

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.09.2014

+ **W.P.(C) 5644/2014**

M/S MAHAVIR STORE

..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Pardeep Gupta.

For the Respondents : Mr Amiet Andlay and Mr Arun Kr. Sharma.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

CM No.13985/2014

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5644/2014 & CM No.13986/2014

1. The present writ petition has been filed impugning an order dated 13.11.2013 passed by the Lt. Governor, Delhi (hereinafter referred to as the 'impugned order') against an appeal preferred by the petitioner under Section 6(8) of Delhi Specified Articles (Regulations of Distributions) Order, 1981. The said appeal was preferred by the petitioner against an order dated 21.06.2011 passed by respondent no.4 (Assistant

Commissioner, North West) and orders dated 16.12.2011 and 22.05.2013 passed by respondent no.3 (Additional Commissioner/Appellate Authority, North West, Dept. of Food & Supplies).

2. Briefly stated, the relevant facts are that the petitioner was granted a licence to run the Fixed Price Shop (FPS) on 27.03.1995. An inspection was carried on by the concerned authorities and some irregularities were found in the records of the petitioner with regard to the sales made in the month of December, 2010. A suspension-cum-show cause notice was issued to the petitioner on 07.04.2011. Essentially, the following charges were levelled against the petitioner:-

- “1. In the column of Card Number of FPS sale register, the complete card numbers were not mentioned as a result of which it cannot be ascertained as to whom the appellant has issued the subsidized food articles, thus vitiating the process of public audit.
2. There were sales shown against the same cards twice a month in excess of entitlement of card holders. 12 such cards were noticed during test check of sale register of December, 2010 alone.
3. The signatures purportedly done by the card holders in the sales Register were apparently found to be in same hand.”

3. Subsequently, on 21.04.2011 & 02.05.2011, the inspectors of the Food & Supplies Department visited the FPS for physical verification of the stock and found further irregularities. Consequently, a supplementary show cause notice was issued to the petitioner on 20.05.2011 alleging that the necessary display board was not placed at a prominent place in the premises of the FPS and the sanitary condition were also not good. It was

further alleged that the necessary/mandatory verification certificate of Weight & Measure Department was also not produced by FPS holder during the inspection by Enforcement Branch of the Department. The weighing instruments were not found duly verified (bearing the seal of Weights & Measure Department).

4. The response of the petitioner to the show cause notices was rejected by respondent no.4 by an order dated 21.06.2011. In an appeal filed the petitioner, the said order was affirmed by respondent no.3 by an order dated 16.12.2011. The review petition was also dismissed by respondent no.4, by an order dated 22.05.2013. By the impugned order, the Lt. Governor also affirmed the orders passed by respondent nos.4 & 3.

5. I have heard the learned counsel for the parties.

6. Before proceeding further, it would be relevant to examine the response of the petitioner to the show cause notices and the findings of the authorities. In response to the charge that the records reflected that certain Ration Card Holders had been sold rations twice in the month of December, the petitioner had explained that this was because of the negligence of her employee who was placed incharge of the FPS during her absence, on account of her ill health. The petitioner explained that 5 out of 12 cardholders had, in fact, taken the rations twice in a month. The petitioner had also furnished affidavits from 5 card holders affirming that they had received rations twice in that month. It was stated that there were two other similar cases also but the petitioner could not obtain affidavits from the card holders as they were not available. In respect of the remaining 5 cases,

it was stated that food articles sold to other card holders had by mistake been entered against the 5 card holders twice. The petitioner also disputed that the entries had been done by one hand. With regard to the certificate of Weights and Measure Department, the petitioner stated that the due to piling of stock in the shop, she could not find the same. The petitioner further stated that the display board was put up but may not have been noticed as it had been placed slightly higher.

7. These explanations submitted by the petitioner were not found acceptable. The affidavits furnished by the petitioner were also found to be false as they did not conform with the entries made in the Register. The affidavits allegedly affirmed by the card holders and furnished by the petitioner to the respondent authorities had stated that certain family members of the card holders had drawn rations without the knowledge of the card holder and inadvertently, the card holders had also done so, thus, received rations twice over. On examination, it was found that the names on the record of the FPS were not that of the family members of card holders who were stated to have collected the rations.

8. Respondent no.4 found that charges made against the respondent were established and accordingly, passed an order dated 21.06.2011 cancelling the licence granted to the petitioner to operate the FPS. Aggrieved by the same, the petitioner had preferred an appeal before respondent no.3, which was rejected by an order dated 16.12.2011. The review petition filed by the petitioner against the order dated 16.12.2011 was also rejected by respondent no.3, by an order dated 22.05.2013. Thereafter, the petitioner preferred a second appeal before the Lt. Governor

challenging the abovementioned orders passed by respondent nos.4 & 3. After considering the facts and circumstances of the case, the Lt. Governor rejected the appeal and held that the explanations offered by the petitioner with respect to the charges were considered and had been established. The relevant extract from the impugned order is as under:-

“I have considered the submissions made by both the sides, including the appellant and have also perused the documents on record. The appellant was given enough opportunity by way of show cause notices and personal hearing by the respondents, before cancelling her FPS authorization/licence. Diversion of subsidized food grains meant for the card holders, by the FPS owners is the real stumbling block in effective implementation of the Public Distribution System. I am of the opinion that this is a fit case where no leniency should be taken. I find no ground to interfere with the impugned orders. The appeal is, therefore, dismissed.”

9. The learned counsel for the petitioner did not challenge the findings arrived at by respondent no.4 which had also been affirmed in appeal. It was, however, submitted that in similar cases a lenient view had been taken by the authorities. It was contended that the impugned order was erroneous inasmuch as the Lt. Governor, Delhi had not considered that in similar cases, the licence of delinquent holders had not been cancelled.

10. The learned counsel for the respondent had stated that in the present case, the affidavits furnished by the petitioner was examined and found to be false. The petitioner was, thus, not only guilty of the irregularities for which she was charged but her conduct, thereafter, in procuring false affidavit was also reprehensible and thus, lenient view ought not to be taken in this case.

11. Undisputedly, there is no infirmity in the decision making process. The petitioner has been granted full opportunity to meet the charges levelled against her. The explanations furnished by the petitioner have also been duly considered in detail and the allegations made against the petitioner have been established. I do not find any reason to interfere with the impugned order. The impugned order is neither unreasonable nor arbitrary. The contention that since in similar cases a lenient view had been taken by the Food Department, the order cancelling the petitioner's licence should be set aside, also cannot be accepted. Each case has to be examined on its own facts. This is clearly a case where the records of FPS outlet have been manipulated and no tolerance for this conduct can be expected. I am inclined to accept the contention of the respondent that the conduct of the petitioner in procuring false affidavits also cannot be countenanced and do not warrant that a lenient view be taken in the present case. It is well settled that a judicial review under Article 226 of the Constitution of India is not akin to an appeal and the Court will not supplant its views over that of the decision making authority. Interference in exercise of powers under Article 226 of the Constitution of India is not warranted unless there is a manifest error or the decision making process is flawed. In this view, no interference with the impugned order is warranted.

12. Accordingly, the present petition and the application are dismissed. No order as to costs.

VIBHU BAKHRU, J

SEPTEMBER 02, 2014
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