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

Date of Decision: 4th December, 2019

+ W.P.(C) 8343/2019

UCHIT DAR DUKANDAR AVAM
UPBHOKTA ASSOCIATION

..... Petitioner

Through: Mr. Ankit Gupta & Ms. Surmita,
Advs.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Gautam Narayan, ASC with
Mr. Ishan Agrawal, Adv. for GNCTD

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

: **D.N. PATEL, Chief Justice (Oral)**

CM No. APPL.52108/2019

This application has been preferred on behalf of respondent No.3 for condonation of delay of 76 days in filing counter affidavit.

Having heard the counsel for respondent No.3 and looking into the reasons stated in the application, there are reasonable grounds for condonation of delay. We hereby condone the delay of 76 days in filing counter affidavit on behalf of respondent No.3.

The application is allowed and disposed of.

W.P.(C) 8343/2019

1. This Public Interest Litigation has been preferred with the following prayers:

“i) Issue writ of mandamus or orders or directions or any other writ directing the respondent No.1 and 2 to enquire the conduct of the Respondent No.3 in granting temporary licence to Fair Price Shops in the North East Area under circle No. 63 to 70 under Public Distribution Scheme(PDS).

ii) Issue writ of Mandamus or orders or directions or any other writ directing the respondent No.1 and 2, to stop grant the temporary license to the Fair Price Shop in the North East area till the enquiry on the Respondent No.3 will not be completed.

iii) cost of the writ be awarded in favour of the Petitioner against the Respondents.

iv) pass such order(s) which are deemed fit and proper in the circumstances of the case.”

2. Having heard the counsel for both sides and looking to the facts and circumstances of the case, it appears that this petition has been preferred challenging the grant of temporary licences for the Fair Price Shops in North-East area of Delhi under the Public Distribution Scheme (PDS) in terms of the circular/order issued by the respondents.

3. It appears from the facts of the case that the said circular/order contains the detailed guidelines and terms and conditions for grant of temporary licenses issued by the respondents.

(a) Circular dated 18th March, 2015 (at page 55 of the paper book) reads as under:

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI*

*DEPARTMENT OF FOOD SUPPLIES & CONSUMER
AFFAIRS*

*K-BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI-
110002*

(POLICY BRANCH)

No.F.5(7)/Misc./P. File/534-536

dated 18.03.2015

CIRCULAR

*Guidelines for issue-of temporary license for Fair
Price Shops*

*Government of NCT of Delhi has recently approved a
policy for grant of temporary license for the Fair Price
Shops. The temporary license shall be granted for the
following guidelines.*

- i) Temporary License shall be valid only for a period
of 3 months from the date of issue and shall not be
renewed.*
- ii) Temporary license shall be granted only in case of
immediate necessity when it is difficult to supply
Specified Food Articles (SFAs) through the existing
network of FPS.*
- iii) The Assistant Commissioner of the District shall be
the competent authority to issue the temporary
license.*
- iv) The license shall be issued after clearly elaborating
the immediate necessity to issue such a license.*
- v) Temporary license may be issued for fixed FPS as
well as a Mobile FPS.*
- vi) Eligibility for grant of temporary license. The
eligibility criteria for grant of temporary license
including age and educational qualification shall be
the same as the for regular license. However, in case
of dimensions of the shop, relaxation may be granted
by the competent authority liberally depending upon*

the number of ration cards prepared to be attached to ' the proposed temporary FPS.

- vii) Temporary license shall be granted only to person who resides in the same Revenue District in which the FPS is proposed to be located.*
- viii) While granting temporary license, old KOD licensees, persons belonging to, SC/ST, Women Self Help-Groups, Ex-service-men and Handicapped persons shall be given preference. As it is purely a temporary, emergent measure, reservations will not apply. However, in case of a regular license, reservation roster shall be followed.*
- ix) A person who has been illegible commodity Act 1955 or an, other illegible other law enforcement in India, illegible not be granted temporary, license. A declaration to this effect from the applicant shall be sufficient for considering his case for grant of temporary, license.*
- x) Whenever there is urgent, need for grant of a temporary FPS licensees, the Assistant Commissioner concerned shall record the reasons in writing on the file and shall issue a public notice inviting applications for grant of such license. The notice shall be pasted on the notice board of the officers of the Assistant Commissioners and all- circle offices of the district, giving two days time to submit the application..*
- xi) The premises of the applicant shall be inspected by concerned FSO who will submit report to the Assistant Commissioner concerned.*
- xii) Based on the eligibility of the applicant, preference category and the location of the premises. The Assistant Commissioner will take decision for grant of temporary license to persons/groups.*
- xiii) Grant of temporary license shall not in any way entitle the licensees to get a regular license. For grant of regular license, the prescribed procedure shall be followed.*
- xiv) One person/self shall be help group shall not be given more than one-license.*

- xv) *The application shall be submitted in the prescribed format, along with the declaration attached as Annexure to these guidelines.*
- xvi) *Following documents shall be submitted along with application for temporary license.*
- a. Proof of Identity*
 - b. Proof of Residence*
 - c. Proof of educational qualification*
 - d. Proof of legal possession of the premises*
 - e. Copy of passbook/bank statement*
 - f. Draft of Security money of Rs.10,000 per FPS.”*

and

(b) Order dated 27th July, 2015 (at page 62 of the paper book) reads as under:-

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI*

*DEPARTMENT OF FOOD SUPPLIES & CONSUMER
AFFAIRS*

*K-BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI-
110002
(POLICY BRANCH)*

No.F.5(7)/Misc./P. File/1071-1075 dated 27.07.2015

ORDER

**Subject: Policy for issue of licence of Fair Price Shops (FPS)
in Delhi**

In supersession of orders issued under Essential Commodity Act, 1955, Delhi Specified Articles (Regulation of Distribution) Order, 1981 & Public Distribution System (Control) Order, 2001, except as respects things done or omitted to be done before such supersession and save otherwise provided hereunder, order is made for smooth functioning of Fair Price

Shop as under:-

(1) *Types of licenses: Three types of licenses:-*

- (i) Regular license: Regular license will be issued for a period of three years and may be renewed as per the laid down procedure.*
- (ii) Mobile FPS license:- License to run a mobile FPS may be issued in areas where it is not possible to issue a regular license due to non-availability of premises for FPS or where the concentration of ration card holders is too less for a viable FPS. This license will also be valid for a period of 3 years and may be renewed as per the laid down procedure.*
- (iii) Temporary license: This type of license will be valid only for a period of 3 months. It will be granted only in case of immediate necessity when it is not possible to supply Specified Food Articles (SFAs) through the existing network of FPS. The guidelines have been already approved and issued vide circular no. F.5(7)/Misc./P.file/534-536 dated 18.03.2015.*

(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 of 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.*

(3) Specification of Fair Price Shop:

Proposed premises to be used as FPS:

- (i) *The proposed premises must be at least 15 square meters in area and must have a height of 3 meter.*
- (ii) *In case of slums and colonies of F, G and H category, smaller premises of minimum 8 square meters will be considered provided that the applicant also has legal possession of a godown of at least 7.5 sq. meter size within one km distance of the proposed FPS.*
- (iii) *In case of Mobile FPS, the capacity of the vehicle should be at least 3 metric tonnes and the applicant must also have valid possession of a godown of at least 15 sq. meters area with height of at least 3 meters.*
- (iv) *In such cases of FPS requiring godown as per aforesaid guidelines, the license for the FPS and the godown will be issued together.*
- (v) *The proposed premises should be situated on at least 12 feet wide road.*
- (vi) *The applicant must have valid possession over the proposed premises and the godown wherever applicable.*
- (vii) *The proposed premises should be a pakka structure and should not have more than one door and should not have any window or any other opening.*
- (viii) *The applicant must be able to prove his possession over the premises either by ownership document, rent agreement, allotment letter or any other document.*
- (ix) *There should be no atta chakki adjoining the proposed premises.*

(4) Residence of the applicant: *The applicant, except a Company, local body or a Government entity must be the resident of the district in which the FPS is to be located. In case of group societies, at least 50% of the members of the group societies must be resident of the concerned.*

(5) Disqualifications: *The following shall not be qualified to obtain an FPS license:-*

- a. *Person of unsound mind.*
- b. *Proprietor or partner of a cancelled FPS or a*

Kerosene Oil Depot.

- c. If the applicant already has an FPS licence.*
- d. The applicant convicted for an offence under the Essential Commodities Act, 1955 or for any other offence under the India Penal Code or any other law in force in India from time to time.*

In case of groups, disqualification of any member of the groups shall disqualify the entire group.

(6) Preferential allotment: *While issuing the license for an FPS the preference will be given to the following:*

- (i) Companies, Boards, Societies and other entitles owned by the Government of NCT of Delhi and the Central Government.*
- (ii) Local Bodies, Panchayat Raj Institutions.*
- (iii) Ration and holders groups representing at least 100 ration card holders.*
- (iv) Women Self Help Group, Groups of unemployed youth.*
- (v) Physically handicapped person who are not totally incapable or running the FPS.*
- (vi) Ex. Servicemen.*
- (vii) Persona having Graduate/Post Graduate education qualification.*
- (viii) Cooperative Societies.*
- (ix) Nominated agency of the Government like Kendriya Bhandar.*

Person holding license of kerosene oil depot in the past

(7) Submission of the application:

The application must be submitted in the prescribed proforma duly filled in along with the following document:

- i. Proof of identity.*
- ii. Proof of residence if the residential address is not mentioned in the identity proof.*
- iii. Proof of education qualification.*
- iv. Proof of legal possession of the proposed premises.*
- v. Copy of passbook or bank statement.*

- vi. *If the application is being submitted under any preferential allotment category document showing that the applicant belongs to that particular category.*
- vii. *Copy of Aadhaar card or Aadhaar enrolment slip containing the EID of the applicant: if available*
- viii. *Self declaration that the applicant has read the terms and conditions and is eligible for getting an FPS license.*
- ix. *Age Proof.*

Note: All the documents must be self attested by the applicant.

(8) Availability of the Application Form: *The application form will be available in the Circle office. The application form will be made available on the website of the Department as well as in the Offices of the Assistant Commissioner of respective district of the Department of Food Supplies and Consumer Affairs.*

(9) Application fee: *The application must be deposited along with following non-refundable fee:-*

- (i) Regular License: Rs. 100/-*
- (ii) Mobile FPS License: Rs. 100/-*
- (iii) Temporary License: No fee*

(10) Place of submission of applications:

Till the facility for online submission of application is developed, the applications along with the supporting documents should be submitted in the Office of the Assistant Commissioner of the Department of Food Supplies and Consumer Affairs of the District in which the proposed FPS is located. In case of mobile FPS, application should be submitted to the Assistant Commissioner of the district where godown of FPS is located.

(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 lay 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 recommend the allotment of FPS license.

(12) Security Deposit:

- A) The successful applicant shall deposit an amount of Rs. 10,000/- as Security with the department before issue of license.*
- B) Fee for issuance of license - Rs.1000/-*
- C) Fee for renewal of license - Rs.500/-*
- D) Fee for issue of duplicate license – Rs. 250/-”*

4. In view of the aforesaid circular/order, there are guidelines/policy floated by the respondents looking to the public need and other

circumstances as stated therein, the respondents can always grant temporary license for Fair Price Shop for a particular area.

5. Moreover, the licence granted by the respondents dated 5th October, 2019 which is at Annexure R-2 to the memo of the counter affidavit filed on behalf of respondent No.3 reflects the fact that such temporary licenses for the Fair Price Shops shall be valid only for a period of three months from the date of issuance. Thus, looking to the circular dated 18th March, 2015 to be read with the order dated 27th July, 2015 and also looking to the temporary licence dated 5th October, 2019 issued by the respondents for fair price shop, it is clear that the respondents have all power, jurisdiction and authority to issue such temporary licences for three months.

6. The validity period of the temporary licenses in question granted by respondent No.3 in the month of October, 2019 is yet to expire.

7. Moreover, the detailed procedure has been mentioned in paragraph 2.8 and 2.9 of the counter affidavit filed on behalf of respondent No.3. For ready reference these two paragraphs read as under:

“2.8 On 28.06.2019, a meeting was held at Delhi Secretariat between Hon’ble Minister of Development, Urban & Employment/Area MLA Mr. Gopal Rai along with the Commissioner Food Supplies (CFS), Special Commissioner Food Supplies (Spl. CFS), Assistant Commissioner (North East) and Food Supplies Officer (FSO) of Circle-67 (Babarpur). The issue regarding opening of locality-wise temporary Fair Price Shops in Assembly Constituency No.67 (Babarpur) was discussed in the aforesaid meeting. A consensus was arrived at the meeting regarding opening such temporary Fair Price Shops at Circle No.67.

2.9. It is only in the consequence of the discussion and approval granted in the meeting dated 28.06.2019, the process for opening of temporary Fair Price Shop in Janta Majdoor Colony, Delhi (Circle No. 67, Babarpur) was initiated. Thereafter, the Respondent No. 3 duly recorded the urgent requirement to issue a temporary Fair Price Shop license in Janta Majdoor Colony in the Department file. Subsequently, on 01.07.2019, a Public Notice was issued inviting applications for opening of temporary Fair Price Shop and the same was displayed on the Notice Board of the Asstt. Commissioner (NE) office, Nand Nagri, Delhi.”

8. Furthermore, as per paragraph No.2.16 the respondents have given a need and justification for grant of such temporary licences for Fair Price Shop. For ready reference paragraph 2.16 of the counter affidavit filed by respondent No.3 reads as under:

“2.16. It is submitted that in Janta Majdoor Colony mostly residents/cardholders are of the labour/lower strata of society and only one Fair Price Shop was functional namely. Shop No. 9349 i.e. M/s Radhika Store having more than 1200 ration cards.”

9. Thus, in view of the aforesaid facts and circumstances, no illegality has been committed by the respondents in giving temporary licences for the Fair Price Shop for the area in question as mentioned in the writ petition. Moreover, the grant of such temporary licences for Fair Price Shop is a policy decision taken by the respondents, based on objective facts as mentioned in the aforesaid circular/order. Earlier also Writ Petition No.5503/2018 was preferred by the President of this petitioner in his individual capacity, which was disposed of by this Court vide order dated 22nd May, 2018 with a direction to the respondents to conclude the matter and communicate the result of the same to the petitioner. The said result was communicated by the respondents *vide* letter dated 18th August, 2018

(Annexure P-5 to the memo of this writ petition).

10. In view of the aforesaid facts, there is no substance in this writ petition and the same is, therefore, dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 04, 2019
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