

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

Date of decision: 14th November, 2011

+ W.P.(C) 1602/2008

% SURESH RATION STORE Petitioner
Through: Mr. Pradeep Gupta, Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through: Ms. Manmeet Kaur, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may 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

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 7th /8th February, 2008 of the Secretary-cum-Commissioner (Food & Supplies) of the Govt. of National Capital Territory of Delhi dismissing the appeal preferred by the petitioner against the order dated 30th November, 2007 of the Assistant Commissioner (W), Food & Supplies cancelling the authorization/license

of the petitioner for Fair Price Shop No.7945 situated at RZ-3, Madhu Vihar, Delhi under Circle-30.

2. Notice of the petition was issued and vide order dated 27th February, 2008 which continues to be in force, the effect and operation of the orders dated 30th November, 2007 and 7th /8th February, 2008 stayed. Counter affidavit has been filed by the respondents. An application being CM No.6012/2010 for impleadment in these proceedings was filed by one Sh. Vijay Walia. Notice thereof was issued; opportunity was sought by the petitioner to file reply but neither any reply was filed nor did the said Sh. Vijay Walia who was appearing in person appeared thereafter. The record of the respondent summoned vide order dated 19th November, 2009 has been perused and the counsels have been heard.

3. License for the aforesaid Fair Price Shop was issued to the petitioner as far back as on 30th June, 1989 under the Delhi Specified Articles (Regulation of Distribution) Order, 1981 and was renewed from time to time. A notice dated 24th October, 2007 was issued to the petitioner to show cause as to why the said license be not cancelled; it was averred in the said notice that three APL Ration Cards were issued in contravention

of Rules, in favour of Mrs. Ram Dulari (who is the proprietor of the petitioner and in whose name the license aforesaid had been issued), Ms. Monika and Sh. Suresh Gupta at the address of D-5, Madhu Vihar, Main Road, Najafgarh, Palam, Delhi, which is the residence of the said Mrs. Ram Dulari, proprietor of the petitioner showing the names of Sh. S.P. Gupta in two cards and the name S.P. in the third card and with Brij Bala being shown as wife of Sh. Suresh Gupta; the petitioner was asked to show cause as to how these three cards were held by her at the said address and as to how these cards were got renewed.

4. The petitioner filed a reply dated 29th November, 2007 to the aforesaid show cause notice in which she stated that the three cards aforesaid had been got made mistakenly and had since been got cancelled. The petitioner further stated that the said cards were never registered in the Card Register and no "Parchi" against them had ever been issued. The petitioner prayed that the mistake be condoned and assured that such mistake will not happen in future.

5. The Assistant Commissioner in order dated 30th November, 2007 (supra) recorded that the licensee Mrs. Ram Dulari had appeared before

him on 29th November, 2007 and had admitted that three Ration Cards were got prepared with her knowledge. He therefore held that the Ration Cards were got made and got renewed in connivance with the petitioner; that the lapses on the part of the petitioner/licensee were apparent and which necessarily invited cancellation of the license. Accordingly, the license was cancelled and the security deposit of ₹5,000/- forfeited.

6. The petitioner preferred an appeal under Clause 6 of the 1981 Order (supra). The Commissioner in his order dated 7th February, 2008 has held that it stood established that the petitioner/licensee was fully aware of the preparation and renewal of the Ration Cards aforesaid at her residential address; that the only inference was that the said Ration Cards had been got prepared for the purpose of diversion of Specified Food Articles; that the said Ration Cards had been prepared with the abetment of the petitioner and which was a criminal act; that the guilt of the petitioner also stood established from the immediate surrender of the said Ration Cards upon the show cause notice being issued. The Commissioner further held that an authorization holder/licensee is expected to work in the interest of consumers as well as Public Distribution System but the petitioner/licensee

had abetted in the issuance of Ration Cards on wrong facts and thus cannot be absolved of her responsibility as a clear case of collusion between the authorization holder and officials of the department was made out. Accordingly, the order of cancellation was upheld and enquiry by the Vigilance Branch into the matter of issuance of three Ration Cards and initiation of criminal prosecution against the card holders as well as the concerned officials/officers posted in the West District directed.

7. The petitioner before this Court has pleaded that she is an old widow; that she has an unblemished record till now; that the said Ration Cards had never been used and no ration drawn against them; that she had not been charged with abetting preparation of the Ration Cards with the intent to divert the Specified Food Articles and thus the order of cancellation is contrary to the principles of natural justice; that she is virtually illiterate and running the Fair Price Shop with the assistance of her salesman and one mistake committed by her salesman should not result in cancellation of the license; that obtaining a Ration Card on false grounds is an individual act and has nothing to do with the license granted to her.

8. The respondent in its counter affidavit has pleaded, that in view of admission of culpability, the orders of cancellation of license cannot be faulted with; that the petitioner as a licensee of a Fair Price Shop owed a duty to ensure fair public distribution of scarce food articles meant for weaker section of society and having abetted in the offence of multiple Ration Cards issued in her name and in the name of her relations, is not entitled to any equity; that the finding of guilt of the petitioner is a finding of fact; that if inspite of such guilt, the petitioner is allowed to go scotfree and remains unpunished, it would have an adverse effect on the Public Distribution System through the Fair Price Shop; that the petitioner cannot split her role as an individual and as a licensee; that even as a licensee, the petitioner is obliged to ensure that ration is drawn only by *bona fide* card holders; that the non-withdrawal of ration on the cards admittedly wrongly got prepared is irrelevant; that the petitioner having not pleaded any error in procedure resulting in the cancellation order, is in the writ proceedings, not entitled to challenge the findings of the authorities concerned.

9. The record produced by the respondents in pursuance to the order dated 19th November, 2009 in the present proceedings supports that the

complaint against the petitioner was made by Sh. Vijay Walia aforesaid. Sh. Vijay Walia in his application stated that though the petitioner in the petition has not named her employee/salesman on whom the entire blame has been placed but the said employee/salesman is none other but Sh. Suresh Gupta alias Suresh Prakash who is the son of Mrs. Ram Dulari, proprietor of the petitioner; that the irregular Ration Cards are also in the name of said Sh. Suresh Gupta alias Suresh Prakash; that there was discrepancy in the name of father of Sh. Suresh Gupta in the multiple Ration Cards; that while in the Ration Card in the name of Mrs. Ram Dulari, her husband is described as late Brindawan, in the Ration Card in the name of Sh. Suresh Gupta, his father was described as Vakil Babu; that D-5, Madhu Vihar at which address the multiple Ration Cards were issued was not even a residential building and only 25% constructed and which portion also was being used for commercial purposes.

10. The counsel for the petitioner during the hearing also argued that the petitioner is an illiterate person and though had committed a mistake had not reaped any benefit thereof. He has also contended that this Court vide order dated 13th December, 2010 had directed the respondents to furnish

the dates on which the Ration Cards were issued and the basis of cancellation thereof but which has not been furnished and on account whereof adverse inference ought to be drawn. He has further contended that the punishment of cancellation of license is disproportionate to the guilt. With reference to the provisions of the 1981 Order (*supra*), it is contended that the same empowers imposition of punishment of forfeiture of security deposit also and considering that the petitioner herself upon issuance of show cause notice had got the Ration Cards cancelled, the punishment of forfeiture of security deposit only ought to have been imposed instead of maximum punishment of cancellation of license.

11. The counsel for the respondents during the hearing has contended that the subject Ration Cards were got prepared in May, 2005, got renewed on 31st March, 2006 and cancelled on 13th July, 2007. It is also urged that the petitioner having not filed any rejoinder to the counter affidavit, is deemed to have admitted the contents thereof.

12. I have considered the rival contentions. No one can be said to be having a right to continue to be granted a license to run/operate a Fair Price Shop under the Public Distribution System. Running/operating a Fair

Price Shop entails a number of obligations including maintenance of accounts of the Specified Food Articles received and distributed, accounts of consumers, security of the stocks, verification from time to time of the *bona fides*/genuineness of the card holders etc. The petitioner claims to be illiterate and old. She is now 73 years of age. The agreement/license to run/operate a Fair Price Shop cannot be said to be specifically enforceable. I have wondered whether on the said grounds alone, the petitioner is not entitled to the relief claimed. A person who is 73 years of age and claims to be not in control of the business/affairs herself but dependent on others for the same, cannot be held to be entitled to the license which has certain onerous obligations as aforesaid. It cannot also be lost sight of that the Government itself does not consider those over 58/60 years of age to be fit to serve it. In such circumstances, can, a 73 years old who has admitted to mistake be said to be entitled to a direction to condone her mistake. In my opinion, no.

13. A Public Distribution System is a welfare measure of the State to ensure supply of Specified Food Articles at concessional cost to those unable to afford the same at normal prices. It entails a position of trust.

The State however instead of implementing the same itself, has opted to issue licenses therefor. The licensee in the circumstances, occupies a position of trustee for the said welfare measure. There is thus an element of faith between the State and the licensee. The State cannot be compelled to continue to license a person in whom it has lost faith.

14. Thus, what falls for adjudication is whether the loss of faith in the petitioner can be said to be justified or not.

15. Though the petitioner under legal advice is invoking the argument of the issuance of the wrongful Ration Cards having nothing to do with the license but the fact remains that the petitioner also realized that she was in the wrong and in her first response to the show cause notice admitted her guilt and sought pardon. The mistake / misdemeanor on the part of the petitioner cannot be said to be alien to the license. The same is closely associated thereto. Ordinarily, a person who has wrongfully obtained a Ration Card in connivance with the issuing authorities would also be under the scrutiny of the Fair Price Shop licensee. However, here the petitioner who had wrongfully got the Ration Cards issued was herself the Fair Price Shop licensee. The petitioner and her family members seem to have been

emboldened to get such Ration Cards issued from the fact that they would not be subject to any further scrutiny. Their said action also shows the mindset of the petitioner of colluding with the officers of the Rationing Department. Such collusion, today has been detected in the matter of issuance of multiple Ration Cards; it may tomorrow be on other aspects of Public Distribution System. Thus, it cannot be said that the loss of faith in the petitioner is wrongful.

16. Even otherwise this Court in exercise of powers of judicial review is not to sift through the finding of the guilt of the petitioner as an appellate authority. The only error urged in the procedure is of the notice to show cause not charging the petitioner with fabrication of Ration Card with intent to divert Specified Food Articles. There is no merit in the said contention also. Both parties knew what the charge was and it cannot be said that the petitioner has suffered any prejudice for the charge being not framed in the manner averred. No such prejudice also has been pleaded.

17. As far as the argument of proportionality is concerned, the same has to be in the context. A Fair Price Shop licensee in whom the authority has lost faith, cannot be trusted with continuing to discharge the trust in future.

As aforesaid, the sufferer in such cases are the weaker sections of the society for whom the Fair Price Shops have been set up and who are rarely in a position to complain. Thus no merit is found in the said argument also.

18. There is also no merit in the contention that the petitioner had not availed any benefit of the fabricated Ration Cards. What is relevant in the present case is the intent. The petitioner cannot after such conduct be said to be a fit person for being granted the license.

19. The petition therefore fails; the petitioner under the interim orders of this Court has continued to reap the benefits of license which otherwise validly stood cancelled. To balance the equities flowing therefrom, the petitioner is burdened with costs of ₹50,000/- payable to the respondents within four weeks. The vigilance enquiry and prosecution as directed by the Commissioner be also now undertaken expeditiously.

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 14th, 2011
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