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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13617/2018 and CM Nos. 53054/2018 & 53055/2018**

M/S BHIM SINGH SHIV NARAIN Petitioner

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

versus

GOVERNMENT OF NCT OF DELHI AND
ANR.

..... Respondents

Through: Mr Naushad Ahmed Khan, ASC,
Civil, GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
17.12.2018

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1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 05.07.2017 whereby the Authorisation granted to the petitioner for running a Fair Price Shop (FPS) was cancelled. The petitioner also impugns an order dated 14.12.2017 passed by the Special Commissioner rejecting the petitioner's appeal against the order cancelling the FPS Authorisation. The petitioner had appealed against the said order dated 14.12.2017 before the Special Commissioner (Admn.), Appellate Authority, which was rejected by an order dated 17.09.2018. The said order is also impugned in the present petition. The aforesaid orders are referred to as "the impugned orders".

2. On 17.05.2017, a surprise visit was made by the Minister, Food and Supply, GNCTD and it was found that the FPS run by the petitioner was

locked. The petitioner had neither displayed the statutory notice board, nor the details of weekly off. After inspection, further irregularities were also found. In view of the above, the respondents issued a show cause notice dated 05.06.2017, calling upon the petitioner to show cause as to why action should not be taken under the provisions of the Delhi Specified Articles (Regulations of Distribution) Order, 1981, and the instructions issued thereunder.

3. Thereafter, the respondents passed the impugned order dated 05.07.2017, cancelling the FPS Authorisation. The said order indicates that the petitioner's FPS was sealed as it was found locked at the time of the surprise visit on 17.05.2017. It was thereafter de-sealed on 31.05.2017 and the following discrepancies/irregularities were found:-

- “1. FPS name was not displayed at the Notice Board.
2. Signature of Rattan Card holders were not obtained in cash memos.
3. Stock of wheat, rice and sugar as on date was not mentioned in the Notice Board.
4. Complaint register, was not available in the FPS.
5. Procedure of making complaints indicating the authority the Redressal of grievance of consumer boards was not displayed.
6. No RTI Board was displayed at FPS.
7. Rate list and Entitlement of SFAs were not displayed at FPS.
8. Weight and measurement certificate not provided by the FPS folder.”

4. The impugned order dated 05.07.2017 further indicates that the said FPS was also visited earlier on 03.06.2014 by the Assistant Commissioner, and upon inspection, a net variation of 22.98 quintals was found in the stock of wheat, along with some other irregularities. Pursuant to the said inspection, an FIR was lodged against the petitioner on 18.06.2014 and a show cause notice was issued on 03.07.2014.

5. As observed above, the petitioner had preferred an appeal against the impugned order dated 05.07.2017, which was rejected by the impugned order dated 14.12.2017. The further appeal against the said order was also rejected by the impugned order dated 17.09.2018.

6. The petitioner is, essentially, aggrieved by the cancellation of the FPS Authorisation. The learned counsel appearing for the petitioner referred to an Office Order dated 06.04.2005 issued by the respondents and drew the attention of this Court to the provisions with regard to penalties contained therein. He submitted that since the variation in stocks was less than 100 kgs, the petitioner could be, at highest, visited with the penalty of suspension of licence for a period of three months. He contended that the irregularities and the discrepancies found did not warrant an order of cancellation of FPS Authorisation, and the same was harsh and disproportionate. He further submitted that the allegation regarding variation of stocks of 22.98 Quintals was subject matter of proceedings initiated earlier, which were contested by the petitioner and an FIR in respect of the same is pending.

7. Before proceeding further, it would be relevant to refer to the provisions relating to penalties as contained in the Office Order dated

06.04.2005 referred to by the petitioner. The said provisions are set out below:-

“vii) Penalties –

- In case of minor variation of stock upto 50 Kg. of SFAs, a penalty of Rs.5000/- to be imposed.
- In case variation is more than 50 Kg of all the articles combined together, licence to be suspended for three months – initiation of quasi –judicial proceedings at the level of Zonal Asstt. Commissioner.
- In case variation is more than 100 Kg. of all the articles put together, licence to be suspended and FIR to be lodged under section 7/10 of Essential Commodities Act, 1955.
- In case of overcharging and other violations, immediate suspension of licence.”

8. As apparent from the above, the Office Order dated 06.04.2005 does provide for a penalty of suspension of FPS Licence for period of three months in case of variation in stocks above 50 kgs but below 100 Kgs. However, the said order also provides for initiation of quasi-judicial proceedings at the level of the Zonal Asst Commissioner and, further, immediate suspension of license in case of other violations.

9. There is no dispute that the respondents had, in fact, found the discrepancies/irregularities as noticed in the impugned order. Thus, the action of cancelling the FPS license is premised not only on the variation in the stocks but also on the several other irregularities as noticed hereinabove.

10. The contention that the discrepancy of 22.98 quintals is a disputed issue and therefore must be ignored is unpersuasive. The issue regarding variation in the stocks to the extent of 22.98 quintals also cannot be ignored. Although, criminal proceedings in respect of the same are pending, it is also incumbent on the respondents to take note of the past conduct while determining the action to be taken in respect of irregularities found subsequently. Having stated the above, even if the petitioner's contention is accepted and the said issue is ignored, the impugned orders clearly indicates that there are several other irregularities including variation in the stocks of specified articles to the extent of 65 Kgs.

10. In view of the gross violations found by the respondent authorities, this Court is unable to accept that there is any infirmity with the impugned order.

11. The petition is, accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

DECEMBER 17, 2018
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