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

+ W.P.(C) 1072/2008

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Judgment dated 20.02.2015

M/S.SHIV FAIR PRICE SHOP

..... Petitioner

Through : Mr.R.P. Luthra, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present petition has been filed by petitioner under Article 226 of the Constitution of India for issuance of a writ of certiorari or any other writ directing respondents to quash the impugned cancellation order dated 1.9.2007 issued by Assistant Commissioner (EAST) and order dated 15.1.2008 passed by the Commissioner in appeal preferred by the petitioner against the cancellation order dated 1.9.2007 of Asstt. Commissioner (W).
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 a proprietary concern of which Dushyant Kumar Saxena is the proprietor. The petitioner concern had been granted licence in the year 1981 for running the Fair Price Shop (for short, 'FPS') No.5629 under Circle No.44 at A-235, Jhilmil Colony, Shahdara, Delhi -95.

4. On 27.7.1987 a raid was conducted by the officials of Enforcement Branch, Food and Supplies, Department, Delhi Administration, Delhi at the FPS No.5629 under Circle No.44 at A-235, Jhilmil Colony, Shahdara, Delhi -95. In the raid, certain discrepancies / irregularities were detected; on the basis of which an FIR No.315/87 under Sections 7/10/55 of the Essential Commodities Act, was lodged at P.S. Vivek Vihar, Delhi against the authorization holder of the abovesaid FPS.
5. After about 10 years from the date of incident, on 16.9.1997 learned Additional Sessions Judge held the petitioner guilty under the Essential Commodities Act. In the meanwhile the petitioner paid the penalty of Rs.50/- and his licence was restored.
6. Counsel for the petitioner submits that for the first time after lapse of about 10 years of passing of the judgment dated 16.9.1997, show cause notice dated 17.8.2007 was issued to the petitioner and thereafter impugned cancellation order dated 1.9.2007 was issued.
7. Counsel for the petitioner submits that it is clear that the impugned cancellation order dated 1.9.2007 was issued by respondent on the basis of the directions / letter dated 4th July, 2007 passed by the higher authorities [Central Vigilance Committee].
8. Learned counsel for the petitioner submits that the petitioner cannot be punished for an offence committed as far back as on 27.7.1987, for which petitioner had been convicted by learned Additions Sessions Judge and on making the payment of the penalty amount of Rs.50/-, the licence of the petitioner had already been restored. Counsel further submits that during the period of twenty years 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. Counsel

also contends that on account of the delay the respondent has condoned the act of the petitioner and the action of the respondent has become stale.

9. 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.
10. Mr.Salwan, learned counsel for the respondent, submits that once the licensee 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.”

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, and, thus, the delay cannot be attributed to the respondent.
12. 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.

13. 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, and has also suffered penalty, thus, the petitioner should not be punished twice for the same offence.
14. 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 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.

15. I have heard learned counsel for the parties and considered their rival submissions. In this case, admittedly, petitioner had been granted licence for running the FPS No.5629 under Circle No.44 in the year 1981 at A-235, Jhilmil Colony, Shahdara, Delhi -95. On 27.7.1987 a raid was conducted by the officials of Enforcement Branch, Food and Supplies, Department, Delhi Administration, Delhi at the FPS No.5629 under Circle No.44, at A-235, Jhilmil Colony, Shahdara, Delhi -95. In the raid, certain discrepancies / irregularities were detected; on the basis of which an FIR No.315/87 under Sections 7/10/55 of the Essential Commodities Act, was lodged at P.S. Vivek Vihar, Delhi against the authorization holder of the said FPS.
16. After about 10 years from the date of incident, on 16.9.1997 learned Additional Sessions Judge held the petitioner guilty under the Essential Commodities Act. In the meanwhile the petitioner paid the penalty of Rs.50/- and his licence was restored.
17. Admittedly, no administrative action was taken by the respondent against the petitioner for more than 10 years and in fact the license of the petitioner was renewed from time to time.
18. 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.

19. The 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 10 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 on 27.7.1987, there is no complaint against the petitioner till date. Any action of cancellation would, therefore, cause great prejudice to the petitioner. Accordingly, the impugned cancellation order dated 1.9.2007 issued by Assistant Commissioner (EAST) and order dated 15.1.2008 passed by the Commissioner in appeal preferred by the petitioner are quashed.
20. Petition is allowed. The rule is made absolute.

G.S.SISTANI, J

FEBRUARY 20, 2015

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