

\$~40

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

+ **W.P.(C) 5165/2019**

**PRIYA DUTT SHARMA**

..... Petitioner

Through: Mr D. K. Mathur, Advocate.

versus

**GOVT OF NCT OF DELHI & ORS**

..... Respondents

Through: Mr Ramesh Singh, SC, GNCTD with  
Mr Chirayu Jain and Mr Ishan  
Agarwal, Advocates for GNCTD with  
Mr C. M. Krishna, DLA, Food Safety  
Deptt.,GNCTD.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

%

**13.05.2019**

**CM No.22898/2019**

1. Allowed, subject to all just exceptions.

**W.P.(C) 5165/2019**

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 28.03.2019 (hereafter 'the impugned order') passed by the Food Safety Appellate Tribunal in FSAT No.11/19. By the impugned order, the Adjudicating Officer had found the petitioner guilty of supplying substandard food articles based on an analysis report (Report No.FSS/375/2018 dated 25.04.2018).

3. Aggrieved by the aforesaid decision, the petitioner had preferred an appeal (FSAT 11/2019). In the said proceedings, the petitioner had also

sought stay of the impugned order passed by the Adjudicating Authority. The learned Tribunal has acceded to the petitioner's request and stayed the impugned order, subject to the petitioner furnishing a fixed deposit receipt (FDR) equivalent to the amount of penalty imposed by the Adjudicating Authority (that is, a sum of ₹2,20,000/-).

4. It is noticed that the matter was considered by the Tribunal on 03.05.2019, and on that date the petitioner had requested for further time to deposit the FDR. However, instead of depositing the same, the petitioner has now filed the present petition (although styled as a writ petition).

5. It is contended on behalf of the petitioner that the appeal before the Tribunal under Section 70 of the Food Safety and Standards Act, 2006 is a first appeal and, therefore, the hearing of the said appeal cannot be made conditional on the deposit of the penalty imposed. He submits that the Tribunal will not hear the appeal, unless the FDR as directed, is deposited.

6. The above contention is unmerited. It is relevant to note that the learned Tribunal has not declined to hear the appeal. It had stayed the order impugned therein – as requested by the petitioner – on the condition that the petitioner deposits the FDR equal to the amount of penalty. The question whether to grant a stay is a matter of discretion and the learned Tribunal has exercised a discretion by imposing the condition of deposit of the penalty. Clearly, if the FDR is not deposited the stay granted to the petitioner would not be operative. However, this does not mean that the petitioner's appeal would not be heard.

7. The contention that the learned Tribunal would not hear the appeal is also unfounded. It is clear from the order dated 03.05.2019 that the appeal was partly heard on that date.

8. It is relevant to note that the petitioner had represented that the FDR would be deposited is evident from the order dated 03.05.2019. Having failed to fulfil this commitment, the petitioner has filed this present petition.

9. This Court is of the view that the present petition is thus not *bona fide* and the petitioner deserves to be visited with costs. The petition is, therefore, dismissed with costs quantified at ₹10,000/-. The cost shall be deposited with the Delhi High Court Advocates Welfare Trust.

**VIBHU BAKHRU, J**

**MAY 13, 2019**  
**MK**