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

+ **W.P.(C) 7672/2017 & CM No. 31726/2017**

M/S KHEMWALS STORE & ORS

..... Petitioners

Through Mr Pardeep Gupta, Mr Parinav Gupta,
Mr Mansi Gupta and Mr Moazzam Ali,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through Mr Sanjoy Ghose, ASC, GNCTD with
Ms Uri Mohan & Mr Rishabh Jetley, Advocate for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.11.2017

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

“WRIT of Certiorari be issued for quashing the impugned orders dated 22.08.2017/23.08.2017 regarding Selection/issue of FPS Licence no. 9385, 9387 & 9386 circle no.2 Burari in favour Respondent no.4 to 6 issued by Respondent no.3

Writ of mandamus be issued directing the Respondents to reconsider Petitioner No.1 to 3 for selection and allot the respective Fair Price Shop Licence no. 9385, 9386 & 9387 to the petitioners as per regulation 3 of Delhi specified articles (regulations of distribution) order 1981 and policy dated 27.07.2015 for issue of license of fair price shop in Delhi.”

2. In March, 2016, respondents issued an advertisement for allotment of

Fair Price Shop (hereafter 'FPS') in Circle-02, Burari for different areas including in Nathu Pura, Mukhmelpur & Village Mukundpur. Pursuant to the aforesaid advertisement, petitioner no.1 applied for allotment of a FPS at Village Mukundpur petitioner no.2 applied for a FPS at Nathu Pura and petitioner no.3 applied for a FPS at Mukhmelpur as the petitioners were residing in those areas. It is stated that since there was an urgent requirement for catering to card holders in those areas, another advertisement was issued for granting temporary licences for FPSs. The petitioners also applied for temporary licences. The premises of the petitioners were inspected by the Food and Supply Officials and were found suitable. The petitioners were, accordingly, recommended for a temporary licences for FPS which was subsequently issued in their favour.

3. The officials once again inspected the premises of the petitioners for the purposes of recommending grant of a permanent FPS licences. The petitioners were, thereafter, called for an interview on 16.06.2017. It is stated that thirty two applications were received for allotment of permanent FPSs including that of the petitioners, out of which sixteen persons were called for an interview. Thereafter, respondent nos. 4 to 6 were granted licences for FPSs by allotment orders dated 22.08.2017/23.08.2017, which are impugned in the present petition.

4. The principal ground urged on behalf of the petitioners for assailing the allotment of FPS licences in favour of respondent nos. 4 to 6 is that respondent nos. 1 to 3 have not followed the guidelines as specified under Delhi Specified Articles (Regulations of Distribution) Order, 1981 (hereafter 'the 1981 Order').

5. Mr Sanjoy Ghose, learned counsel appearing for respondent nos. 1 to

3 submitted that respondent no.1 had issued a policy circular dated 27.07.2015, which specially provides for constitution of a high powered Selection Committee consisting of Senior Officers: (a) District Magistrate/Deputy Commissioner (Revenue) of the District - Chairperson.; (b) Assistant Commissioner, Food & Supply, other than concerned District in-charge, nominated by the Commissioner, F&S - Member; (c) Assistant Commissioner, Food & Supply, in-charge of the District in which the proposed applicant is located - Member Secretary. The process of examining and shortlisting the applicants by a Screening Committee was done away with and the Selection Committee is expressly empowered to formulate its own marking scheme. He submitted that in conformity with the aforesaid policy, the Selection Committee had formulated a marking scheme on the basis of which the candidates have been selected. He contended that the selection was done on an objective criteria and as per the policy and, therefore, cannot be faulted.

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

7. The 1981 Order was issued in exercise of the powers conferred under Section 3(2) (d) of The Essential Commodities Act, 1955 and, therefore, is a piece of subordinate legislation. Plainly, the provisions of the 1981 Order cannot be superseded by any policy circular or executive instructions issued by respondent no.1. Indisputably, the provisions of the 1981 Order were required to be followed while selecting the candidates for grant of a FPS licence. Rule 3 of the 1981 Order provides for issue of authorization to wholesalers and FPS holders. Sub-rule (6) of Rule 3 of the said Order provides for the factors to be considered while considering an application for FPS. The said Sub-rule reads as under:-

“3. Issue of Authorization to a wholesalers and fair price shop holders

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(6) Every application for the issue of an authorization shall be considered having due regard to:-

(1) the need for authorized wholesalers or fair price shops in the area or locality of in which the business premises of the applicant/applicants are situated.

(2) The suitability of the premises for proper storage and sale of specified articles.

(3) The suitability of the applicant in view of his past record of dealings in essential commodities and other business. If any, being carried on by him or his near relations in the same premises or the same area or locality or locality or elsewhere in the Union Territory of Delhi.

(4) The financial position and capacity of the applicant in performing the functions of an authorized wholesaler or a fair price shop holder as the case may be.

(5) Any other factor considered relevant to the grant of an authorization under this order.”

8. A plain reading of the aforesaid Sub-rule indicates that the Selection Committee was required to evaluate the applications on the basis of four specified factors, namely, (i) the need for a FPS in the area or locality; (ii) the suitability of the premises; (iii) the suitability of the applicant; and (iv) the financial position and capacity of the applicant in performing functions of an authorized FPS holder.

9. The policy circular dated 27.07.2015 issued by respondent no.1 also provides for the eligibility criteria required to be complied by candidates applying for allotment of a FPS. The said criteria are set out below:-

“(2) Eligibility criteria:

A. General criteria:

- (i) An individual or partnership firm (registered under Partnership Act), limited liability partnership, companies incorporated under the Companies Act, 2013. Women Self Help Group, self-help group of educated unemployed youth, local authority, government, semi government organization, Non-Government Organisations (NGOs), Cooperatives, organized groups of ration card holders will be eligible to apply for an FPS license.
- (ii) Non-Government Organisations and Groups of Ration Card Holders must be registered under the societies Registration Act 1860 within the NCT of Delhi.

B. Age:

- (i) In case of an individual, partnership, including the limited liability partnership, the person including all the partners should not be less than 18 years and more than 60 years of age.
- (ii) In case of Self Help Groups, NGOs and other groups, there shall not be any member in the Group who is below 18 years of age and above 60 years of age.
- (iii) In case of ex-servicemen, there will be relaxation of up to 5 years in the upper age limit in all categories.
- (iv) The age shall be calculated on the last date of submitting application for a fresh license or renewal of an existing license.

In any case upper age limit enhancement shall not be allowed.

C. Educational Qualifications:

- (i) In case of an individual candidate, he must be at least

class 10 pass from any recognised Board in India.

- (ii) In case of Partnership, Limited Liability Partnership Women Self Help Group, Self Help Group of Educated Unemployed Youth, Organized Groups of Ration Card Holders, NGOs, Cooperatives at least 2 members of the group or partnership must be class 10 pass.
- (iii) In case of a Company, at least two of the Directors of the Company must be class 10 pass.

D. Financial Standing: The applicant must have an account in a bank branch in the NCT of Delhi.”

10. The applications of eligible candidates are required to be processed in the manner as specified in paragraph 11 of the said policy, which is set out below:

“11. Processing of the applications received:

- (i) All the applications received in the Office of the Assistant Commissioner on or before within the prescribed time limit shall be scrutinized to ascertain the eligibility of the applicant as per the above eligibility criteria and other guidelines.
- (ii) Inspection of the proposed premises of the applicants found eligible shall be conducted by the Food and Supply Officer of the Circle concerned who will submit the report to the Assistant Commissioner clearly mentioning whether the proposed premises meet the criteria laid down in the guidelines or not.
- (iii) Applicants who are found eligible and whose premises meet the criteria specified in the guidelines will be called for interview by a Committee comprising of the following:-

- a. District Magistrate/Deputy Commissioner (Revenue) of the District – Chairperson.
- b. Assistant Commissioner, Food & Supply, other than concerned District in-charge, nominated by the Commissioner, F&S – Member.
- c. Assistant Commissioner, Food & Supply, in-charge of the District in which the proposed applicant is located – Member Secretary.

Abolishing the Screening Committee to save time, the Selection Committee will design its own marking scheme to select the best candidates as per the aforesaid guidelines and recommended the allotment of FPS license.”

11. In conformity with the aforesaid circular, the Selection Committee evaluated the eligible candidates based on their education qualifications; knowledge of Rules and Government Policies; and preference as per paragraph 6 of the policy - on the basis whether the candidate belonged to a preferential category. The marking scheme adopted by the Selection Committee is set out below:-

“RESULT SHEET
Marking scheme:-

1.	Whether fulfil eligibility criteria:-	Yes/No
2.	Education Qualification (10 th Marks):-	1. 10 th Pass – 6 Marks 2. 12 th Pass – 8 Marks 3. Graduate and above – 10 Marks
3.	Knowledge of Rules and Government Policies (15 Marks)	
4.	Whether belongs to preferred category As per para 6 of order dated 27.07.2015 for issue of license of Fair Price Shop (in Delhi) (05 Marks)	

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12. Indisputably, even though the opening words so indicate, the policy circular cannot override the 1981 Order. The 1981 Order expressly required

the applicants to be evaluated having regard to the factors as set out in Rule 3(6) of the 1981 Order. However, it is also relevant to point out that in terms of clause 5 of Rule 3 (6) of the 1981 Order, the Selection committee could also consider any other factor relevant to the grant of an authorization under the 1981 Order. Thus, the limited scope of examination in the present petition is whether the criteria adopted by the Screening Committee fell foul and was repugnant to the 1981 Order. If the criteria adopted by the Screening Committee - the marking scheme read in conjunction with the eligibility criteria under the policy circular - is examined in the aforesaid context, it would be seen that there is no dispute as to the necessity of an FPS in the locality and, therefore, the petitioners as well as respondent nos. 4 to 6 had met the aforesaid criteria. The second factor to be considered under the said order was the suitability of the premises for proper storage and sale of specified articles (Clause 2 of Rule 3(6) of the 1981 Order). There is no dispute that this factor was also duly considered as the premises of the petitioners as well as the respondent nos. 4 to 6 were found suitable.

13. The suitability of the candidates was also considered as the Selection Committee also evaluated the candidates on the basis of their knowledge of applicable rules and regulations. Thus, the selection method also considered the factors specified in clause 3 of Rule 3(6) of the 1981 Order. The contention that the petitioners were entitled to preference as they were running FPS on temporary licences is not merited as such licences were issued to them after application for FPS licences were advertised.

14. The fourth factor to be considered was the financial position and the capacity of the applicant in performing functions of an authorized Fair Price Shop (Clause 4 of Rule 3(6) of the 1981 Order). It is seen that the marking

scheme adopted by the Selection Committee did not evaluate the said criteria. The eligibility criteria only required the candidate to have a bank account in a branch in NCT of Delhi. Plainly, this would not amount to evaluating whether the applicant had the financial capacity and standing to run a Fair Price Shop. This is the only infirmity in the evaluation process.

15. Before proceeding further, it is necessary to observe that the respondents had included several other relevant factors for evaluating the candidates that were not specifically mentioned in the 1981 Order. However, this was in conformity with the 1981 Order; as pointed out earlier, the clause 5 of Rule 3 (6) of the 1981 Order expressly permitted consideration of other relevant criteria. Except as indicated above, the methodology adopted by the Selection Committee cannot be faulted. The only factor that was required to be taken into account but escaped the evaluation criteria was the financial standing and capacity of the applicant to run a FPS.

16. In view of the above, the present petition is disposed of by directing respondent nos. 1 to 3 to specifically evaluate whether respondent nos. 4 to 6 have the financial standing/capacity to run the FPS shop. The Selection Committee must satisfy itself that the respondent nos. 4 to 6 have the necessary wherewithal to run the FPS Shop. If the Selection Committee finds that respondent nos. 4 to 6 are unable to satisfy them as to their financial standing and capacity to run the FPS, the concerned authority would take steps to cancel the FPS. No further orders are required to be passed in this petition. The criteria regarding financial standing and capacity do not require any comparative evaluation. The said criteria only requires that the selected candidates have the necessary financial capacity/standing to run a FPS. In this view, it would not be necessary for respondents to re-

evaluate the applicants *de novo*. The Selection Committee had evaluated the petitioners and other applicants on an objective criteria and no interference in the comparative evaluation would be warranted. As stated earlier, if any of the selected candidates (respondent nos. 4 to 6) are found not to possess the requisite financial standing/capacity, steps would be taken to cancel their allotment and to allot the FPS to the next best candidate or by a fresh selection.

17. The petition and the pending application are disposed of with the aforesaid directions.

NOVEMBER 02, 2017

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VIBHU BAKHRU, J

