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

+ W.P.(C) 1121/2008 & CM.No.2186/2008

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Judgment delivered on 08.01.2014

M/S.RAM PRATAP ROHIT KUMAR & ORS. Petitioners

Through: Mr.Sanjeev Kumar, Advocate

versus

THE STATE & 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, the present petition is set down for final hearing and disposal.
2. In this case on 22.12.1983 authorization to run a Fair Price Shop No.5054 was issued in the name of M/s.Ram Pratap, being Ram Pratap and Nanak Chand its partners.
3. After a gap of almost 2 years on an inspection carried out by the officials of Food and Civil Supplies Department on 08.12.1985, certain irregularities were detected and on this basis a complaint was lodged, resulting in registration of FIR No.261/1985 under section 7 of the Essential Commodities Act, at Police Station Mangolpuri. This led to issuance of the suspension-cum-show cause notice.
4. On 11.09.1986 the suspension-cum-show cause notice issued to M/s.Ram Pratap was revoked by the Collector by forfeiting the entire security amount of Rs.500/-.
5. Meanwhile, on the basis of an FIR filed, cognizance was taken by the Special Court under Section 7 of the Essential Commodities Act. Vide order dated 14.12.1988 passed by learned ASJ, Delhi petitioner no. 2

(Ram Pratap) and Sh. Nanak Chand were convicted and a fine of Rs 200/- was imposed on them and in default of payment of fine they were directed to undergo R.I. for a period of one month. Sh.Nanak Chand expired on 27.12.2002. On 15.04.2006 the licence was mutated and renewed upto 14.04.2009 in the name of Ram Pratap and Rohit Kumar (petitioner no.2 and petitioner no.3 herein). On 11.10.2007 licence was cancelled by respondents, which resulted in filing of an appeal, which was also dismissed by respondent no.1, hence, the present writ petition.

6. It is submitted by counsel for the petitioners that in the year 1986 show cause notice issued to petitioner no.2 (Ram Pratap) and Nanak Chand the erstwhile proprietors of M/s.Ram Pratap was revoked by the Collector and the security deposit was forfeited, hence, the present partners i.e. petitioner no.2 (Ram Pratap) and petitioner no.3 (Rohit Kumar) cannot be punished twice for the same offence. The second argument of counsel for the petitioners is that the cancellation order dated 11.10.2007 is liable to be quashed, as firstly the action initiated has become stale; and secondly, violation, if any, stands condoned, as licence was renewed subsequently for 19 years and moreover in the name of the present proprietors of the firm.
7. Mr.Salwan, counsel for the respondent submits that once the partners of the petitioner were convicted, the respondents were well within their rights to take action as per 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 respondents 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 petitioners 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 the shortest 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 right has been created in favour of the petitioners 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 M/s.Ram Pratap, being Ram Pratap and Nanak Chand as its partners, to run a Fair Price Shop. The partners of the petitioner firm i.e. Ram Pratap and Nanak Chand were convicted in the year 1988. It is also not in dispute that as long as the earlier proprietor (Nanak Chand) was alive, no action was taken against the petitioner firm as per Clause 7 of the Delhi Specified

Articles (Regulations of Distribution) Order 1981. Thereafter, licence of the petitioner firm was mutated in the name of Ram Pratap and Rohit Kumar and was renewed upto 14.4.2009 and only after a gap of more than 19 years, order of cancellation dated 11.10.2007 with respect to the Fair Price Shop was issued, as according to the respondent, petitioner firm had incurred a disqualification having been convicted by a criminal court, in terms of 1981 Order.

12. Admittedly, no administrative action was taken by the respondent against the petitioner for more than 19 years. In my view no action lies against the present petitioners for the act committed by the previous licence holders. Even otherwise, having not taken action for 19 years and on the contrary having renewed licence of the petitioner firm from time to time would amount to condoning the act of the wrong doer; and after 19 years, the respondents are estopped from taking action against the petitioners 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 petitioners.
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 petitioners. Moreover, the respondents by agreeing to transfer the licence in the name of the petitioner Nos.2 & 3 have condoned the act of the predecessor of the petitioner firm, hence, the licence of the present petitioners cannot be cancelled for the acts of the previous licencees.

14. At this belated stage, the action of the respondents has become stale and more so part authorization of the persons who were actually convicted has already been transferred to another, which transfer has been carried out by the respondents department and the new proprietors /authorization holders have 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. Counsel for the respondents 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.
16. In view of the aforesaid, present petitioners cannot be penalized, at this stage even more so since the published act was never committed by the substituted partner of the petitioner firm i.e. petitioner no.3. 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 petitioners. Given that the authority has itself renewed to license of the petitioners, 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 petitioners has given the petitioners a reasonable cause to believe that a right has accrued in their favour. Accordingly, the impugned cancellation order dated 11.10.2007 is quashed.
17. Rule is made absolute. The petition stands disposed of in above terms. Parties shall bear their own costs.

G.S. SISTANI, J.

JANUARY 08, 2014 'ssn'