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

\+ **W.P.(C) 13599/2018 & CM Nos. 52997/2018 & 52998/2018**

M/S GANGA DEVI ..... Petitioner

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

versus

GOVERNMENT OF NCT OF DELHI AND ORS. ..... Respondents

Through: Mr Shadan Farasat, ASC wit Mr Ahmed Said and Mr Hafsa Khan, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **17.12.2018**

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 24.08.2017 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 24.08.2018. 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. Neither the statutory notice board, nor the details of weekly off were displayed. 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 24.08.2017, 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 30.05.2017 and the following discrepancies/irregularities were found:-

> "1. No board displaying name and no. of FPS outside the shop.
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> 2. No stock was displayed at the stock board.
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> 3. No guidelines for the customers for registering the complaint and redressel.
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> 4. No display boad for RTI.
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> 5. Non availability of samples of SFA.
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> 6. Non availability of Talpatti for the period of May-2017.
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> 7. No signature was found on cash memos issued by the shopkeeper neither his nor of customers.
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> 8. Daily Sale Register produced by the FPS holder stated to be for the month of May 2017 has alteration on all the pages at date and month."

4. The impugned order dated 28.04.2017 also indicates that the scrutiny of the *Talpatia* and stock register also revealed certain irregularities including a variation of 37 kgs of specified food articles. It was also found that certain entries regarding receipt of food articles were made in the stock register prior to the actual receipt of these articles. The relevant extract of the said order indicating the above is set out below:-

> "1. On the basis of talpatties derived fromNFS site for wheat, Rice and Sugar and the stock register has assessed the variation of 0.37 Qtls.
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> 2. As per Talpatti Wheat-PR received on 3.5.2017 : 203.98 Qtls and on 4.5.2017 : 67.26 Qtls. Entries made in stock register on 2.5.201 : 203.98 Qtls and on 3.5.2017 : 67.26 Qtls. Entries in stock register made on e day before supply of Wheat-PR.
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> 3. As per Talpatti Wheat BPL/PR-S received on 3.5.2017 :3.48 Qtls., but entry in stock register on 2.5.2017 : 3.48 Otis. One day before supply of Wheat PR-S."

5. As observed above, the petitioner had preferred an appeal against the impugned order dated 28.04.2017, which was rejected by the impugned order dated 14.12.2018. The further appeal against the said order was also rejected by an impugned order dated 24.08.2018.

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 to the provisions with regard to penalties therein. He submitted that since the variation in stocks was less than 50 kgs, the petitioner could be, at highest, visited with the penalty of ₹5000/-. He contended that the

irregularities and the discrepancies found did not warrant an order of cancellation of the FPS Authorisation, and the same was harsh and disproportionate.

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 –
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> - In case of minor variation of stock upto 50 Kg. of SFAs, a penalty of Rs.5000/- to the 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. There is no dispute that the respondents had, in fact, found the discrepancies/irregularities as noted 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.

9. The Office Order dated 06.04.2005 does provide for a penalty of

₹5,000/- in case of variation in stocks up to 50 kgs. However, the said office order also provides for immediate suspension of license in case of other violations. Since the cancellation of the FPS Authorization is not founded on the discrepancies in the stock of food articles alone, it would be erroneous to contend that the penalty should be limited to ₹5,000/- as provided for in case of such discrepancy.

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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