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

+ W.P.(C) 9109/2007

% *Judgment dated 20.02.2015*

M/S.CHAUHAN KHADYA BHANDAR Petitioner
Through : Mr.Pradeep Gupta, Advocate

versus

GOVT. OF N.C.T. OF DELHI & ORS 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 27.10.2007 issued by Assistant Commissioner (South).
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 for running the Fair Price Shop (for short, 'FPS') No.6649 under Circle No.35 in the year 1981 under Delhi Specified Articles (Regulations of Distributions) Order 1981. A copy of the authorization letter is annexed with the present petition, which was renewed from time to time and finally renewed upto 31.3.2009.

4. On 25.5.1985 an inspection was carried out by the officials of Enforcement Branch, Food and Supplies, Department, Delhi Administration, Delhi at the FPS No.6649 under Circle No.35. The stock was physically verified by weighting in the shop in the presence of Chattar Singh (as representative of Mr.R.L. Singh, proprietor) and the following discrepancies were detected:

- (i) RBD palm oil was sold 2 Kgs. vide c.m. No.234 dated 4.10.86 but not posted in sale/ stock register;
- (ii) RBD Palm oil was sold by 2 Kgs. vide C.M. No.248 dated 4.10.86 but not posted in sale/ stock register;
- (iii) RBD palm oil was sold 2 Kgs. vide C.M. No.635 dated 11.10.86 but not posted in sale/ stock register;
- (iv) Wheat was sold 20 kgs. vice C.M. No.422 dated 7.10.86 but not posted as 30 Kgs. in sale/ stock register;
- (v) Sugar was sold 4.800 Kgs. in C.M. No.753 dated 14.10.86 but posted as 4.800 in sale/ stock register;
- (vi) Candles were sold 2 pkts. vide C.M.No.694 dated 12.10.86 but not posted in sale/ stock register;
- (vii) Candles were sold 2 pkts. vide C.M.No.780 dated 14.10.86 but not posted in sale/ stock register;
- (viii) Candles were sold 2 pkts. vide C.M.No.811 dated 16.10.86 but not posted in sale/ stock register;
- (ix) Rice was found short by 00-09-700 in stock.
- (x) RBD Palm Oil was found excess by 00-06-000 in stock.
- (xi) Maida was found short by 00-06-000 in stock.
- (xii) Suji was found short by 00-01-000 in stock.
- (xiii) Candles were found in excess by 6 pkts. in stock.

5. As the petitioner could not explain the discrepancies, a report was also sent to the Police on the basis of which an FIR No.139/85 was registered under Section 7 of the Essential Commodities Act; and respondents had also issued a show cause notice to the petitioner on 5.11.1986. The petitioner filed reply to the show cause notice, but could not explain the discrepancies, consequently, an order dated 8.12.1986 for forfeiture of a sum of Rs.150/- from the security deposit was passed.
6. On 30.7.1987 learned Additional Sessions Judge held the petitioner and the representative of the petitioner (Chattar Singh) guilty and imposed fine of Rs.250/- each and in default thereof, each was directed to undergo simple imprisonment for one month.
7. Counsel for the petitioner submits that for the first time after lapse of about 20 years of passing of the judgment dated 30.7.1987, show cause notice dated 3.10.2007 was issued to the petitioner and thereafter impugned cancellation order dated 27.10.2007 was issued.
8. Counsel for the petitioner submits that it is clear that the impugned cancellation order dated 27.10.2007 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 25.5.1985, for which petitioner had been convicted by learned Additions Sessions Judge and fine has also been imposed. Counsel further submits that during the period of twenty two 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, 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.6649 under Circle No.35 in the year 1981 under Delhi Specified Articles (Regulations of Distributions) Order 1981, which was renewed from time to time and finally renewed upto 31.3.2009. On 25.5.1985 an inspection was carried out by the officials of Enforcement Branch, Food and Supplies, Department, Delhi Administration, Delhi at the FPS No.6649 under Circle No.35. The stock was physically verified by weighting in the shop in the presence of Chattar Singh (as representative of Mr.R.L. Singh, proprietor) and certain discrepancies were detected. As the petitioner could not explain the discrepancies, a report was also sent to the Police on the basis of which an FIR No.139/85 was registered under Section 7 of the Essential Commodities Act; and respondents had also issued a show cause notice to the petitioner on 5.11.1986. The petitioner filed reply to the show cause notice, but could not explain the discrepancies, consequently, an order of forfeiture of a sum of Rs.150/- from the security deposit was passed. Learned Additional Sessions Judge vide Order dated 30.7.1987 held the petitioner and the representative of the petitioner (Chattar Singh) guilty and imposed fine of Rs.250/- each and in default thereof, each was directed to undergo simple imprisonment for one month.
17. Admittedly, no administrative action was taken by the respondent against the petitioner for more than 21 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 21 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. The impugned cancellation order dated 27.10.2007 issued by Assistant Commissioner (South) is quashed.
20. Petition is allowed. The rule is made absolute.

G.S.SISTANI, J

FEBRUARY 20, 2015

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