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

+ W.P.(C) 8350/2007

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Judgment delivered on 08.01.2014

PRAVEEN KUMAR

..... 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, the present petition is set down for final hearing and disposal.
2. In this case licence of Fair Price Shop under the name M/s.Puran Mal Om Prakash, was granted to Sh.Puran Mal (father of the petitioner herein) on 06.06.1977. Sh.Puran Mal, as the sole proprietor continued to carry on his business till 09.01.2002 on which date he expired. Immediately the present petitioner (Sh.Praveen Kumar) approached the department for transfer / change of licence in his own name, in respect of Fair Price Shop. By order dated 14.06.2002, the application of the petitioner was allowed and the licence of Fair Price Shop was transferred in the name of present petitioner. From June, 2002, petitioner continued to carry out his business, without any adverse report from the department. The licence of the petitioner was renewed from time to time and lastly renewed for the further period of three years i.e. from 24.04.2006 to 23.04.2009.
3. On 17.08.2007 a show cause notice was issued to the petitioner, alleging that Sh.Puran Mal was convicted under the Essential Commodities Act.

The petitioner appeared before the Assistant Commissioner (SW) on 22.08.2007 and pointed out that his father was released on probation of one year and fine of Rs.5,000/- was imposed upon him. Since the explanation was not found to be satisfactory, by an order dated 29.10.2007, the licence was cancelled.

4. It is submitted by counsel for the petitioner that at the time when the offence was committed, the petitioner was barely 20 years of age and he was studying and had no knowledge about the said incident. It is further submitted that even otherwise, after the order was passed, the licence was renewed from time to time by the respondents; and that the department was aware of all facts.
5. It is further submitted that once in the year 1996 a fine of Rs.5000/- was imposed upon the father of the petitioner, after releasing him on probation of one year, and therefore, the petitioner cannot be punished twice for the same offence. The second argument of counsel for the petitioner is that in view of Section 12 of the Probation of Offenders Act, 1958, petitioner does not suffer any disqualification. The third argument of counsel for the petitioner is that the show cause notice dated 17.8.2007 and cancellation order dated 29.10.2007 are liable to be quashed, as firstly the action initiated has become stale; and secondly, violation, if any, by the father of petitioner stands condoned, as licence was renewed subsequently for 11 years and moreover in the name of the present petitioner.
6. Mr.Salwan, learned counsel for the respondent submits that in addition to the administrative action, respondents were entitled 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, and submits that once the father of the petitioner had committed breach and he was convicted, the respondents were bound to cancel the licence of the

petitioner:

“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.”

7. 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.
8. 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 period 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 petitioner by continuous renewal of license, which cannot be taken away at this belated stage.
9. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petition.

10. The basic facts are not in dispute that the license was granted to the father of the petitioner to run a Fair Price Shop. The father of the petitioner was convicted and later on released on probation. It is not in dispute that as long as the father of the petitioner was alive, no action was taken against him as per Clause 7 of the Delhi Specified Articles (Regulations of Distribution) Order 1981. Thereafter, licence was granted in favour of the petitioner, who is a separate entity and further the said licence of the petitioner was renewed from time to time and only after a gap of more than 11 years, show cause for cancellation of the Fair Price Shop was issued and the licence was cancelled as according to the respondent, petitioner had incurred a disqualification by virtue of his predecessor having been convicted by a criminal court, in terms of 1981 Order.
11. Admittedly, no administrative action was taken by the respondent against the petitioner for more than 11 years. In my view no action lies against the present petitioner for the act committed by the previous licence holder. Even otherwise having not taken action for 11 years and on the contrary having renewed licence of the petitioner from time to time would amount to condoning the act of the wrong doer; and after 11 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.
12. It is settled law that a statutory authority is required to act reasonably, fairly and expeditiously.
13. 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 to take action against the petitioner.

Moreover, the respondents by agreeing to transfer the licence in the name of the petitioner have condoned the act of the predecessor of the petitioner herein, hence, the licence of the present petitioner cannot be cancelled for the acts of the previous licensee.

14. At this belated stage, the action of the respondent has become stale and more so when the authorization of person who was actually convicted has already been transferred to another, which transfer has been carried out by the respondents' department itself and the new proprietor/authorization holder 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 father of the petitioner 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....”

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 on the report.
17. In view of the aforesaid, present petitioner 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, 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 petitioner, the respondents have given the petitioner a reasonable cause to believe that a right has accrued in his favour. Petitioner is also entitled to the benefit of Section 12 of the Probation of Offenders Act. Accordingly, the impugned show cause notice dated 17.8.2007 and cancellation order dated 29.10.2007 are quashed.

18. 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

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