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

+ W.P.(C)8755/2007

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Judgment dated 20.02.2015

SHRI GAURI SHANKER Petitioner

Through : Counsel for the petitioner

versus

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

Through : Mr.S.D. Salwan & Ms.Latika Dutta, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present petition has been filed by petitioner under Articles 226 of the Constitution of India for issuance of a writ of certiorari or any other writ directing respondents to quash the show cause notice dated 15.10.2007 and the impugned order dated 7.11.2007 by which licence of the petitioner was cancelled.
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 had been granted licence no.1172/73 dated 6.6.1973 for running the Kerosene Oil Depot (for short, 'KOD') at Shop No.40, Village Mochi Bagh, Nanakpura, New Delhi at Circle 36, which was renewed from time to time and upto 29.5.2008. A copy of the license granted in favour of the petitioner, has been filed along with the writ petition.
4. In this case an FIR No.459/82 was registered on 2.12.1982 at the Police Station R.K. Puram, under Section 7/10/55 Essential Commodities Act against the petitioner. The learned Additional Sessions Judge, while

disposing of the case, convicted the petitioner till rising of the court also imposed fine of Rs.1000/-, in default thereof petitioner was directed to undergo three months rigorous imprisonment.

5. In the meanwhile, after a gap of about 12 years, on 11.1.1994 a show cause notice was issued by respondents to the petitioner and also directed to appear in person on 20.1.1994 at 3:00 p.m. along with relevant records. The petitioner filed reply to the show cause notice and also appeared in person on 25.3.1994 and 14.4.1994. It is also the case of the petitioner that after departmental enquiry a fine of Rs.100/- was imposed on the petitioner on the basis of a case registered on 2.12.1982.
6. It is the case of the petitioner that petitioner had been running the KOD shop for the last about 25 years; and the show cause notice dated 15.10.2007 and the impugned order of cancellation dated 7.11.2007 were issued by the respondents to him after about 13 years of the order dated 11.1.1994 passed by learned Addition Sessions Judge, whereby the petitioner was convicted and sentenced till rising of the court and fine of Rs.1000/- was also imposed.
7. Counsel for the petitioner submits that it is clear that the Show Cause Notice dated 15.10.2007 and the impugned order dated 7.11.2007 by which licence of the petitioner was cancelled, were 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 about twenty five years ago. Counsel further submits that during the period of twenty five 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. 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 for the petitioner further submits that there are no reasons in the show cause notice dated 15.10.2007 on the basis of which the cancellation order dated 7.11.2007 has been issued. 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. It is submitted by counsel for the petitioner that the impugned orders suffer from unreasonableness, non-application of mind and is arbitrary. It is also submitted that similarly situated persons had approached this court by filing writ petition bearing No.4030/2006, which was allowed *primarily* on the ground that reliance on stale material could not be justified and action was arbitrary. It is also submitted that the fine imposed on the petitioner stands deposited.
11. Mr.Salwan, learned counsel for the respondent, submits that once the petitioner had committed breach and he had been sentenced, the respondents were well within its right to cancel the licence of the petitioner, in terms of Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962, which reads as under:

“6. Contravention of the terms and conditions of licence:

(1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and condition or directions or any provisions of this order then without prejudice to any other action that may be taken against licensee according to law, his licence can be suspended by order in writing by the Commissioner.

Proviso to clause 6(1) order vide Dt. 15.2.80.

(2) Without prejudice to the provisions of sub-clause 1 if the Commissioner is satisfied that the licensee has contravened any of the terms and conditions of a licence or the directions issued under clause 3-D or any provision of this order and cancellation of his licence is called for, may after giving the licensee a reasonable opportunity of stating his case against the proposed cancellation by order in writing cancel his licence and shall forward a copy thereof to the licensee.

(3) Notwithstanding anything contains in this clause, where a licensee is convicted by a court of law for breach of the terms and conditions of the licence or contravention of the provision of this order the licensing authority may by order in writing, cancel his licence.

Provided that no such order shall be passed until the appeal, if any, filed against such conviction is dismissed and where no such appeal is filed until the period of limitation for filing an appeal expires.”

12. Counsel for the respondent submits that once the breach was committed respondents were bound to cancel the licence of the petitioner.
13. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petition. The basic facts are not in dispute that the petitioner had been granted licence no.1172/73 dated 6.6.1973 for running the Kerosene Oil Depot at Shop No.40, Village Mochi Bagh, Nanakpura, New Delhi at Circle 36, which was renewed from time to time and upto 29.5.2008. An FIR No.459/82 was registered on 2.12.1982 at the Police Station R.K. Puram, under Section 7/10/55 Essential Commodities Act against the petitioner. Thereafter learned Additional Sessions Judge convicted the petitioner till rising of the court also imposed fine of Rs.1000/-, in default thereof petitioner was directed to undergo three months rigorous imprisonment. As stated, the fine has been deposited.
14. It is only after a gap of about 13 years from the date of the judgment of learned Additional Sessions Judge, a show cause notice for cancellation of the KOD was issued and the cancellation order was issued as according to the respondents, petitioner had incurred a disqualification having been

convicted by a criminal court, in terms of the 1962 Order.

15. Admittedly, no action was taken against the petitioner for about 13 years. Thus in my view no action lies against the petitioner for the act committed. Even otherwise having not taken action for about 13 years and on the contrary having renewed licence of the petitioner from time to time would amount to condoning the act of the wrong doer; and after about 13 years, the respondents are estopped from taking action against the petitioner having waived off their rights by their own conduct. The Government must act in fair, just and expeditious manner. The delay and inaction on the part of the respondent has resulted in creation of valuable rights in favour of the petitioner.
16. It is settled law that a statutory authority is required to act reasonably, fairly and expeditiously. The respondents have not only slept over their right, but also there is no reasonable and plausible explanation for the gross delay, and, thus, the respondents waived their right for taking any action against the petitioner; and the respondents have given a reasonable belief to the petitioner that his right and title is good and shall not be disturbed, hence, the licence of the petitioner cannot be cancelled, at the belated stage.
17. Counsel for the respondent has placed reliance upon the report of Justice Wadhwa Committee constituted by the Supreme Court of India. In the light of the aforesaid facts and observations, respondents cannot at this stage get benefit of their inaction or the findings of the report.
18. In view of the aforesaid, petitioner cannot be penalized, at this stage. A party is bound to act reasonably more so a statutory authority. The authority was under a duty to act reasonably and without prejudice to the rights of the petitioner. Further by not acting within a reasonable period of time and by agreeing to renew the licence of the petitioner, the respondents

have given a reasonable cause to believe that a right has accrued in favour of the petitioner. Accordingly, the petition is allowed. Consequently, impugned show cause notice dated 15.10.2007 and the order of cancellation dated 7.11.2007 are quashed.

19. At this stage, it is pointed out that the petition has become infructuous, as fresh licences are not being granted for running kerosene oil depots.
20. Petition is allowed. The rule is made absolute.

G.S.SISTANI, J

FEBRUARY 20, 2015

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