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

+ W.P.(C) 5369/2012 & CM APPL. 10957/2012

SMT.POONAM

..... Petitioner

Through: Mr. Pardeep Gupta, Advocate with
Ms. Aarti Shakalya, Ms. Poonam
Mutreja, Mr. Vishal Gupta and
Ms. Mansi Ajmani, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS

..... Respondents

Through: Ms. Sonia Arora, Advocate with
Ms.Heena Mongia, Ms. Pallavi Shali,
Advocates for R-1 to R-3.
Mr. Yogesh Kumar, Advocate for R-4.

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Date of Decision : 07th March, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 18th July, 2012 whereby respondent No.4 has been issued authorisation to run a Fair Price Shop in Baba Colony, Burari, New Delhi. It is pertinent to mention that the petitioner had also applied for the Fair Price Shop, but was unsuccessful.

2. Mr. Pardeep Gupta, learned counsel for petitioner submits that the allocation of Fair Price Shop to respondent No.4 is violative of Rule 3(6)(4) of the Delhi Specified Article (Regulation of Distribution) Order, 1981 inasmuch as respondent No.4 had not shown due diligence in support of its financial position. Rule 3(6)(4) reads as under:-

“3. Issue of Authorization to a wholesalers and fair price shop holders

xxxx xxxx xxxx xxxx

(6) Every application for the issue of an authorization shall be considered having due regard to:-

xxxx xxxx xxxx xxxx

(4) The financial position and capacity of the applicant in performing the functions of an authorized wholesaler or a fair price shop holder as the case may be.

3. Learned counsel for petitioner draws this Court’s attention to the report prepared by the clerical staff of respondents No.1 to 3 wherein it is stated that sole proprietor of respondent No.4 possess a Below Poverty Line (for short ‘BPL’) Card No. BPL 02080218.

4. Learned counsel for petitioner also states that the grant of Fair Price Shop to respondent No.4 is violative of Rule 3(6)(1) of the Delhi Specified Article (Regulation of Distribution) Order, 1981. Learned counsel for petitioner contends that respondents No.1 to 3 did not ascertain as to whether the respondent No.4 is conducting his business or has his business premises situated in an area or locality for which authorisation had been issued. He further contends that respondents No.1 to 3 have taken into

account the residential address of respondent No.4 rather than his place of business while allocating the Fair Price Shop. In support of his contention, learned counsel for petitioner lays emphasis on the layout plan to show that Vashisht Enclave, where respondent No.4's business is being conducted, is different from Baba colony in respect of which authorisation for running a Fair Price Shop had been granted.

5. On the other hand, Ms. Sonia Arora, learned counsel for respondents No.1 to 3 states that an elaborate procedure had been followed by respondents No.1 to 3 before awarding the Fair Price Shop to respondent No.4. She states that firstly a report had been prepared by the clerical staff and subsequently, a Selection Board had approved the allotment of the Fair Price Shop to respondent No.4.

6. Learned counsel for respondents No.1 to 3 has also handed over certain extracts of the official file to show that sole proprietor of respondent No.4 had filed three affidavits stating that he had adequate finances for running the Fair Price Shop inasmuch as he had Rs.70,315/- in his bank account. She points out that respondent No.4 had also given an undertaking not to withdraw the said amount for three months. She submits that holding of a BPL card is not a disqualification for allotting a FPS licence to a person.

7. She states that just because Vashisht Enclave has a separate welfare association does not mean that Vashisht Enclave is not in Baba Colony. She emphasises that Vashisht Enclave is very much a part of Baba Colony.

8. Mr. Yogesh Kumar, learned counsel for respondent No.4 draws this Court's attention to the instructions for filling up of application form and eligibility criteria for allotment of outlet. He submits that the only financial criteria which the respondent No.4 had to comply with was to have a

minimum bank balance of Rs.50,000/-, which respondent No.4 fulfilled on the date of the application. He states that respondent No.4 had voluntarily surrendered his BPL Card on 25th March, 2012—i.e. much before the filing of writ petition.

9. In rejoinder, learned counsel for petitioner states that even as of today, the sole proprietor of respondent No.4 is a BPL Card holder. He states that being a BPL card holder means that petitioner and his family members income is less than Rs.24,000/- per annum. He, however, states that for the purpose of allocation of Fair Price Shop, respondent No.4 had shown a bank balance of Rs.70,315/- as well as the ownership of a car and a house and having paid advance rent of Rs.6,600/- for the shop.

10. Having perused the papers, this Court finds that the last day for filing of application for allotment of Fair Price Shop in the notified area of Baba Colony, Burari, Delhi was 02nd November, 2011. One of the essential eligibility conditions for allotment of PDS Outlet was that the applicant should be financially sound. Condition 1(g) of Instruction for Filing the Application Form and Eligibility Criteria for PDS Outlet states “*The applicant should be financially sound.*”

11. In the opinion of this Court, respondents No.1 to 3 have, in the present case, failed to carry out due diligence as respondent No.4 has evidently made either contradictory or false statements. Respondent No.4 cannot be both a BPL card holder and at the same time own a car, house as well as bank balance of Rs.70,315/- and pay rent of Rs.6,600/- for a shop!

12. This Court is of the view that a BPL Card holder cannot be considered financially sound as the State has devised the concept of BPL to provide state subsidy to such sort of people.

13. This Court does not agree with the stand of respondents No. 1 to 3 that holding a BPL card is not a disqualification for grant of a Fair Price Shop licence, as the essential condition for allotment of PDS Outlet is that an entity or individual has to be financially sound—which a BPL card holder cannot be.

14. Certainly if the State has a scheme or reservation for the economically weaker sections or for the educated unemployed, then a BPL card holder can be considered for allotment. But as long as the essential eligibility criteria stipulates that an applicant has to be financially sound for allotment of PDS outlet, this Court is of the view that a BPL card holder cannot be considered for allotment of a Fair Price Shop licence.

15. Since this Court is in agreement with the first submission of the petitioner, it is not examining the petitioner's second ground of violation of Rule 3(6)(1) of Delhi Specified Article (Regulation of Distribution) Order, 1981.

16. This Court is amazed at the ease with which respondent No. 4 has obtained on one day a BPL card and after a few days, has declared himself to be financially sound even without surrendering the BPL card. Consequently, this Court directs the Chief Secretary of Government of NCT of Delhi to appoint a relatively senior officer to conduct a departmental inquiry against the officials who took the decision to allot the BPL card and Fair Price Shop in question. If any officer/official is found to be negligent or remiss in his duty, a suitable entry in his service record is directed to be made.

17. In view of the aforesaid, the allotment of Fair Price Shop in favour of respondent No.4 is cancelled and respondents No.1 to 3 are directed to take suitable steps to allot the shop in question in accordance with law.

18. With the aforesaid observations and directions, present petition and application stand disposed of.

Order dasti.

MANMOHAN, J

MARCH 07, 2014

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