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

+ LPA 58/2019

M/S BHIM SINGH SHIV NARAIN Appellant
Through: Mr.Pradeep Gupta, Adv. with
Mr.Parinav Gupta, Ms.Mansi Gupta, Advs.

Versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents
Through: None.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **30.01.2019**

C.M.No.4361/2019 (exemptions)

Allowed, subject to all just exceptions.

C.M.No.4363/2019 (delay in filing)

For the reasons stated in the application, delay in filing the appeal is condoned and the application is disposed of.

LPA No.58/2019 & C.M.No.4362/2019 (stay)

1. Seeking exception to an order passed on 17th December, 2018 in W.P.(C) No.13617/2018 dismissing the writ petition filed by the petitioner, this appeal has been filed under Clause 10 of the Letters Patent Act.

2. The appellant was granted licence for running a Fair Price Shop ('FPS') which was cancelled by the Competent Authority vide order dated 5th July, 2017. The appeal filed before the Special Commissioner against the said order was also dismissed on 14th December, 2017. The appellant also filed an appeal before the Special Commissioner (Admn.), Appellate Authority which was rejected vide order dated 17th September, 2018. Challenging all these orders the appellant had filed the writ petition in question and the writ Court having upheld the orders of the Competent Authority and the Appellate Authority, this appeal before us.

3. In a surprise inspection of the appellant's shop which was conducted on 17th May, 2017, the following irregularities were noted:-

- “1. FPS name was not displayed at the Notice Board.
2. Signature of Ration 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 at 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. A show cause notice was issued and based on the enquiry conducted.

In reference to the show cause notice, the license was cancelled. The learned counsel for the appellant, during the course of hearing, tried to indicate that earlier an inspection was conducted in June, 2014. The matter travelled in appeal after the show cause notice was issued on 3rd July, 2014 and in the proceedings held up to the appellate stage in the year 2014, the matter was remanded back to the Competent Authority. However, again on account of the discrepancies which were found in 2014, without notice to the appellant, the punishment of cancellation of FPS has been imposed. Accordingly one of the grounds for challenge is that the aforesaid amounts to denying the right of reasonable opportunity of hearing.

5. Having considered the aforesaid submission, we find that in the present case action was taken against the appellant based on the inspection that was conducted on 17th May, 2017 and one of the discrepancies that were found was variation in the stocks of certain food items to the extent of 65 kgs. The appellant relied upon a circular to say that if the variation in the stock is between 50 kg. to 100 kg., a punishment of suspension for three months can be imposed and the same cannot be a ground for cancellation.

6. The learned writ Court has taken note of the aforesaid office order dated 6th April, 2005, dealt with it *in extenso*, and found that apart from variation in stocks, various other discrepancies and irregularities were noted which are contained in the impugned order and as the license has been cancelled on account of several other irregularities as have been noted, it did not interfere with the orders passed by the Competent Authority and it is also taken note of by the learned writ Court that by imposing the punishment, the past conduct has been taken note of and taking note of the

totality of circumstances, the learned writ Court has upheld the action of the authorities.

7. The learned writ Court, while dismissing the writ petition, took note of the past conduct of the appellant as well as the concurrent findings recorded by the competent authority and the Appellate Authority. In our considered view, the learned writ Court in doing so has not committed any error warranting reconsideration by us in this appeal.

8. The appeal is, accordingly, dismissed along with the pending application.

CHIEF JUSTICE

V. KAMESWAR RAO, J

JANUARY 30, 2019
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