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

+ W.P.(C) 907/2008 & CM.No.1765/2008

% **Judgment delivered on 08.01.2014**

NARAIN SINGH THR. IT'S PROP.TRIPTA RANI Petitioner
Through: Mr.Nitin Sehgal, Advocate

versus

THE COMMISSIONER OF FOOD &
SUPPLIES DELHI & ANR Respondent
Through: Mr.S.D. Salwan and Ms.Latika Dutta, Advs

CORAM :-

HON'BLE MR. JUSTICE G.S. SISTANI

G.S.SISTANI (ORAL)

1. Rule. With the consent of counsel for the parties, present petition is set down for final hearing. Necessary facts for disposal of this petition are that in the year 1976 at the request of Sh.Narain Singh, a licence for running Fair Price Shop No.4743 was issued. On 23.06.1984 the shop of Sh.Narain Singh was visited by the department officials and some irregularities were detected which led to lodging of FIR No.142/1984 against the said Sh.Narain Singh. On 04.08.1984 the licence of the said Fair Price Shop was cancelled by the department, on the basis of violation levelled by the raiding party.
2. The order of cancellation was assailed by Sh.Narain Singh by filing an appeal. In the appeal by order dated 28.09.1984 the then Commissioner, Food and Supplies, remanded the case back to the Assistant Commissioner, Food and Supplies for further examination.
3. On 15.10.1985 the Assistant Commissioner, Food and Supplies on re-

examination of the case, revoked the cancellation order, forfeited the security amount of Rs.250/- and restored the licence. On 09.03.1997, the original licence holder, Sh.Narain Singh expired and in August, 1997 the present proprietor (daughter-in-law of late Sh.Narain Singh) applied for change of constitution of the Fair Price Shop in her name. Based on the policy of the department, the licence of the Fair Price Shop was transferred in the name of Smt.Triptā Rani. On 17.11.1997, the original licence holder was convicted by court of Addl. Judge and a fine of Rs.250/- was imposed on him.

4. According to the present proprietor / Smt.Triptā Rani, she was not aware of any criminal case, which was lodged against her father-in-law. It is submitted that on 21.09.2007 present proprietor received a show cause notice based on the conviction of Sh.Narain Singh and on 11.10.2007 the Assistant Commissioner, Food and Supplies, cancelled the licence of the Fair Price Shop in the name of the present proprietor on the ground of conviction of Sh.Narain Singh, the earlier proprietor.
5. It is contended that the present proprietor cannot be held responsible for the acts of late Sh.Narain Singh, especially when Sh.Narain Singh died in the year 1997; and from 1997, after substitution the present proprietor has been running the Fair Price Shop, without any complaint. It is submitted that licence of the petitioner firm cannot be cancelled, for the offence, which took place in the year 1984.
6. It is submitted by counsel for the petitioner that once the Assistant Commissioner, Food and Supplies after due hearing, had imposed a penalty of forfeiture of security amount of Rs.250/- vide order dated 15.10.1985, therefore, petitioner cannot be punished twice for the same offence. The second argument of counsel for the petitioner is that the show cause notice dated 21.9.2007 and cancellation order dated

11.10.2007 are liable to be quashed, as firstly the action initiated has become stale; and secondly, violation, if any, of the petitioner stands condoned as licence was renewed subsequently for 10 years and moreover in the name of the present proprietor of petitioner firm.

7. Mr.Salwan, learned counsel for the respondent submits that once the original licence holder had committed breach and was convicted the respondents were bound to cancel the licence of the petitioner firm, hence, the respondents are well within their right to take action in terms of Clause 7 of the 1981 Order dated 12.01.1981, i.e. Delhi Specified Articles (Regulations of Distribution) Order, 1981 which reads as follows:

“7. Cancellation of authorization upon Conviction.- *Notwithstanding anything contained in this clause where an authorized wholesaler or a fair price shop holder has been convicted by a court of law in respect of contravention of any of the provisions of this Order or any other order made under Section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Deputy Commissioner may, by order, in writing cancel his authorization forth with :*

Provided that where such conviction is set aside in appeal or revision the Deputy Commissioner may on application by the person whose authorization has been cancelled re-issue the authorization to such person.”

8. Counsel for the respondent submits that the delay is procedural, as in the period of 18 years, 24 Assistant Commissioners had been transferred in one zone, and in another zone 12 Assistant Commissioners were transferred in 10 years.
9. In response to the above, the counsel for the petitioner stated that in case the respondents were to rely upon Clause 7 of the order dated 12.1.1981, the same should have been invoked by them within a short span of time

from the date of the cause of action and in any case within a reasonable period of time. It is further contended that on account of delay, the respondents are estopped from relying on Clause 7 of the Order dated 12.01.1981 which would be deemed to have been given up by the respondents, by virtue of their conduct; and on the contrary, vested rights have been created in favour of the petitioner by continuous renewal of license, which cannot be taken away at this belated stage.

10. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petition.
11. The basic facts are not in dispute that the licence was granted to the father-in-law of the present proprietor of the petitioner firm to run Fair Price Shop. Upon inspection being carried out and some irregularities having been found, hearing was granted and the father-in-law of the present proprietor of the petitioner firm was penalized by forfeiting the security amount. It is also not in dispute that as long as the original licence holder was alive, no action was taken against him as per Clause 7 of the Delhi Specified Articles (Regulations of Distribution) Order 1981. Thereafter the licence was renewed from time to time in favour of the present proprietor, who is a separate entity. It was only after a gap of more than 10 years, show cause notice for cancellation of the Fair Price Shop was issued, which led to cancellation of licence, as according to the respondent, original licence holder had incurred a disqualification having been convicted by a criminal court, in terms of the 1981 Order.
12. Admittedly, action was taken by the Assistant Commissioner against the previous licensee and a penalty of forfeiture of security amount was imposed. In my view no action lies against the present proprietor for the act committed by the previous licence holder. Even otherwise, having not taken action for a period of more than 10 years and on the contrary having

renewed licence of the petitioner firm would amount to condoning the acts of the wrong doer; and after 10 years, the respondents are estopped from taking action against the petitioner having waived off their rights by their own conduct. The Government must act in fair, just and expeditious manner. The delay and inaction on the part of the respondent has resulted in creation of valuable rights in favour of the petitioner.

13. It is settled law that a statutory authority is required to act reasonably, fairly and expeditiously. The respondents have not only slept over its right, but also there is no reasonable and plausible explanation for the gross delay, and, thus, the respondents waived their right for taking any action against the petitioner. Moreover, the respondents by agreeing to transfer the licence in the name of the present proprietor, have condoned the act of the previous licence holder, hence, the licence of the present proprietor cannot be cancelled for the acts of the previous licensee, as the respondents have given a reasonable belief to Smt.Tripta Rani (the present proprietor of the petitioner firm) that her rights and title is good and shall not be disturbed.
14. At this belated stage, the action of the respondent has become stale and more so the authorization of person who was actually convicted has already been transferred to another, which transfer has been carried out by the respondents department and the new proprietor has been continuously running Fair Price Shop for years. The above narration of facts would show that the department has been extremely careless and casual in enforcing the terms of the license, in accordance with law, and, thus, respondents' action cannot be sustained.
15. Moreover, in my view the present proprietor of the petitioner firm has not incurred any disqualification for grant of license/authorization due to

conviction, as it was the previous proprietor (Mr.Narain Singh) who was convicted.

16. Respondents counsel has placed reliance upon the report of Justice Wadhwa Committee constituted by the Supreme Court of India. Due to the aforesaid facts and observations, respondents cannot at this stage get benefit of their inaction or the findings of the report.
17. In view of the aforesaid, present proprietor cannot be penalized, at this stage even more so since the published act, was never committed by the present license holder. A party is bound to act reasonably more so a statutory authority. The authority was under a duty to act reasonably and without prejudice to the rights of the petitioner. Given that the authority has itself renewed the license of the petitioner firm, they themselves have condoned the earlier conviction. Further by not acting within a reasonable period of time and by agreeing to renew the license in the name of present proprietor has given her a reasonable cause to believe that a right has accrued in her favour. Accordingly, the impugned show cause notice dated 21.9.2007 and cancellation order dated 11.10.2007 are quashed.
18. Rule is made absolute. The petition and the application stand disposed of in above terms. Parties shall bear their own costs.

G.S. SISTANI, J.

JANUARY 08, 2014

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