

\$~

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

+ W.P.(C) 1066/2008 & CM.No.2081/2008

% **Judgment delivered on 08.01.2014**

JAGDAMBA CONSUMER CO-OP STORE LTD.

(THROUGH ITS SECRETARY) Petitioner

Through: Mr.Sanjay Goel, Advocate for petitioner

versus

GOVT. OF NCT OF DELHI & ORS Respondent

Through: Mr.S.D. Salwan and Ms.Latika Dutta, Advs

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (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 the licence bearing No.2217/81 in the name of petitioner's Cooperative Society (M/s.Jagdamba Consumer Co-operative Store Ltd.), for running Kerosene Oil Depot (KOD) was granted on 14.08.1981 and since then the same was being run by its Elected Secretary from the shop which is situated at Shop No.101, village Garhi, Lajpat Nagar, Delhi. This licence was renewed from time to time and was valid upto 13.08.2008. In the year 1994 an inspection of the Petitioner's Kerosene Oil Depot was conducted and based on the violations under the Essential Commodities Act, a complaint was lodged by the department against Shri Herkesh Verma (the then Secretary of M/s.Jagdamba Consumer Co-operative Store Ltd.), who later on died on 16.08.2004. In the meanwhile, respondent also lodged an FIR bearing No.259/1994 at P.S. Lajpat Nagar,

Delhi against him for the same alleged violations. Consequently licence of the petitioner's KOD was suspended by an order dated 07.09.1994 passed by respondent no.3. On 26.10.1994 the suspension order was revoked by the respondent no.3, after levying penalty of forfeiture of the entire security amount deposited. Since then the KOD was being operated by the duly elected Secretary, in absolute conformity with law and without any adverse report from the department. On 03.01.1996, in the criminal proceedings, the erstwhile duly elected Secretary as well as its employee, were penalized by way of imposing fine of Rs.3500/- on each of them and both of them were released on probation for a period of one year.

2. It is submitted by counsel for the petitioner that in this case a show cause notice was issued to the petitioner on 12.11.2007, after a gap of more than 13 years, on the ground that the holder of authorization had been convicted under the Essential Commodities Act for violation of various provisions of the said Act. Reply to the show cause notice was filed, however, the same was not found to be satisfactory by the respondents and the licence/ authorization was cancelled on 28.11.2008. An appeal filed against the order of cancelling the authorization was also dismissed.
3. It is contended that the then Secretary (Mr.Harkesh Verma) against whom the order had been passed has since died and the KOD is being run by the subsequent elected Secretary, hence, the petitioner cannot be made to suffer for the same offence. It is further submitted that once in the year 1996 a fine of Rs.3500/- was imposed upon the then Secretary of the petitioner society and he was released on probation of one year, the petitioner society cannot be punished twice for the same offence. Therefore, counsel for the petitioner contends that in view of Section 12 of the Probation of Offenders Act, 1958, the petitioner society does not suffer any disqualification.

4. It is further contended that on the administrative side the suspension order was revoked, penalty of forfeiture of the security amount was imposed and the licence was also renewed from time to time, thus the respondents are estopped from taking recourse to clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962. In any case the action of the respondents is stale, having been initiated after 13 years, which would show that respondents had given up their rights to initiate such an action.
5. Mr.Salwan, counsel for the respondent has opposed this petition on the ground that once the order of conviction had been passed, the licence of the petitioner was liable to be terminated, as per Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962, which reads as under:

“6. Contravention of the terms and conditions of licence:

- (1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and condition or directions or any provisions of this order then without prejudice to any other action that may be taken against licensee according to law, his licence can be suspended by order in writing by the Commissioner.
Proviso to clause 6(1) order vide Dt. 15.2.80.
- (2) Without prejudice to the provisions of sub-clause 1 if the Commissioner is satisfied that the licensee has contravened any of the terms and conditions of a licence or the directions issued under clause 3-D or any provision of this order and cancellation of his licence is called for, may after giving the licensee a reasonable opportunity of stating his case against the proposed cancellation by order in writing cancel his licence and shall forward a copy thereof to the licensee.
- (3) Notwithstanding anything contains in this clause, where a licensee is convicted by a court of law for breach of the terms and conditions of the licence or contravention of the provision of this order the licensing authority may by order in writing, cancel his licence.

Provided that no such order shall be passed until the appeal, if any, filed against such conviction is dismissed and where no such appeal is filed until the period of limitation for filing an appeal expires.”

6. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petition.
7. The basic facts are not in dispute that business of M/s.Jagdamba Consumer Co-operative Store Ltd., was being carried out by the duly elected Secretary. The order of conviction in this case is against the then Secretary of M/s.Jagdamba Consumer Co-operative Store Ltd.. It is also not in dispute that as long as the then Elected Secretary, who had committed the breach was alive, no action was taken against the petitioner society in terms of Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962. Thereafter, licence was renewed from time to time uptill 13.8.2008 in favour of the petitioner society. It was only after a gap of more than 13 years, a show cause notice dated 12.11.2007 for cancellation of the licence of Kerosene Oil Depot was issued and thereafter the licence was cancelled vide order dated 28.11.2007 as according to the respondents, the petitioner society had incurred a disqualification as its licensee was convicted by a criminal court, in terms of Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962.
8. Admittedly, no administrative action was taken by the respondents against the petitioner society for more than 13 years. Thus in my view no action lies against the present licence holder of the petitioner society for the act committed by the previous licence holder. Even otherwise having not taken action for 13 years and on the contrary having renewed licence of the petitioner society from time to time would amount to condoning the act of the wrong doer; and after 13 years, the respondents are estopped from taking action against the petitioner society 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 society.

9. It is settled law that a statutory authority is required to act reasonably, fairly and expeditiously. The respondents have not only slept over their 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 society. Moreover, the respondents by agreeing to renew the licence from time to time have condoned the act of the previous licence holder of the petitioner society; further, the respondents have given a reasonable belief to the petitioner that his right and title is good and shall not be disturbed, hence, the licence of the present licence holder of the petitioner society cannot be cancelled for the acts of the previous licence holder.
10. At this belated stage, the action of the respondents 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 authorization holder has been continuously running Kerosene Oil Depot on behalf of the petitioner society, 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.
11. Moreover, in my view the earlier licence holder of the petitioner society has not incurred the disqualification of grant of license/authorization due to conviction, as it is settled law that a person released on probation under Section 12 of the Probation of Offenders Act shall not suffer any

disqualification. In the case of *Gulzar v. State of M.P.*, (2007) 1 SCC 618, it has been held as under:

“....While Section 12 of the PO Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the PO Act shall not suffer disqualification, if any, attached to the conviction of an offence under any law....”

12. 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.
13. In view of the aforesaid, present licence holder of the petitioner society 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 society. Given that the authority has itself renewed the licence of the petitioner society, they themselves have condoned the earlier conviction. Further by not acting within a reasonable period of time and by agreeing to renew the licence in the name of the present licence holder of the petitioner society, has given him a reasonable cause to believe that a right has accrued in his favour. Accordingly, the impugned order of cancellation dated 28.11.2007 is quashed.
14. 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 'ssn'