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

+ W.P.(C) 8446/2007

% **Judgment delivered on 08.01.2014**

BHARAT STORE Petitioner

Through: Mr.R.P. Luthra, Advocate

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 (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 a partnership firm (Smt.Saroj Bala and Mr.Vinod Kumar, as its partners) under the name of M/s.Bharat Store was carrying on business. A licence to run a Fair Price Shop was granted to M/s.Bharat Store in the year 1987. This licence stood renewed from time to time till 16.07.2009. On 02.08.1988 a raid was conducted on the premises of the petitioner on the basis of alleged shortage of 9.4 kg. of wheat and 1.084 kg. of sugar and FIR No.193/1988 was registered with the Police Station Seemapuri, Delhi under sections 7/10/55 of the Essential Commodities Act. Smt. Saroj Bala, Mr.Vinod Kumar and one Mr.Mool Chand, an employee of the petitioner firm, were charged in the aforesaid FIR. After conclusion of the trial, Ms.Saroj Bala was acquitted due to lack of evidence vide judgment dated 23.12.1995, although Mr.Vinod Kumar and Mr.Mool Chand were convicted. Subsequently Mr.Vinod Kumar resigned from the partnership firm on 07.10.2006 and respondents were informed to this

effect and a request was made for change of constitution of M/s.Bharat Store. This request of Smt.Saroj Bala was allowed by an office order dated 09.01.2007.

2. Counsel for the petitioner submits that after a gap of 12 years a show cause notice dated 24.09.2007 was issued to the petitioner on the ground that the holder of authorization of M/s.Bharat Store had been convicted under the Essential Commodities Act, 1955, and the petitioner was asked to show cause as to why authorization may not be cancelled under clause 7 of the Delhi Specified Articles (Regulation of Distribution) Order 1981.
3. Counsel for the petitioner submits that a reply to the show cause was filed wherein it was stated that Sh.Vinod Kumar had no concern with the management and affairs of M/s.Bharat Store. The reply filed was not accepted by the respondents and by order dated 31.10.2007, authorization / licence of the petitioner was cancelled.
4. Mr.Salwan, learned counsel for the respondent submits that once the proprietor of the petitioner firm had committed breach for which conviction was awarded, respondents were bound to cancel the licence of the petitioner; 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.”

5. It is submitted by counsel for the petitioner that on the basis of an inspection, FIR No.193/1988 was registered and after due hearing one of the proprietors (Mr.Vinod Kumar) and Mr.Mool Chand, an employee of the petitioner firm were convicted, hence, the petitioner cannot be punished twice for the same offence. The second argument of counsel for the petitioner is that the show cause notice issued and cancellation order passed is liable to be quashed, as firstly the action initiated has become stale; and secondly, violation, if any, by the proprietor of petitioner firm, stands condoned as the licence was renewed subsequently for 12 years and more.
6. 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.
7. 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 the shortest 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 rights have been created in favour of the petitioner by continuous renewal of their license, which cannot be taken away at such a belated stage.

8. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petition.
9. The basic facts are not in dispute that the license was granted to the petitioner to run a Fair Price Shop. Upon inspection having been carried out and some irregularities having been found, an FIR was registered, on the basis of which one of the proprietors of the petitioner firm was convicted on 23.12.1995. The convicted partner thereafter resigned from the partnership firm and the present proprietor of the petitioner firm applied for change of name, which was allowed by the respondent vide order dated 9.1.2007. Thereafter, licence of the petitioner was renewed from time to time; and only after a gap of more than 12 years from the date of conviction, fresh show cause for cancellation of the Fair Price Shop was issued and the licence was cancelled as according to the respondent, petitioner firm had incurred a disqualification by virtue of having been convicted by a criminal court, in terms of the 1981 Order.
10. Admittedly, no administrative action was taken for 12 years by the respondents against the petitioner. In my view no action lies against the present petitioner for the act committed by the previous licence holder. Even otherwise, not taking action for a period of 12 years and on the contrary renewing the licence of the petitioner firm from time to time would amount to condoning the acts of the wrong doer; and after 12 years, the respondents are estopped from taking action against the petitioner having waived off their rights by their own conduct. 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.Vinod Kumar) who was convicted. The Government must act in a 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.

11. It is settled law that a statutory authority is required to act reasonably, fairly and expeditiously.
12. 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 any 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.
13. 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 sole 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.
14. 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.
15. In view of the aforesaid, present proprietor of the petitioner firm cannot be penalized, at this stage 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 convictions. Further by not acting within a reasonable period of time and by agreeing to renew the license in the name of present proprietor of the petitioner firm, the respondents have given the petitioner a reasonable cause to believe that a right has accrued in her favour. Accordingly, the impugned order of cancellation dated 31.10.2007 is quashed.

16. 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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