clear on a bare perusal of the records. In this connection we may refer to the two communications issued regarding initiation of the said proceedings. The relevant portions of the same are reproduced below for reference :

“ Memo dated 23rd November, 2000

It has been observed that you are not submitting your D/D Drafts of S.F.A. since last seven months without any intimation to this Circle office. You are hereby directed to explain the reason of not submitting the Draft and closer(sic. closure) of your F.P. shop. Your reply should reach this office within a week of issuing of this memo, failing which necessary action will be taken.”

Show Cause Notice Dated 11th March, 2003

“WHEREAS FPS No.5368 FPS/KOD Lic.No.____situated at A-69 Majlis Park, Delhi inspected/checked by Circle Staff on 3.1.03 and the following discrepancies have been observed/reported in records/stocks:

Not functioning since long.

By committing the above discrepancies, you have violated the provisions of Delhi Specified Food Articles (Regulation of Distribution) Control Order 1981 and Delhi Kerosene Oil (Export & Price) Control Order 1962. You are therefore directed to submit reply within 7 days on the receipt of this notice. If no reply is received within the stipulated period it will be presumed that you have accepted the charges and ex-parte decision will be taken.

Besides written reply, you are directed to appear before the undersigned on 21.3.2003 at 11.00 a.m. along with relevant records pertaining to the case.”

7.The appellant neither deposited any draft for long five years nor lifted any stocks. Therefore, due to the conduct of the appellant, the beneficiaries of the Public Distribution system, who had been placed under the appellant, suffered for untimely and irregular supply or no supply of the food grains and other commodities under the Public Distribution System. The appellant as a licence holder failed to discharge his duties as was expected of him. He failed to lift such supplies, although he was given the licence under which he was obliged to lift the stocks so as to meet the objectives of the Public Distribution System. Even as per Departmental Instructions No.

F.28/4/97/F&S/P&S/1105 dated 15th July, 1999, no Fair Price Shop holder can avail leave on medical ground for a period exceeding one year, as in that case either the shopkeeper has to give resignation or notice will be given to him for termination of license. It also appears that the appellant was not interested in running the Fair Price Shop as is evident from reply submitted by him to the notice dated 11th March, 2003, wherein he has stated that the lifting of stocks was unviable because the prices in the PDS had become uneconomic.

8. In that view of the matter, we find no reason to interfere with the reasoned order passed by the learned Single Judge. We find the reasons given by the learned Single judge in dismissing the writ petition to be cogent. There is no merit in this appeal which is accordingly dismissed.

CHIEF JUSTICE

REVA KHETRAPAL, J

MARCH 28, 2008
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