

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

% Judgment reserved on : 22.08.2013
Judgment pronounced on : 02.09.2013

+ W.P.(C) 1958/2013 & CM 3726/2013

M/S MOHIT STORE Petitioner
Through: Mr. Pradeep Gupta, Mr.
Parinav Gupta, Mr. Vishal
Gupta, Advs.

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Mr. Vinay Garg and Mr.Amit
Srivastava with Inspector Kailash
Kumar

+ W.P.(C) 1971/2013 & CM 3756/2013

M/S GANGA ADEVI Petitioner
Through: Mr. Pradeep Gupta,
Mr. Parinav Gupta, Mr. Vishal Gupta,
Advs.

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Mr. Vinay Garg and Mr.Amit
Srivastava with Inspector Kailash
Kumar

**CORAM:
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

The petitioners in W.P.(C) No.1958/2013 and 1971/2013 are running Fair Price Shops bearing Nos. 9097 and 4799 respectively. The fair price shop holder is required to sell the specified food articles such as foodgrains only against the consumer cards registered with them or against the special cards, issued by Food and Supplies Department.

2. Vide notice dated 20.12.2012, the Assistant Commissioner of Food, Supplies and Consumer Affairs, referring to a door to door survey and referring to a number of discrepancies/short-comings found therein, required the petitioner to explain why their respective authorization should not be cancelled and their security be not forfeited. The following were the discrepancies mentioned in the notice, issued to the petitioner in W.P.(C) No. 1958/2013:-

- “1. A number of card holders were not found residing at the given addresses.
2. Addresses mentioned in the list of the EE Block Jahangirpuri do not exist at all.
3. Addresses of some card holders were also not found as reflected in the list.

4. Addresses of some card holders exist outside the jurisdiction of Circle.

5. In some cases, there is availability of two ration cards on same name and having same address which makes it evident that one ration card is bogus.

6. After calculation by the Circle Authority, diversion of Specified Food Articles in huge quantity during the period of last 26 months as mentioned below has been calculated in Approx.

S. No.	SFAs	Diversion calculate during the last 26 months (APPOX.)
1.	Wheat	187200 Kg.
2.	Rice	78000 Kg.
3.	Sugar	46800 Kg.

The following were the discrepancies mentioned in the notice, issued to the petitioner in W.P.(C) No. 1971/2013:-

“1. A number of card holders were not found residing at the given addresses.

2. Addresses mentioned in the list of the EE Block Jahangirpuri do not exist at all.

3. Addresses of some card holders were also not found as reflected in the list.

4. Addresses of some card holders exist outside the jurisdiction of Circle.

5. In some cases, there is availability of two ration cards on same name and having same

address which makes it evident that one ration card is bogus.

6. After calculation by the Circle Authority, diversion of Specified Food Articles in huge quantity during the period of last 26 months as mentioned below has been calculated in Approx.

S. No.	SFAs	Diversion calculate during the last 26 months (APPOX.)
1.	Wheat	124800 Kg.
2.	Rice	52000 Kg.
3.	Sugar	31200 Kg.

3. The petitioners responded to the said notice by way of reply dated 27.12.2012. Vide order dated 16.01.2013, the Assistant Commissioner held that the petitioners were not running the shop in a business-like manner which was against the terms and conditions of authorization, besides being detrimental to the Public Distribution System and suspended the authorization of the petitioners. They were also directed to show cause as to why their authorization should not be cancelled.

4. The aforesaid notices were challenged by the petitioners by way of two separate writ petitions being W.P.(C) Nos. 1048/2013 and 1011/2013. Vide order dated 08.02.2013, this Court directed the respondents to give an opportunity to the petitioners to file reply to the show-cause notice dated 16.01.2013 as well. The concerned officer was

directed to pass an order thereafter. It was also directed that the concerned officer, while passing order, will also have regard to the judgments of this Court in W.P.(C) Nos. 4353/2010 and 8719/2011, wherein the Court had taken a view that mere allegations could not be the basis for passing the cancellation order. Vide order dated 07.03.2013, the Commissioner, Food and Supplies set aside the suspension/show-cause notice dated 16.01.2013, with consequential actions. He also directed the Assistant Commissioner to conduct fresh door to door verification of all the card holders falling under the notified area of the shop, within one month of the receipt of his order. He further directed that based on the fresh survey, further action, if any, against the FPS holder shall be initiated a fresh, following due procedure and following the principles laid down by this Court in W.P.(C) Nos. 4353/2010 and 8719/2011. The Assistant Commissioner (North) was also directed to determine accountability of officials, who were responsible for not taking action against allegation of the allocation of the Specified Food Articles, without verification of the status of the card holders. The petitioners submitted an application to the Assistant Commissioner, for compliance of the order dated 07.03.2013 passed by the Commissioner and allowing them to sell

the quota of the specified food articles lying in their shop. The Assistant Commissioner vide order dated 14.03.2013, directed fresh door to door verification and a detailed factual report regarding verification of the address of the card holders and drawl of ration in their names. He further directed the petitioners to ensure that the specified food articles are issued only to valid/active card holders, in the interest of smooth function of Public Distribution System and to remove the sleek possibility of diversion of subsidized food articles.

Being aggrieved from the aforesaid direction, the petitioner is before this Court seeking quashing of the order dated 14.03.2013 and restoration of the ration cards and monthly quota to her.

5. When the writ petitions came up for hearing on March 22, 2013, this Court noted that the order passed by the Commissioner on 07.03.2013 was in line with the judgment of this Court in the earlier round of litigation since he had taken a view that the petitioner could not be held responsible for linkage of ghost card holders to his FPS. The grievance of the petitioners, however, was that on account of the subsequent order dated 14.03.2013, passed by the Assistant Commissioner, they shall not be able to sell the Specified Food Articles

during the pendency of the enquiry, directed by the Assistant Commissioner and since food articles are perishable, there was no good reason for the petitioners not being allowed to sell them even after they have succeeded before the Commissioner.

6. In their counter-affidavit, the respondents have stated that it is the duty of the FPS holder to bring to the notice of the Department, if some card holders are not residing in the notified area of the Circle. It is also claimed that the FPS holder has a duty to conduct door to door survey of the ration card holders attached to his FPS, every three months and submit report to the Circle Office, in terms of the order dated 02.01.2009. It is also stated in the counter-affidavit that the petitioners were allowed to sell the Specified Food Articles to the genuine card holders, collect the proof of genuineness from them and submit the same to the Circle Office on a daily basis, but they have not complied with the said direction. It is also stated that all the ration cards have been restored and quota of the Specified Food Articles, pertaining to the FPS have been restored.

7. The petitioners have not challenged the order dated 07.03.2013, passed by the Commissioner, Food and Supplies and they have no grievance with respect to the said order. The suspension-cum-show cause

notice, issued to them, has already been set aside by the Commissioner with consequential actions. While deciding the appeals filed by the petitioners, the Commissioner directed the Assistant Commissioner to conduct door to door verification of all the card holders, within one month of the receipt of the order. No exception can be taken to this direction issued by the Commissioner since it has to be endeavour of everyone, including the FPS holders that the Specified Food Articles are issued only to the genuine card holders residing in the jurisdiction of the circle in which their FPS is situated. If a person is not residing within the jurisdiction of a particular circle, he cannot draw Specified Food Articles from an FPS, situated in that circle and must necessarily draw the same from an FPS catering to the place where he is residing. For this purpose, he must get his address duly changed in the record of the Food and Supplies Department and get his ration card linked to an FPS, authorized to sell such articles in the locality, where he is residing. This also has to be the endeavour, not only of the Food and Supplies Department, but also of an FPS holder that no Specified Food Article is issued against a ghost ration card, i.e., a card in the name of a person who does not reside at the address given on the ration card.

8. Coming to the order dated 14.03.2013, passed by the Assistant Commissioner, the following are the directions issued to them:

- i) they shall conduct door to door verification in respect of all BPL ration card holders and submit a detailed factual report regarding verification of their addresses, drawl of ration on the name of these cards holders;
- ii) they shall submit the report of door to door verification within one month;
- iii) they shall assist the officers/officials in conducting door to door verification in compliance of the order of the Commissioner dated 07.03.2013 and
- iv) they shall issue Specified Food Articles only to the valid/active card holders.

9. In exercise of the powers conferred upon him by clause 24 of Delhi Specified Articles (Regulation of Distribution) Order, 1981 read with condition No. 17 of the terms and conditions of issue of authorization for FPS and condition No. 8 of the terms and conditions for issue of licence to KOD holders, the Commissioner (Food and Supplies) vide order dated 02.01.2009 directed:

“1. Each FPS/KOD holder shall personally carry out a survey of all users of consumer cards for SFAs (including K-oil) in his notified area.

2. He will certify at the end of each quarter i.e. January-March, April-June, July-September, October-December, that he has personally met the Head of family of each consumer card user, verified his address and ascertained the location his residence. The FPS/KOD holders should take the signature of Head of family while doing this exercise. This exercise shall be regularly carried out and a final report shall be given at the end of each quarter, within fifteen days thereof, to the FSO on a performa prescribed from time to time with certification of its authenticity. Abstracts thereof will be sent to Head quarters by the Assistant Commissioners of the zones.”

10. The directive dated 02.01.2009, issued by the Commissioner of Food and Supplies, which applies to all the Fair Price Shops in Delhi, has not been challenged by the petitioners and, therefore, they are bound by the said directive. In view of the first directive, issued by the Commissioner, the petitioners can have no grievance with respect to the direction, issued by the Assistant Commissioner, requiring them to carry out a survey of all users of the consumer cards for Specified Food

Articles in their respective notified areas. Similarly, they can have no grievance with respect to the directive to certify at the end of each quarter that they have personally met the Head of the family of each consumer card user, verified his address and ascertained the location his residence. The petitioners are also required to take signature of the Head of the family while undertaking this exercise. The exercise has to be carried out on regular basis and the final report is to be submitted to the Department at the end of each quarter in a prescribed performa. As regards directive to assist the officers/officials for conducting door to door survey in compliance of the order dated 07.03.2013 passed by the Commissioner, no FPS holder can refuse to cooperate with the officials of the Department in undertaking this exercise.

The last directive given by the Assistant Commissioner to the petitioners is to ensure that Specified Food Articles are issued to valid/active card holders only. The petitioners can have no grievance to a direction to issue such articles only to valid card holders. Their only grievance seems to be that they cannot verify the genuineness of the card holders, before issuing the Specified Food Articles to them. This direction, in my view, is to be read in the light of Standing Directive

dated 02.01.2009, which requires every FPS holder to personally carry out a quarterly survey of all the users of the consumer cards in his area, meet the Heads of the family of each consumer card user, verify his address and ascertain his location. If such an exercise is undertaken, the FPS holder would know who are the genuine ration card holders in his area and he would have no difficulty in denying ration cards to those who at the time of survey are not found residing at the address given on the consumer card. Of course, if a card holder shifts from the address given on the consumer card, between the date on which the last quarterly survey was carried out by the FPS holder and the date on which the next quarterly survey is carried out by them, he cannot be blamed for issuing Specified Food Article to such a card holder. Therefore, the direction issued by the Assistant Commissioner requires only a slight modification that the petitioners shall issue Specified Food Articles only to those food card holders, who, at the time of last quarterly survey carried out by them in terms of the Standing Directive dated 02.01.2009, are found residing at the address given on the ration card. All other directions, issued by the Assistant Commissioner vide order dated 14.03.2013, shall be duly

complied by the petitioners.

The writ petitions stand disposed of accordingly. There shall be no order as to costs.

V.K.JAIN, J

SEPTEMBER 02, 2013
bg