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

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Judgment delivered on: 17.05.2017

+ **W.P.(C) 4201/2017**

M/S HASIJA BROS.

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjiv Kumar & Ms Vasudha

For the Respondents: Mr Akshay Choudhary for Mr Raman Duggal for
GNCTD.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

17.05.2017

SANJEEV SACHDEVA, J. (ORAL)

CM No.18391/2017 (exemption)

Allowed, subject to all just exceptions.

W.P.(C) 4201/2017 & CM No.18390/2017(stay)

1. Issue notice. Notice is accepted by the learned counsel appearing for the respondent.
2. With the consent of the parties, the petition is taken up for hearing today.

3. The petitioner impugns Suspension Order dated 29.10.2016, whereby the Fair Price Shop License issued to the petitioner has been suspended.

4. The petitioner was issued an authorization to run a Fair Price Shop (FPS) under the name and style of M/s. Hasija Bros. by the Department of Food and Supplies, Government of NCT of Delhi.

5. The team deployed by the Enforcement Branch by order dated 11.10.2016 conducted a survey of the petitioner store and reported discrepancies in the stock and non-supply of Specified Food Articles.

6. Consequent to the survey, the impugned Suspension Order dated 29.10.2016 was issued to the petitioner thereby suspending FPS licence with immediate effect.

7. 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.

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

9. Reliance is also placed on the judgment of this Court dated 10.04.2017 in WP(C) No.2963/17 titled *M/s. Ajit Kapoor Store vs.*

Govt. of NCT of Delhi & Anr., wherein in similar circumstances, where the period of suspension has extended beyond three months, the Suspension Order has been set aside.

10. Learned counsel for the petitioner further submits that in terms of Circular dated 06.04.2005, the maximum penalty that could have been imposed upon the petitioner is a fine of Rs.5,000/- and no suspension order could have been issued.

11. 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.

12. The FPS license of the petitioner has been suspended with immediate effect by Suspension Order dated 29.10.2016.

13. 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)

14. 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.

15. 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 if 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)

16. 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.

17. In view of the fact that the statutory period of three months has already expired from the date of issuance of Suspension Order dated 29.10.2016 on this technical ground alone, the petitioner is entitled to relief of setting aside of the suspension order. Reference may be had

to the judgment in *M/s. Ajit Kapoor Store (Supra)*.

18. In view of the above, the suspension order dated 29.10.2016 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 in accordance with law.

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

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

SANJEEV SACHDEVA, J

MAY 17, 2017

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