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

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Judgment delivered on: 10.04.2017

+ **W.P.(C) 2963/2017**

M/S AJIT KAPOOR STORE

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr Yogesh Kumar

For the Respondents:

Ms Nidhi Raman

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

10.04.2017

SANJEEV SACHDEVA, J. (ORAL)

CM No.12883 /2017(exemption)

Allowed, subject to all just exceptions.

W.P.(C) 2963/2017 & CM No.12882/2017(stay)

1. The petitioner impugns Suspension-Cum-Show-Cause Notice dated 13.07.2016, whereby the Fair Price Shop License issued to the petitioner has been suspended.

2. The petitioner was issued an authorization to run a Fair Price

Shop (FPS) under the name and style of M/s. Ajit Kapoor Store by the Department of Food and Supplies, Government of NCT of Delhi.

3. Because of alleged discrepancies in the stock and non-supply of Specified Food Articles (SFA), a show-cause notice was issued to the petitioner on 20.10.2016.

4. Consequent to the show-cause notice, the impugned Suspension-Cum-Show-Cause Notice dated 13.07.2016 was issued to the petitioner thereby suspending the FPS licence with immediate effect.

5. Learned counsel for the petitioner relies on a Circular dated 16.03.2004 issued by the respondents to contend that where a licence is suspended, the maximum period of suspension can be three months and all proceedings have to be concluded within the period of three months.

6. Reliance is also placed on the Delhi Specified Article (Regulation of Distribution) Order, 1981 to contend that period of suspension cannot exceed three months.

7. Reliance is also placed on the decision of the Coordinate Bench of this Court, wherein in similar circumstances, where the period of suspension has extended beyond three months, the suspension-cum-show-cause notice has been set aside.

8. Learned counsel for the respondent submits that proceedings,

consequent to the show-cause notice, are continuing and a one-man Inquiry Committee has been constituted, which is examining the case of the petitioner. It is submitted that delay has occurred because of the conduct of the petitioner, who has failed to appear on several occasions and even failed to submit the reply in time.

9. The FPS license of the petitioner has been suspended with immediate effect by Suspension-Cum-Show-Cause Notice dated 13.07.2016.

10. Relevant portion of the Circular dated 16.03.2004 relied upon by the Petitioner reads as under:-

“*****

In case where variation in stocks is more than 50 ltrs. in case of KOD and 50 kgs. In respect of FPS, license can be suspended initially for a maximum period of three months by the Zonal Asstt. Commissioner. However, in such cases quasi-judicial proceedings will be completed at the level of Zonal Addl. Secretary-cum-Addl. Commissioner. In those cases also the Asstt. Commissioner will issue show-cause notice and obtain a reply of the FPS. He/she will put up the case to his/her Zonal Addl. Secretary/Addl. Commissioner with his/her observation on the charges levelled in the show-cause notice and reply filed by the FPS holder. The Zonal Addl. Secretary-cum-Addl. Commissioner will be required to finalise the proceedings within three months.”

(underlining supplied)

11. The circular dated 16.03.2004 stipulates that the licence can be initially suspended for a maximum period of three months and

thereafter the proceedings have to be finalised within the period of three months.

12. Clause 4 of the Delhi Specified Article (Regulation of Distribution) Order, 1981 reads as under:-

4. *Suspension/cancellation of authorization:*

(1) The Administrator or the Deputy Commissioner may at any time, whether at the request of the person to whom authorization has been issued or on his contravention or attempt to contravene any of the provisions of the said order or directions issued thereunder from time to time in this behalf or any term or condition of the authorization or any directions issued thereunder after making such enquiry as may be deemed necessary without prejudice to any other action that may be taken against him to amend, suspend or rescind the authorization issued under this Order.

(2) Without prejudice to any action that may be taken under sub-clause (1) in respect of any contravention of any of the provisions made by or under this order, the Deputy Commissioner may forfeit the whole or a part of the security deposited under sub clause (2) thereupon the authorized wholesaler or fair price shop holder whose security been forfeited shall forthwith deposit an amount equivalent to the forfeited so as to make the efficiency in the amount of prescribed amount of security.

Provided that before passing any order under sub-clause (1) or sub clause (2), the Deputy Commissioner shall give a reasonable opportunity of being heard to the party concerned.

Provided further that if the authorization is under consideration for action and it is necessary to suspend it

pending enquiry the provisions contained in the foregoing proviso shall not apply subject to the condition that the period of such suspension shall not exceed three months.

Provided further that a copy of every order made under sub clause (1) or sub clause (2) shall be supplied to the person concerned free of charge.”

(Underlining supplied)

13. Reading of the clause 4 of the order shows that it prescribes a procedure for conducting an enquiry pending a proposed action of suspension/cancellation. The proviso stipulates that where pending consideration of any action, if there is any necessity to suspend the authorisation, the suspension shall not exceed three months.

14. Even though the contention of the respondent is that the petitioner himself has been delaying the proceedings, the same cannot be a ground not to conclude the proceedings within the period mandated by the Circular as well as the Order. If a party delays in filing the reply or to appear, the authorities are empowered to proceed further with the enquiry and pass appropriate orders. The authorities need not wait for a response more so when the circular and order stipulate an outer limit for conclusion of the proceedings.

15. In view of the fact that the statutory period of three months has already expired from the date of issuance of Show-Cause Notice-Cum-Suspension Order dated 13.07.2016 on this technical ground alone, the petitioner is entitled to relief of setting aside of the

suspension order.

16. Reference may be had to the decision of the coordinate Bench dated 11.02.2011 in W.P.(C) 132/2011 titled M/s. Ved Prakash versus Government of NCT of Delhi & Another and judgment dated 05.05.2008 in W.P.(C) 3368/2008 titled Jai Shree Ram Store versus the Commissioner Food & Supplies Delhi & Another,

17. In view of the above, the suspension order dated 13.07.2016 is set aside. It is clarified that this Court has not interdicted the show-cause notice issued to the petitioner. The Respondents are at liberty to conclude the proceedings consequent to the Show Cause Notice without waiting for any further response or reply from the petitioner.

18. The Writ Petition is accordingly allowed in the above terms.

19. *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

APRIL 10, 2017

'Sd'