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

+ W.P.(C) 9013/2007

% ***Judgment dated 21.03.2014***

SURINDER PAL Petitioner

Through : Mr.Sanjay Mishra, Adv.

versus

GOVT. OF N.C.T. OF DELHI Respondents

Through : Mr.S.D. Salwan and Ms.Latika Dutta,
Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present petition has been filed by petitioner under Articles 226/227 of the Constitution of India for issuance of a writ of mandamus in the form of order or direction for quashing the order dated 20.11.2007 passed by Secretary-cum-Commissioner, arising out of an appeal against the cancellation order dated 6.10.2007 passed by Assistant Commissioner (West).
2. Rule. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
3. The necessary facts for disposal of the present writ petition are that the petitioner is the sole proprietor of the firm, namely, M/s Surinder Pal FPS (Fair Price Shop) (hereinafter referred to as "FPS"). Authorisation No.5416 was granted in favour of the petitioner for running a shop situated at B-31, Sharda Puri, New Delhi, under the jurisdiction of Circle-65, B-31, Sharda Puri, New Delhi. A copy of the license dated 6.6.1980,

granted in favour of the petitioner, has been filed along with the writ petition. The petitioner was running the FPS shop for the last 27 years till the year of filing of the present writ petition i.e. 2007.

4. On 29.8.1987, the Inspectors of respondents visited the shop of the petitioner. They weighed and counted articles of ration lying there and seized the record of the petitioner. Stock verification statement was also prepared by the Inspector and minor discrepancies in wheat, sugar, R.B.D. Palm Oil and rapeseed oil were found. The total shortage/excess out of the entire stock of 2500 kg. was 44.5 kg., which was around 2% of the total stock and less than 1% of the total sale volume of the months, which according to the petitioner was due to natural reasons.
5. Based on the report prepared, a Show Cause Notice dated 18.9.1987 was issued to the petitioner calling upon him to explain the irregularities mentioned in the report. Since reply to the show cause notice was found to be dissatisfactory, the respondent no.2 lodged an FIR against the petitioner at Police Station Kirti Nagar, New Delhi, under Section 3 of Essential Commodities Act, 1955, on the basis of inspection held on 29.8.1987. Vide judgment dated 7.12.1988 the petitioner was convicted with imprisonment till the rising of the Court, besides a fine of Rs.200/- was imposed upon him. Thereafter on 10.9.2007 i.e. after a span of more than 18 years another Show Cause Notice was issued to the petitioner under Clause 7 of Delhi Specified Articles (Regulation of Distribution) Control Order 1981 to explain as to why his license should not be cancelled for the offence committed on 1.9.1987. The petitioner was also called upon to appear in person or through his representative on 15.9.2007. After granting an opportunity of hearing to the petitioner, order of cancellation with regard to petitioner's license was passed by Assistant Commissioner (West) on 6.10.2007. An appeal filed by petitioner against

the order dated 6.10.2007 was dismissed by the Secretary-cum-Commissioner on 20.11.2007.

6. Learned counsel for the petitioner submits that the petitioner cannot be punished for an offence committed by him eighteen years ago. Counsel further submits that during the period of eighteen years the license of the petitioner was renewed from time to time. Counsel also contends that the license of the petitioner cannot be cancelled after such a long gap without any cogent or plausible explanation with regard to delay on the part of the respondents. It is next submitted that the order dated 20.11.2007 passed in the appeal would show that the Secretary-cum-Commissioner, who passed the order, was satisfied that there was no plausible explanation for the delay on the part of the Department. Counsel also contends that on account of the delay the respondent has condoned the act of the petitioner and the action of the respondent is stale.
7. Counsel for the petitioner further submits that the trial court while passing the Order dated 7.12.1988 has recognised the fact that the nature of shortages was minor and there was no hoarding or black-marketing by the petitioner. In support of this submission counsel has drawn the attention of the Court to the Order on sentence passed by Additional Session Judge, Delhi, on 7.12.1988
8. Learned counsel for the petitioner submits that a careful reading of the order dated 20.11.2007 passed by Secretary-cum-Commissioner, in the appeal filed by the petitioner would show that the main reason for upholding the cancellation order is the observations in the report of Justice Wadhwa Committee. Counsel further submits that there are no reasons, which have been given in the order, which would justify the action of cancellation against the petitioner. Counsel contends that it is the case of the petitioner that after the Committee was formed by the Supreme

Court of India, sweeping actions were taken without any application of mind and under the fear of strictures being passed and action being taken against the erring officials.

9. Mr.Salwan, learned counsel for the respondent, submits that once the petitioner had committed breach and he was convicted, the respondent was well within its right 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:

“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.”

10. 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, and, thus, the delay cannot be attributed to the respondent.
11. Learned counsel for the respondent, while placing reliance on the report of Justice Wadhwa Committee, contends that the Supreme Court of India passed an order in WP(C) 196/2001 constituting Central Vigilance Committee to be headed by Mr.Justice D.P. Wadhwa, a retired Judge of the Supreme Court to be assisted by Dr.N.C. Saxena, Commissioner, earlier appointed by Court. The Committee was required to look into the

maladies affecting the proper functioning of Public Distribution System (PDS) and to suggest remedial measures. In particular, the Committee was asked to focus on (a) The mode of appointment of the dealer; (b) the ideal commission or the rate payable to the dealers; (c) modalities as to how the Committees already in place, can function better; and (d) modes as to how there can be transparency in allotment of the food stock to be sold at the shops. The Supreme Court further directed that “while dealing the question of mode of appointment, the Committee would also suggest as to a transparent mode in the selection of the dealers. The Committee would also indicate as to how more effective action can be taken on the report of the Vigilance Committee already appointed. The direction was issued initially for the Government of Delhi to be followed on all India basis. This report details with Delhi.

12. It is submitted by counsel for the petitioner that the scope of the directions of the Committee was not to look into the genuine cases and old matters where action had already been taken many years prior to the formation of the Wadhwa Committee. It is further submitted that the petitioner has already suffered the rigours of trial, as he was convicted till the rising of the Court and he also paid fine and, thus, he should not be punished twice for the same offence.
13. Learned counsel for the respondent submits that as per Clause 7 of Delhi Specified Articles (Regulations of Distribution) Order, 1981, it was mandatory upon the respondent to cancel the license of the petitioner after he was convicted by a court of law. Counsel further submits that the action was optional as the word, which has been used is ‘may’ and the same cannot be read as ‘shall’. Counsel also submits that there is no question of double jeopardy as the action for cancellation of the license has been taken pursuant to Clause 7 of Delhi Specified Articles

(Regulations of Distribution) Order, 1981, which would come into play after the order of conviction has been passed.

14. I have heard learned counsel for the parties and considered their rival submissions. In this case, admittedly, Authorisation No.5416 was granted in favour of the petitioner for running a shop situated at B-31, Sharda Puri, New Delhi, under the jurisdiction of Circle-65, B-31, Sharda Puri, New Delhi. On 29.8.1987 an inspection of the shop of the petitioner was carried out. The Inspectors of respondents weighed and counted the articles of ration lying there and seized the record of the petitioner. Stock verification statement was also prepared by the Inspector and minor discrepancies in wheat, sugar, R.B.D. Palm Oil and rapeseed oil were found. The total shortage/excess out of the entire stock of 2500 kg. was 44.5 kg., which was around 2% of the total stock and less than 1% of the total sale volume of the months, which according to the petitioner was due to natural reasons. Based on the report prepared, a Show Cause Notice dated 18.9.1987 was issued to the petitioner to explain the irregularities mentioned in the report. As the reply to the show cause notice was not found satisfactory, respondent no.2 lodged an FIR against the petitioner at Police Station Kirti Nagar under Section 3 of Essential Commodities Act, 1955, on the basis of inspection held on 29.8.1987. Trial was conducted. Vide judgment dated 7.12.1988 the petitioner was convicted with imprisonment till the rising of the Court together with a fine of Rs.200/-. Thereafter on 10.9.2007 another Show Cause Notice was issued to the petitioner under Clause 7 of Delhi Specified Articles (Regulation of Distribution) Control Order 1981 to explain as to why his license should not be cancelled for the offence committed on 1.9.1987. The petitioner was also called upon to appear in person or through his representative on 15.9.2007. After granting an opportunity of hearing to the petitioner, order

of cancellation with regard to petitioner's license was passed on 6.10.2007. An appeal filed by petitioner against the order dated 6.10.2007 was also dismissed on 20.11.2007.

15. Admittedly, no administrative action was taken by the respondent against the petitioner for more than 18 years and in fact the license of the petitioner was renewed from time to time.
16. A careful reading of Clause 7 of Delhi Specified Articles (Regulations of Distribution) Order, 1981, would show that the word, which has been used is 'may' and not 'shall' and, thus, it is not for the Court to substitute its interpretation or to give a meaning to a word unless the clause is unhappily worded or requires an interpretation to be given. In my view the word 'may' is to be read as it is and should not be substituted for 'shall' for the reason that the nature of offence committed by an individual would depend on the facts of each case.
17. In this case, trial court has clearly observed that the nature of shortages are minor and the petitioner was not indulging in hoarding or black-marketing on the basis of which the trial court, only granted punishment to the petitioner till the rising of the Court with a fine of Rs.200/- in contrast to a matter where the person convicted, was granted a more severe punishment depending on the acts committed by him. It is for this reason that the Legislature, in my view, has given a discretion to the respondent whether to take action with regard to cancellation or not. Another reason why the petitioner must succeed in this writ petition is that there is gross delay on the part of the department i.e. as long as approximately 18 years. In my view the respondents have condoned the acts of the petitioner by renewing the license of the petitioner year after year and moreover there is no explanation for the gross delay in the matter and further from the date of inspection, which took place in the year 1987,

there is no complaint against the petitioner till date. Any action of cancellation would, therefore, cause great prejudice to the petitioner.

18. Resultantly, the impugned order dated 20.11.2007, arising out of an appeal against the cancellation order dated 6.10.2007, is quashed.
19. Petition stands disposed of. Rule is made absolute.

G.S.SISTANI, J

MARCH 21, 2014

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