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

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+ **W.P.(C) 100/2010 & CM APPL No. 202/2010**

BHARAT STORE

..... Petitioner

Through: Mr. Puneet Mittal, Advocate

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Amiet Andley, Advocate

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether reporters of the local papers
be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

ORDER
15.04.2010

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1. The challenge in this petition is to an order dated 24th December 2009 passed by the Assistant Commissioner (North), Food & Supply Department, Government of NCT of Delhi asking the Petitioner which is a proprietary concern of Mr. Rishi Prakash Bansal and running a Fair Price Shop ('FPS') No. 7433 to show cause why the authorization letter granted to him should not be cancelled for violating the various provisions of Delhi Specified Food Articles (Regulation & Distribution) Control Order 1981 ('DSFARDO').

2. According to the Respondents, the aforementioned FPS situated at A-48, Wazirpur Industrial Area functioning under Circle 17 was inspected by the Inspectorate Staff of District (North) on 22nd December 2009 at 3.30 pm and the following discrepancies were noticed:

“(a) 31.5 Oils of SFAs (29 Qtls of wheat and 2.5 Qtls of rice) found short during the inspection of Inspectorate team of District (North) on 22nd December 2009.

(b) Misbehaved with Smt. Kamlesh Kumari, Area Inspector on 18th December 2009.

(c) Non co-operation and misbehaving with inspecting team on 22nd December 2009.

(d) 16 card holders bearing Nos. BPL-56320273, BPL-56320406, BPL-56320094, BPL-56320251, BPL-56320076, BPL-56320354, BPL-56320568, BPL-56320358, BPL-56320496, BPL-56320356, BPL-563020350, BPL-56320127, BPL-56320030, BPL-56320442, BPL-56320334, BPL-56320297, alleged that FPS holders overcharging and less issuance of SFAs to them.

(e) Keeping closed inside the business premises of Smt. Muneshwari Devi BPL Card holder No. 56320118 by closing shutter nearly two hours and released after intervention of police.

(f) Not signing over seizure/recovery memo.

(g) Not providing the books of accounts to the inspecting team on 22nd December 2009.

(h) Not adhering the Department order No. 738 dated 30th October 2009 and 868 dated 21st November 2009 regarding de-linking of cards and transferring of SFAs.

(j) Stock board was not filled at the time of visit.

(k) Authorization was not displayed at the premises at the time of visit 2008.

(l) Samples were not displayed during the visit.

(m) Complaint book was not available during the visit.”

3. Although the aforementioned show cause notice was titled “suspension-cum-show cause notice”, in the body of the notice there was nothing to indicate that the Petitioner FPS in question was being placed under suspension. According to the Petitioner, the aforementioned show cause notice was delivered to him on 31st December 2009. In response thereto, he gave an interim reply on 2nd January 2010 and a detailed reply on 6th January 2010.

4. It is stated in the petition that orders dated 30th October 2009 and 21st November 2009 of the Additional Commissioner (North) transferring 23 food cards and 13 food cards respectively to other FPSs, was challenged in an appeal filed by the Petitioner. The said appeal was pending when the aforementioned inspection took place.

5. When this writ petition was listed on 11th January 2010, while directing notice to be issued, the Respondents were directed by this Court to maintain status quo regards the transfer of stock of Specified Food Articles (‘SFAs’) as well as cards, if already not done, to other fair price shops.

6. At the next hearing on 29th January 2010 learned counsel for the Petitioner stated that the entire stock which the Petitioner had received for sale during

the month of December 2009 was in tact even as on that date. On the other hand learned counsel for the Respondents maintained that their inspection revealed that shortfall in the both stocks wheat and rice. A direction was issued by this Court that on that very date 29th January 2010 at 3.00 pm an inspection team headed by a Senior Officer of the Respondent Department of Food & Supplies should inspect the FPS of the Petitioner. The Petitioner was also directed to remain present. The entire exercise was directed to be videographed and a soft copy of the videograph/inspection to be produced on the next date.

7. Pursuant to the above direction an inspection report was filed. The following order was passed on 19th February 2010:

“The inspection report was placed on record and has been perused. The video of the inspection was also viewed by the Court in the presence of the counsel for both the parties in the Court. The video substantiates the statement in para 4 of the inspection report that the bags containing special food articles (SFA) were lying in the premises in an unsealed and torn condition and were spread all over the floor in an unhygienic manner.

2. Mr. Andley, learned counsel for the Respondents states that the officers will again visit the shop within next three days, on a date to be informed in advance to the Petitioner, who will also remain present, so that a proper inventory can be taken of the bags that are intact. It will be open to the officers to note the marking on the bags and the exact condition of the bags. The offices are permitted to number the bags for the purpose of identification. Photographs and if possible, a video, be taken for this exercise. A further report be placed on record before the

next date of hearing.

3. After the exercise is complete, the officers are permitted to reseal the shop. The floor will be cleaned by removing the spilt SFS and the shop be kept in a neat and clean condition. The officers are permitted to take appropriate steps, if they feel that the food articles in the bags which are intact will deteriorate further to shift the stocks of SFA to other shops. It will be clearly indicated in the report whether and to what extent the SFA bags found in the Petitioner's stock have been shifted to the other shops.

4. The CD which has been played today in the Court be kept in a sealed cover with the Registrar.

5. List on 23rd March 2010.

6. Order dasti.”

8. The Petitioner has thereafter been heard on two occasions. The Respondents have filed a further affidavit on 5th April 2010 wherein it is stated that as per the weighment-memo prepared on 26th/27th February 2010, 176 qtls 55 kgs 100 grams wheat, 103 qtls 88 kgs 250 grams rice and 49 qtls 73 kgs 490 grams sugar found consumable in the business premises and the same have been transferred to other food cards linked shops namely FPS No. 7435, 5885 and 8790 for further distribution to cardholders. Further 6 qtls 73 kgs 376 grams of SFAs was found mixed of all categories i.e. wheat, rice and sugar, which is not consumable. This mixed quantity was filled in 15 bags and kept in the shop. The shop was not resealed by the inspecting team. The shortfall after the weighing showed that as far as the wheat is concerned '1.25 qtls was short, for rice the shortfall was 1.42. qtls and for

sugar it was 9.20 qtls. The difference between the figures stated in the show cause notice and what has been found upon inspection, pursuant to the orders of this Court, has sought to be explained thus:

“6. That in view of the above, it is pertinent to mention here that checking of this FPS was initially done on 22nd December 2009 and the premises was sealed on 29th January 2010 (after 37 days) and during this period shop and stock remain unsealed and in possession of the FPS holder. The CD of the visit by inspecting team on 22nd January 2010 as per the orders of the Court revealed that food grains were laying spread all over the floor in the premises. The possibility of the Petitioner dumping the food grains in order to make good the deficiency of SFAs cannot be ruled out.”

9. In a rejoinder to the above affidavit filed on 6th April 2010 the Petitioner points out that there are unexplained variations in the figures stated in the show cause notice and that found upon the inspection conducted on 26th/27th February 2010. It is pointed out by Mr. Puneet Mittal, learned counsel for the Petitioner, that in terms of the standard practice of the Department shortage/variation of 1 kg. sugar per quintal is permitted. As regards the variation on stock of rice the actual quantity supplied and received as per the department is 105 quintal. The loss of weight in rice was on account of loss of moisture since the stock was weighted after three months approximately. It is further pointed out that when the shop was inspected on 22nd December 2009 no variation in sugar stock was found. In para 9 it is stated as under:

“9. That it is further submitted that entire inspection on 22nd December 2009 was conducted within two hours and when this Hon’ble Court has directed to re-inspect the same, it took almost three days for doing the same job, as this time the entire stock was physically got removed and weighed, which was not

the case earlier. In fact the department as per practice does not get the stock verified/weighed in the presence of the licensee at the time of delivery and it is left to the licensee to accept the weighment made by the department.”

10. At the outset it requires to be noticed that in terms of the second proviso to Clause 4 of the DSFARDO, suspension of an FPS authorization cannot be continued beyond three months. In similar circumstances this Court had quashed the order suspension of the Petitioner in W.P. (Civil) No. 2971 of 2005 (*M/s. Bharat Store v. Govt. of NCT of Delhi & Ors*), following the earlier order dated 3rd October 2005 in W.P. (Civil) 19653 of 2005 (*Kusum Lata v. Govt of NCT of Delhi*).

11. The above position in law is not disputed. Consequently, in terms of the second proviso to Clause 4 of the DSFARDO this Court quashes the impugned order dated 24th December 2009 purportedly placing the Petitioner under suspension. The first proviso to Clause 4 (2) of DSFARDO requires a reasonable opportunity of being heard to the person affected. In the instant case prior to placing the Petitioner’s FPS authorization under suspension, no such procedure was followed. This is another ground on which the impugned order deserves to be quashed. The Department is however at liberty to proceed in accordance with law to issue a show cause notice to the Petitioner enclosing with it the materials which form part of the records of the present case. After giving the Petitioner a liberty of filing a reply and giving him a hearing, the Department will proceed further in accordance with law.

12. In that view of the matter, this Court is not called upon to decide whether the version of the Department as to variation on stock should be accepted or not. That can be decided at an appropriate stage, if such need arises.

13. Before concluding, this Court would like to observe that with the easy availability of affordable digital technology it should be possible for the Food and Supplies Department to videograph every inspection conducted so that an inviolable tamper-proof digital record is available for subsequent verification. Any loss of time in preserving records inspection can weaken the case of the department. The Commissioner, Food and Supplies Department, GNCTD will do well to devise a protocol for the carrying out of inspections, the weighment of stocks, and the verification and cross checking of registers in a systematic and fool proof manner. A digital record of all such inspections should be preserved with back-up copies. In the instant case, the video-graphing of the inspection under the orders of the Court and its subsequent viewing by the Court facilitated the expeditious disposal of the case.

14. With the above directions, the petition and the pending application are disposed of. Order be given dasti to learned counsel for the parties.

S. MURALIDHAR, J

APRIL 15, 2010
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