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

+ W.P.(C) 8608/2007 & CM.No.16224/2007

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Judgment delivered on 08.01.2014

JITENDER KUMAR

..... Petitioner

Through: Mr.A. Mangla, 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 in the year 1981 authorization was issued in favour of mother of the petitioner (Mrs.Asharfi Devi) by the department of Food and Supplies, Govt. of NCT of Delhi for operating a Fair Price Shop (FPS). In the year 1984 a show cause notice was issued to the petitioner by the respondent alleging some variation in the essential commodities. The Deputy Commissioner (South), adjudicated upon the allegations of irregularities and imposed a penalty of forfeiture of the security deposit.
2. Subsequently in the year 1992 cognizance was taken by the Special Court, Delhi under Section 7 of the Essential Commodities Act and a fine of Rs.2,000/- was imposed on the earlier proprietor. On 28.01.1994 a show cause notice was issued on the ground that an order of conviction had been passed against the earlier proprietor (Mrs.Asharfi Devi), hence, petitioner was called upon to show as to why authorization should not be cancelled. Reply to this show cause notice was filed on 16.12.1994,

however, no order was passed by the respondents. At the request of the petitioner, authorization of the Fair Price Shop was renewed in the name of present petitioner, Mr.Jitender Kumar in the year 2006. Mr.Jitender Kumar thereafter received a show cause notice on 18.08.2007 citing conviction of the earlier proprietor, proposing cancellation of the licence and forfeiture of the security deposit. On 18.09.2007 a reply to the show cause notice was issued. However, without affording any opportunity of hearing, the authorization of running the Fair Price Shop was cancelled on 27.10.2007.

3. It is contended by counsel for the petitioner that the show cause notice upon which the cancellation order had been passed was highly belated and that too for the offence which was committed in the year 1984 and for which the Deputy Commissioner (South) had already imposed penalty of forfeiture of security amount. It is further contended by counsel for the petitioner that in any case the offence was not committed by the present petitioner, and thus, the petitioner cannot be penalized for an offence committed by his predecessor.
4. Even otherwise it is contended that the order of conviction was passed as far back as in the year 1992 and the fine imposed also stands deposited. It is submitted that in the year 2006 a fresh authorization was granted in the name of present petitioner, hence, present petitioner, cannot be made to suffer on account of any lapse on the part of the earlier proprietor.
5. It is submitted by counsel for the petitioner that even otherwise once the respondents had issued show cause notice in the year 1984 and after due hearing a penalty of forfeiture of security amount was imposed, petitioner cannot be punished twice for the same offence. The second argument of counsel for the petitioner is that the show cause notice dated 18.8.2007 and cancellation order dated 27.10.20007 are liable to be quashed, as

firstly the action initiated has become stale; and secondly, violation, if any, of the petitioner stands condoned as the licence was renewed subsequently.

6. While 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 proprietor had committed breach and she 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. Mr.Salwan, 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 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 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 petitioner's mother to run Fair Price Shop. Upon inspection having been carried out and some irregularities having been found, a show cause notice was issued; hearing was granted and the mother of the petitioner was penalized by forfeiting the security amount. It is not in dispute that as long as the licence was in the name of the mother of the petitioner no action was taken against her, 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 23 years, a fresh show cause notice for cancellation of the Fair Price Shop was issued and the licence was cancelled as according to the respondents, petitioner had incurred a disqualification by virtue of having been convicted by a criminal court, in terms of the 1981 Order.
11. Admittedly, action was taken by the Deputy Commissioner South against the petitioner and a penalty of forfeiture of security amount was imposed. No further action was taken by the respondents for more than a period of 23 years. In my view no action lies against the present petitioner for the

act committed by the previous licence holder. Even otherwise, in my considered opinion having not taken action for 23 years and on the contrary having renewed licence of the petitioner would amount to condoning the acts of the wrong doer; and after 23 years, the respondents are estopped from taking action against the petitioner having waived off their rights by their own conduct.

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 for taking 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.
14. The respondents have not only slept over their right and, thus, waived it but also by agreeing to transfer the license in the name of the petitioner have reasonably and fairly given a right to the petitioner. Further, the respondents in the present petition have given a reasonable belief to the petitioner that his rights and title are good and shall not be disturbed.
15. Consequent to raid carried out, proceedings were initiated against the mother of the petitioner by respondents. The matter was pursued by the respondents and the order passed, was within the knowledge of the respondents. In case the respondents/department was of the view that in addition to the administrative action licence of authorization is also to be cancelled, then the respondent/department would have been well within its rights to take appropriate action within a reasonable period of time. Whereas in the present case, the department has only taken administrative

action and passed order of forfeiture of security deposit, but decided not to take extreme action of cancellation of licence. At this belated stage, the action of the respondents has become stale and more so when the authorization of person who was actually convicted has already been transferred to the name of the petitioner, which transfer has been carried out by the respondents' department itself and the new authorization holder has been continuously running the 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.

16. Moreover, in my view the petitioner has not incurred any disqualification for grant of license/authorization due to conviction, as it was the previous proprietor (mother of the petitioner) who was convicted.
17. 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.
18. 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. Accordingly, the impugned show cause notice and cancellation order are quashed.

19. 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
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