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

+ W.P.(C) 1122/2008

% ***Judgment dated 20.02.2015***

BRHAM PRAKASH Petitioner
Through : Mr.Nitin Sehgal, Advocate

versus

THE ASSISTANCE COMMISSIONER
FOOD & SUPPLIES (EAST) Respondents
Through : Mr.S.D. Salwan and Ms.Latika Dutta,
Advocate

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 certiorari or any other writ directing respondents to quash the impugned cancellation order dated 31.10.2007 issued by Assistant Commissioner (East).
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 proprietorship concern, which had been granted licence for running the Fair Price Shop (for short, 'FPS') No.5789 at 16/72, Kalyan Puri, Delhi, in the year 1986 by the Department of Food and Supplies, which was renewed from time to time.

4. On 08.12.1996 an inspection was carried out by the officials of the Department of Food and Supplies at said FPS, wherein certain discrepancies were detected and some card holders had not drawn the stock shown against their names by the FPS; and discrepancies in the door to door verification conducted by the department were also found.
5. As the petitioner could not explain the discrepancies, vide order dated 26.12.1996 authorization of the petitioner was suspended and a show cause notice was issued to the petitioner concern, reply to which was submitted by the petitioner. Subsequently, an FIR No.588/96 was also registered under Section 7 of the Essential Commodities Act at P.S. Kalyan Puri, Delhi. On 20.1.1997 the Assistant Commissioner Food and Supplies passed an order, whereby he revoked the order of suspension dated 26.12.1996 and ordered to forfeit the entire security amount of Rs.500/- of the licence holder.
6. On 13.3.2001 learned Additional Sessions Judge held the petitioner guilty and released him to the period already undergone and also imposed fine of Rs.1000/- and in default thereof, further imprisonment for a period of 15 days.
7. Counsel for the petitioner submits that for the first time after lapse of about 7 years of passing of the judgment dated 13.3.2001, show cause notice was issued to the petitioner on 22.9.2007 and thereafter order of cancellation dated 31.10.2007 was passed.
8. Counsel for the petitioner submits that it is clear that the impugned cancellation order dated 31.10.2007 was issued by respondent on the basis of the directions / letter dated 4th July, 2007 passed by the higher authorities [Central Vigilance Committee].
9. Learned counsel for the petitioner submits that the petitioner cannot be punished for an offence committed as far back as on 08.12.1996, for

which petitioner had already undergone the sentence, paid fine imposed and already suffered penalty of forfeiture. Counsel further submits that during the period of eleven 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.

10. 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.
11. 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.”

12. 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.

13. 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.
14. 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/ imprisonment, and has already deposited fine imposed and has also suffered penalty of forfeiture, thus,

the petitioner should not be punished twice for the same offence.

15. 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.
16. 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.5789 at 16/72, Kalyan Puri, Delhi, in the year 1986 by the Department of Food and Supplies, which was renewed from time to time. On 08.12.1996 an inspection was carried out by the officials of the Department of Food and Supplies at said FPS, wherein certain discrepancies were detected and some card holders had not drawn the stock shown against their names by the FPS; and discrepancies in the door to door verification conducted by the department were also found. Vide order dated 26.12.1996 authorization of the petitioner was suspended and a show cause notice was issued to the petitioner concern, reply to which was submitted by the petitioner. Subsequently, an FIR No.588/96 was also registered under Section 7 of the Essential Commodities Act at P.S. Kalyan Puri, Delhi. On 20.1.1997 the Assistant Commissioner Food and Supplies passed an order, whereby he revoked the order of suspension dated 26.12.1996 and ordered to forfeit the entire security amount of Rs.500/- of the licence holder. The learned Additional Sessions Judge vide order dated 13.3.2001 held the petitioner guilty and released him to the period already undergone and also imposed fine of

Rs.1000/- and in default thereof, further imprisonment for a period of 15 days.

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 08.12.1996, there is no complaint against the petitioner till date. Any action of cancellation would, therefore, cause great prejudice to the petitioner. The impugned cancellation order dated 31.10.2007 issued by Assistant Commissioner (East) is quashed.
20. Petition is allowed. The rule is made absolute.

G.S.SISTANI, J

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