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

% ***Judgment Delivered on: 17.12.2013***

\+ ***W.P.(C) 8644/2007***

RAM CHANDER PAWAR ..... Petitioner
Through: Mr.Nitin Sehgal, Adv.
versus

THE ASSISTANT COMMISSIONER OF FOOD AND SUPPLIES SOUTH DELHI ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (*ORAL*)

For Order see detailed judgment passed in the matter [W.P.(C) 948/2008].

G.S. SISTANI, J.

DECEMBER 17, 2013
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171

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

% ***Judgment Delivered on: 17.12.2013***

[1]+ W.P.(C) 948/2008 & CM. no.1863/2008

RAJENDER PRASAD SURINDER KUMAR ..... Petitioner
Through: Mr.Nitin Sehgal, Advocate
versus

THE ASSISTANCE COMMISSIONER FOOD & SUPPLIES ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[2] W.P.(C) 5157/2008 & CM.No.9860/2008

AGGARWAL STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for petitioner
versus

GOVT. OF NCT OF DELHI & ANR ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[3] W.P.(C) 8386/2007 & CM No.15850/2007

MAHENDER KUMAR ..... Petitioner
Through: Mr.Anurag Mangla, Advocate
versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[4] W.P.(C) 8478/2007

SHOBHA KUMARI ..... Petitioner
Through: Mr.Sanjay Goel, Advocate.
versus

172

THE GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[5] W.P.(C) 8554/2007

ASHOK PROVISION STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[6] W.P.(C) 8611/2007 & 16227/2007

ISHWAR CHAND ..... Petitioner
Through: Mr.Anurag Mangla, Advocate.

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[7] W.P.(C) 8634/2007

SHIV STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[8] W.P.(C) 8635/2007

KANTA DEVI ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.

versus

GOVT. OF N.C.T. OF DELIH & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[9] W.P.(C) 9456/2007 & CM.No.17820/2007

AGGARWAL STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.
versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[10] W.P.(C) 9616/2007 & CM.No.18087/2007

RIKHAB CHAND PROP. OF M/S J.N.U. CAMPUS STORE ..... Petitioner
Through: Mr.Sanjay Goel, Advocate
versus

THE GOVT. OF NCT OF DELHI ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[11] W.P.(C) 8820/2007

PAWAN RATION STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.
versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[12] W.P.(C) 8985/2007 & CM.No.16923/2007

ASHOK KUMAR AGGARWAL ..... Petitioner
Through: Mr.Sanjay Goel, Advocate.

versus

THE GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[13] W.P.(C) 8714/2007 & CM.No.16430/2007

DEVINDER GOEL ..... Petitioner
Through:
versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[14] W.P.(C) 8646/2007

JANTA STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.
versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[15] W.P.(C) 8819/2007 & CM.No.16625/2007

SARASWATI GENERAL STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.
versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[16] W.P.(C) 8264/2007 & CM.No.15614/2007

ANIL KUMAR MISHRA ..... Petitioner

Through: Mr.S.K. Chaudhary, Advocate.

175

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[17] W.P.(C) 8046/2007 & CM.No.15855/2007

SUMER CHAND MOHAN LAL ..... Petitioner
Through: Mr.Sanjeev Kumar Gupta, Adv.
versus

GOVT. OF NCT OF DELHI ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[18] W.P.(C) 262/2008 & CM.No.506/2008

SHRI SHER SNGH ..... Petitioner
Through: Mr.Anil Kumar Jangra, Adv.
versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[19] W.P.(C) 8523/2007

MEHAR CHAND BAL KISHORE ..... Petitioner
Through: Mr.Pradeep Gupta and Mr.Suresh Bharti, Advocates for the petitioner.

versus

GOVT. OF NCT OF DELHI & ORS ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[20] W.P.(C) 8628/2007 & CM.No.16252/2007

RAM DASS GUPTA PROP. OF MOHAN STORE ..... Petitioner

Through: Mr.Sanjay Goel, Adv.

versus

GOVT. OF N.C.T. OF DELHI & ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[21] W.P.(C) 8644/2007

RAM CHANDER PAWAR ..... Petitioner
Through: Mr.Nitin Sehgal, Adv.
versus

THE ASSISTANT COMMISSIONER OF FOOD AND SUPPLIES SOUTH DELHI ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[22] W.P.(C) 620/2008 & CM APPL. 1214/2008

RAM AVTAR KAILASH CHAND FPS NO 8184 CIRCLE 2 ..... Petitioner
Through: Mr.Nitin Sehgal, Adv.
versus

ASSISTANT COMMISSIONER FOOD AND SUPPLIES DELHI AND ANR ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[23] W.P.(C) 291/2008

LAXMI STORE FPS ..... Petitioner
Through: Mr.Nitin Sehgal, Adv.
versus

THE COMMISSIONER FOOD AND SUPPLIES DELHI AND ANR. ..... Respondents
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[24] W.P.(C) 5505/2008 & CM APPL. 11408/2009

DAYA PRAKASH GUPTA ..... Petitioner
Through: Mr. Sanjay Mishra, Advocate
versus

STATE ANDORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[25] W.P.(C) 8645/2007

RADHEY SHYAM ANAND ..... Petitioner
Through: Mr.Pradeep Gupta and Ms.Sonia Sharma, Advocates for petitioner

versus

GOVT. OF N.C.T. OF DELHI AND ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[26] W.P.(C) 530/2008

CHUNI LAL ..... Petitioner
Through: Mr.Pradeep Gupta and Ms.Sonia Sharma, Advocates for petitioner

versus

GOVT. OF N.C.T. OF DELHI AND ORS. ..... Respondent
Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[27] W.P.(C) 30/2009

M/S SHREE DURGA STORE ..... Petitioner
Through: Mr.Pradeep Gupta and Ms.Sonia Sharma, Advocates for petitioner

versus

GOVT. OF N.C.T. OF DELHI

178

AND ORS. ..... Respondent

Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

[28] W.P.(C) 9502/2007

TILAK RAJ ..... Petitioner

Through: Mr.Sanjay Goel, Advocate

versus

GOVT. OF N.C.T. OF DELHI AND ORS. ..... Respondent

Through: Mr.Sushil Dutt Salwan and Mr.Neeraj Chaudhary, Advocates for respondents

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. *(ORAL)*

1. Counsel for the parties submit that facts in all these matters are similar. All these petitions raise a common legal question, which can be disposed of by a common order.
2. Rule. With the consent of counsel for the parties, the writ petitions are taken up for final hearing and disposal.
3. As agreed, the facts of the Writ Petition No.948/2008 are being noticed. The petitioner has been running a Fair Price Shop since the year 1987. On 19.3.1997, the shop was visited and inspected by officials of department of respondent and some irregularities were found. A show cause notice-cum-suspension memo dated 31.3.1997 was issued by the then Assistant Commissioner for violation, as mentioned and simultaneously an FIR was lodged against the authorisation/licence holder. Reply to the show cause notice was submitted and hearing was granted by the Department. Upon hearing, the Assistant Commissioner, Food and Supplies passed an order

129

dated 25.4.1997 forfeiting entire security amount of Rs.500/- and thereafter restored the licence of the petitioner. After passing of the order, the Assistant Commissioner did not resort to any further penal action against the petitioner for cancellation of the fair price shop. Thereafter, the petitioner continued to carry on its business on the basis of licence granted by the respondent, without any complaint from the card-holders.

4. In the meanwhile, in the criminal proceedings, initiated upon registration of the FIR, a judgment dated 22.8.1998 was passed by which the petitioner, though convicted, was released on probation for one year and on payment of costs of Rs.500/-. In the year 2007, after a gap of more than 10 years, a fresh show cause notice was issued on 10.9.2007 calling upon the petitioner to show cause as to why the licence be not cancelled.

5. After hearing, by an impugned order dated 1.2.2008 the licence of the petitioner has been cancelled. It is a common case of the petitioners that the impugned order of cancellation passed by the respondent is unfair, unjust and contrary to law and liable to be set aside.

6. Counsel for the petitioners further submitted that while passing the judgment, the Special Court had made it clear that the order of conviction could not affect the operation of the fair price shop.

7. Attention of this court has been drawn to the judgment dated 22.8.1998, a copy of which has been placed on record. Concluding portion of the judgment dated 22.8.1998 reads as under:

> "In respect of sentence, accused, Suridner Kumar, I direct that he shall be released on entering into a personal bond in the sum of Rs.5,000/- with a security of like amount and to appear and receive sentence within a period of 1 years whenever called upon to do so and during time to keep peace and be of good behaviour. Accused, Surinder Kumar shall also pay Rs.500/- as costs of proceedings. This should not affect operation of F.P.S."

8. It is submitted by counsel for the petitioners that once the respondents had

issued show cause notice-cum-suspension memo dated 31.3.1997 and after due hearing a penalty of forfeiture of security amount was imposed, petitioners cannot be punished twice for the same offence. The second argument of counsel for the petitioners is that in view of Section 12 of the Probation of Offenders Act, 1958, petitioners do not suffer any disqualification. The third argument of counsel for the petitioners 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, of the petitioners stands condoned as licences were renewed subsequently for 10 years and more.

9. While counsel for the respondent submits that in addition to the administrative action, respondents were entitled to take action as per Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962 dated 5.12.1962, which reads as under:

> "6. <u>Contravention of the terms and conditions of licence:</u>
>
> (1) If any licencee or his agent or servant or any other person acting on his behalf contravenes any of the terms and condition or directions or any provisions of this order then without prejudice to any other action that may be taken against licensee according to law, his licence can be suspended by order in writing by the Commissioner.
>
> Proviso to clause 6(1) order vide Dt. 15.2.80.
>
> (2) Without prejudice to the provisions of sub-clause 1 if the Commissioner is satisfied that the licensee has contravened any of the terms and conditions of a licence or the directions issued under clause 3-D or any provision of this order and cancellation of his licence is called for, may after giving the licencee a reasonable opportunity of stating his case against the proposed cancellation by order in writing cancel his licence and shall forward a copy thereof to the licensee.

181

(3) Notwithstanding anything contains in this clause, where a licencee is convicted by a court of law for breach of the terms and conditions of the licence or contravention of the provision of this order the licensing authority may by order in writing, cancel his licence.

Provided that no such order shall be passed until the appeal, if any, filed against such conviction is dismissed and where no such appeal is filed until the period of limitation for filing an appeal expires."

10. Counsel for the respondent also relied on 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 petitioners had committed breach and he/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."*

11. 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.

182

12. In response to the above, the counsel for the petitioners stated that in case the respondents were to rely upon Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962 and Clause 7 of the order dated 12.1.1981, the same should have been invoked by them within a 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 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962 and Clause 7 of the Order dated 12.01.1981 which would deem 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 petitioners by continuous renewal of licenses, which cannot be taken away at this belated stage.

13. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petitions.

14. The basic facts are not in dispute that the licenses were granted to the petitioners to run fair price shops/Kerosene Oil Depots. Upon inspection having been carried out and some irregularities having been found, show cause notice was issued; hearing was granted and the petitioners were penalized by forfeiting their security amount or some administrative action was taken. Thereafter, licences of the petitioners were renewed from time to time and only after a gap of more than 10 years, fresh show cause for cancellation of the Fair Price Shop/KODs was issued and the licences were cancelled as according to the respondent, petitioners had incurred a disqualification having been convicted by a criminal court, in terms of the 1962 and 1981 Orders.

15. Admittedly, action was taken by the Assistant Commissioner against the petitioners and a penalty of forfeiture of security amount was imposed. No further action against the petitioners was taken for more than a period

183

of 10 years. Thus in my view having not taken action for 10 years and on the contrary having renewed licences of the petitioners would amount to condoning the acts of the wrong doer; and after 10 years, the respondents are estopped from taking action against the petitioners having waived off their rights by their own conduct, and the respondents by their own act have condoned the acts of the wrongdoer and are now estopped from changing their position.

16. It is settled law that a statutory authority is required to act reasonably and fairly. The Apex Court in Power Control Appliances v. Sumeet Machines (P) Ltd., (1994) 2 SCC 448 has held as under:

> *"Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name etc. It implies positive acts; not merely silence or inaction such as is involved in laches. In Harcourt v. White Sr.John Rommilly said: "It is important to distinguish mere negligence and acquiesce." Therefore, acquiescence is one fact of delay. If the plaintiff stood by knowingly and let the defendants build up an important trade until it had become necessary to crush it, then the plaintiffs would be stopped by their acquiescence. If the acquiescence in the infringement amounts to consent, it will be a complete defence as was laid down in Mouson (J.G.) & Co. v. Boehm. The acquiescence must be such as to lead to the inference of a license to create a new right in the defendant as was laid down in Rodgers v. Nowill.*

17. Accordingly, the respondents have not only slept over its rights and, thus, waived it but also by agreeing to transfer the licenses in the name of the

petitioners have reasonably and fairly given a right to petitioners. Further, the respondents in the present petitions have given a reasonable belief to the petitioners that their rights and title is good and shall not be disturbed.

18. Consequent to raids carried out on different dates in different cases, proceedings were initiated against different persons by respondents. The matters were pursued by the respondents and the order(s) was/were so passed, were 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 cases, the department in many cases has only taken administrative action and passed orders of forfeiture of security deposit, but decided not to take extreme action of cancellation of licence. At this belated stage, the action of the respondent has become stale and more so the authorization of person who was actually convicted has already been transferred to another, which transfer has been carried out by the respondents department and the new proprietor authorization holder has been continuously running KOD/ 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.

19. Moreover, in my view the petitioners have 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:

185

> *"....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...."*

20. 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.

21. In view of the aforesaid, present petitioners cannot be penalized, at this stage even more so since the published acts, in some cases, were never committed by the present license holders. 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 petitioners. Given that the authority has itself renewed to license(s) of the petitioners, they themselves have condoned the earlier convictions. Further by not acting within a reasonable period of time and by agreeing to renew the licenses in the name of petitioners have given the petitioners a reasonable cause to believe that a right has accrued in their favour. Petitioners are also entitled to the benefit of Section 12 of the Probation of Offenders Act. Accordingly, the impugned orders of show cause notices/cancellation orders are quashed.

22. Rule is made absolute. All the petitions and the applications stand disposed of in above terms. Parties shall bear their own costs.

23. It is informed that in the case of WP(C)No.9502/2007 in addition to the order of cancellation, other proceedings are also pending. It is clarified that in addition to the order of cancellation, all other proceedings which are stated to be pending in the case of WP(C)No.9502/2007 shall be

186

decided unaffected by the orders passed by this court in the present proceedings.

G.S. SISTANI, J.

DECEMBER 17, 2013
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