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

Date of Decision : 08.01.2020

+ **W.P.(C) 119/2020**

ASHA RAM GUPTA Petitioner

Through: Mr.Pardeep Gupta, Mr.Parinay
Gupta, Ms.Mansi Gupta, Ms.Mamta, Advs.

versus

THE COMMISSIONER (FOOD & SUPPLIES
DEPARTMENT) & ORS

..... Respondents

Through: Mr.Ramesh Singh, SC, GNCTD
with Mr.Chirayu Jain, Mr.Ishan Agrawal,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM No.349/2020

Exemption allowed, subject to all just exceptions.

W.P.(C) 119/2020 & CM No.350/2020 (Stay)

1. In view of the submissions made and as subsequently recorded in the order, I do not consider it necessary to seek a formal counter affidavit from the respondents.

2. By way of the present petition, the petitioner challenges the order dated 05.07.2019 issued by the Assistant Commissioner (Policy), Department of Food Supplies & Consumer Affairs, Government of NCT of Delhi *inter alia* prescribing the penalty and later suspension/cancelation of the FPS Licences for default of the FPS Licencee in making timely payment of cost of SFAs allocated for further distribution to the beneficiaries.

3. Placing reliance on Clause 4 of the Delhi Specified Articles (Regulation of Distribution) Control Order, 1981 (hereinafter referred to as the 'Food Supply Order'), the learned counsel for the petitioner submits that the same provides a discretion to the Administrator / Deputy Commissioner of Food Supply to order suspension/termination of the licence of the FPS Licencee in case of their default. He submits that such discretion has been taken away from the Deputy Commissioner by way of the Impugned Order. Further, placing reliance on Clause 24 of the Food Supply Order, he submits that the power to issue directions can be exercised by the Commissioner only by way of a 'notification in the Official Gazette' and only for 'purpose of giving effect to the provisions of this Order'. However, in the present case, the Impugned Order is not in form of a Gazette notification and in any case, instead of giving effect to the provisions of the Food Supply Order, is in derogation thereof.

4. The petitioner further challenges the Suspension cum Show Cause Notice dated 21.12.2019 issued by the Assistant Commissioner (North), Department of Food & Supplies, Government of NCT of Delhi, whereby the licence of the petitioner has been suspended with immediate effect while directing him to show cause as to why the licence/authorization be not cancelled and the entire security amount forfeited.

5. The learned counsel for the petitioner submits that a reading of the Impugned Suspension cum Show Cause Notice shall clearly show that the Assistant Commissioner (North) was of the view that because of the order dated 05.07.2019, there is no discretion left in him but to order suspension of the licence of the petitioner. He submits that this would be clearly contrary to Clause 4 of the Food Supply Order.

6. On the other hand, the learned counsel for the respondents submits that the result of the violation of any direction issued under the Food Supply Order is the suspension of the licence and later termination thereof. He submits that the Impugned Order dated 05.07.2019 is itself a direction and therefore, violation thereof has rightly been visited with an order of suspension of the licence of the petitioner. He further submits that in terms of Clause 19(10) of the Food Supply Order, the Commissioner is entitled to issue such orders. He further submits that the petitioner has replied to the show cause

notice issued to him and therefore, the petitioner must be relegated back to his departmental remedies. He further submits that the Impugned Order dated 05.07.2019 does not take away the discretion which has been vested in the Administrator/Deputy Commissioner in terms of Clause 4 of the Food Supply Order. To put it more clearly, he submits that even incase of a third admitted default, on considering the explanation given by the FPS Licencee, the Administrator/Commissioner can, instead of taking action of suspension/cancellation of licence take any other action against the licence holder.

7. He further submits that the Impugned Order dated 21.12.2019, in fact, considers the explanation given by the petitioner and thereafter, exercising discretion vested in the Deputy Commissioner under Clause 4 of the Food Supply Order, the order of suspension has been passed.

8. I have considered the submissions made by the learned counsels for the parties.

9. In light of the submissions made by the learned counsel for the respondents that the Impugned Order dated 05.07.2019 does not in any manner take away the discretion vested in the Administrator /Commissioner to order suspension /revocation of a licence in case of a third default by the licensee, the challenge to the Impugned Order dated 05.07.2019, in my opinion, no longer survives.

10. To put it more clearly and as has been explained by the learned counsel for the respondents, even in case of a third default of a licence-holder, the Administrator/Commissioner of Food Supply shall consider the explanation given by the licensee and applying the test of proportionality, shall further form an opinion on the punishment to be imposed on a licensee who has defaulted in complying with the provisions of the Food Supply Order or directions issued thereunder.

11. As far as the Impugned Order dated 21.12.2019, no doubt, the Assistant Commissioner, in the Impugned order has considered the explanation given by the petitioner and thereafter observed as under:

“And whereas, the above scenario explicitly indicate that the FPS holder is not able to run the shop for the time being in a business-like manner, which is against the terms & conditions of the authorization and is also detrimental to the Public Distribution System.

Thus the authorization holder has violated the terms & conditions of its authorization which are mandatory for continuation of authorization and thus attracts stern action under the provisions of Delhi Specified Article (Regulation of Distribution) Order, 1981 and instructions issued thereunder.”

12. At the same time, in the subsequent paragraph, the Assistant Commissioner clearly indicates that he, in fact, has read the order dated 05.07.2019 as leaving him with no

option/discretion but to suspend the licence of the petitioner. He has expressed this understanding in the following words:

“In compliance of the Department's order No.3(28)/P&C/F&S/2018/Pt.File/614-625 dated 05.07.2019, there is no option left before the Licensing Authority but to suspend the authorization of the FPS No. 4377, M/s Asha Ram Gupta.”

13. In view of the submissions made by the learned counsel for the respondents, the above observation of the Assistant Commissioner in the Impugned Order cannot be sustained.

14. In view of the above, the Impugned order dated 21.12.2019 passed by the Assistant Commissioner, is set aside granting liberty to the respondents to pass a fresh order thereon after considering the reply of the petitioner and the effect of the order dated 05.07.2019 in the form as explained by the learned counsel for the respondents.

15. The learned counsel for the petitioner submits that in a meeting with the Minister, Food and Supplies, Government of NCT of Delhi held on 29.11.2019 (Minutes of Meeting dated 31.12.2019), certain decisions were taken. He submits that these would be relevant for being considered by the Assistant Commissioner while passing a fresh order on the Show Cause Notice.

16. Accordingly, it is directed that the respondent no.3 shall also consider the effect of the Minutes of Meeting while passing the fresh order.

17. The petition is disposed of in the above terms.

Dasti.

NAVIN CHAWLA, J

**JANUARY 08, 2020
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