

\$~56

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

+ **W.P.(C) 159/2015 and CM No. 261/2015**

M/S. SHIV SHAKTI KHADYA BHANDAR Petitioner
Through: Mr Yogesh Kumar, Advocate.

versus

THE SPECIAL COMMISSIONER & ORS. Respondents
Through: Mr Satyakam, ASC for R-1 & 2 with
Mr Jai Pal Yadav, FSO DFPS.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **08.09.2017**

1. The petitioner has filed the present petition, *inter alia*, impugning order dated 11.08.2014 issued by respondent no.2 and an order dated 28.11.2014 passed by respondent no. 1 rejecting the petitioners appeal against the aforementioned order dated 11.08.2014. Further, the petitioner has also challenged the allotment of the Fair Price Shop (FPS) outlet to respondent no.3.

2. Insofar as the rejection of the petitioner's application is concerned, the same is assailed on the sole ground that the letter rejecting the petitioner's application is unreasoned as it does not indicate the reasons for which the petitioner's application for FPS was rejected. The petitioner has also assailed the allotment of FPS to respondent no.3, essentially, on two grounds. First, the petitioner states that the premises offered by respondent no.3 are not legal and are an encroachment on Government land. Second, it is submitted that proprietor of respondent no.3, Jai Kishore Chandra, was

employed at the time of making the application for the FPS.

3. The aforesaid petition has been contested by the respondents on several fronts. First, it is submitted that the petitioner had withdrawn his application and also the complaints made against respondent no.3. The learned counsel appearing for respondent nos. 1 to 3 also handed over a copy of the letter purportedly received from the petitioner on 22.04.2014 withdrawing his application as well as his complaint against respondent no.3. Photocopy of that letter is taken on record. This Court has also perused the original letter available on the records of respondent and it does appear that there is an interpolation in the letter as far as withdrawal of the complaint against respondent no.3 is concerned.

4. In view of the above, for the purpose of this petition, this Court has disregarded the said letter.

5. The second submission made by the learned counsel for respondent is that although the petitioner was also eligible for being allotted a FPS, respondent no.3 was selected mainly for two reasons: (i) that the access to his shop was better placed as it was on a wider road of 13.5 meters in comparison with the road width of 9.7 meters in case of the petitioner; and (ii) respondent no.3, Jai Kishore Chandra, was also better qualified - whereas he has post graduate qualification, the petitioner (the sole proprietor of M/s Shiv Shakti Bhandar) had only passed 10th Std (matriculation).

6. The learned counsel for respondents had further submitted that an FPS holder is required to devote his entire time to FPS and cannot carry on any other vocation. He submitted that this was also verified and Mr Jai Kishore Chandra (respondent no.3) is not carrying on any other vocation. He also submitted that FPS allotted to respondent no.3 has been functioning smoothly and the number of cardholders are drawing their quota of ration from the FPS.

7. I have heard the learned counsel for the parties.

8. The contention that respondent no.3's shop has been constructed by encroaching on public land is not established. In the counter affidavit filed on behalf of the Delhi Development Authority (respondent no.4), it is affirmed that as per MPD 2021, a small shop of a maximum area of 20 sq. meters on ground floor is allowed in DDA flats for the purposes of a ration shop and kerosene shop, under PDS. DDA has also confirmed that the shop in question is located on the ground floor of a *Janta* category flat allotted by DDA and the approximate area of the shop is 19.5 sq. meters, which is approximately 50% of the area of the said flat.

9. In view of the aforesaid affidavit, this Court is unable to accept that the running of an FPS by respondent no.3 is illegal as alleged by the petitioner.

10. The learned counsel appearing for respondents had also produced the comparative table for evaluation of applications, which was considered in the meeting of the Screening Board held on 21.01.2014. The said tabular statement (which is signed by the Chairman as well as two other members of

the Screening Board) clearly indicates the relevant criteria considered by the said Board while selecting Mr Jai Kishore Chandra as the FPS licensee.

11. There were three contenders for the said licence, namely, the petitioner, Jai Kishore Chandra and one Sh. Pawan Kumar, Proprietor of Hari Om Store. Most of the details of Mr Pawan Kumar including the size of the premises, qualification and bank balance were not available and, therefore, he was not recommended. Both, the petitioner and Mr Jai Kishore Chandra complied with the financial criteria. However, Mr Jai Kishore Chandra was better qualified; he is MBA in Marketing while the petitioner has passed 10th standard. Further, the tabular statement also indicates that the respondent no.3's shop was located on 13.5 meter wide road while that of the petitioner was located on a 9.7 meter wide road. Thus, between the two candidates, Jai Kishore Chandra (respondent no.3) was selected. This Court finds no infirmity with the said selection.

12. The contention that Mr Jai Kishore Chandra, was fully employed and, therefore, was ineligible to apply for an FPS licence, is also unmerited. It appears that Mr Chandra was a partner of a firm named "Investors Blossom" which was offering financial services. There is no material on record to indicate the size of the said business. More importantly, the learned counsel for the petitioner has been unable to point out any stipulation, which renders an employed person ineligible to apply for an FPS licence. As per the Office Order dated 27.07.2015, which contains the policy for issue of licence of FPS in Delhi persons, the following persons are disqualified: (a) persons of unsound mind; (b) proprietor or partner of a cancelled FPS or a Kerosene Oil Depot; (c) If the applicant already has an FPS licence; and (d) The

applicant convicted for an offence under the Essential Commodities Act, 1955 or for any other offence under the Indian Penal Code or any other law in force in India from time to time. Clearly, the person who is otherwise employed is not disqualified from applying for an FPS licence. However, once the FPS licence is granted, the licensee is to be fully employed in running the FPS and cannot carry on any other vocation. There is no material to establish that respondent no.3 is not fully employed in running the FPS shop. In any view, there was no infirmity in selecting respondent no.3, Mr Jai Kishore Chandra as licensee.

13. It is also relevant to state that the petitioner had filed an appeal before respondent no.1 and the entire process for selection had been reviewed. Respondent no.1 also noted in his order dated 28.11.2014 that the FPS allotted to respondent no.3 was functioning smoothly and there was no complaint.

14. This Court finds no infirmity with the impugned orders dated 11.08.2014 and 28.11.2014. The present petition is dismissed.

15. The parties are left to bear their own costs.

SEPTEMBER 08, 2017
RK

VIBHU BAKHRU, J