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

Reserved on: 23.01.2020
Date of Decision: 06.02.2020

\+ W.P.(C) 3494/2019 & CM No.16030/2019

M/S NYATHAR MAL NARESH KUMAR ..... Petitioner
Through Mr.Pradeep Gupta, Mr.Parinav Gupta, Ms.Mansi Gupta and Ms.Mamta, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ORS ..... Respondents
Through Mr.Gautam Narayan, ASC, Ms.Shivani Vij and Ms.Dacchita Shahi, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition challenges the order dated 12.07.2018 passed by the respondent no.3 and order dated 21.02.2019 passed by the respondent no.2 on the appeal filed by the petitioner.

2. By the Impugned Orders the respondent nos.2 and 3, relying upon the "Instruction regarding Renewal of Licence/Authorization of PDS outlet" dated 20.03.2006, have refused to renew the Fair Price Shop (FPS) Licence of the petitioner on the ground that one of the partners, namely Mr.Nyathar Mal, has not appeared in person before the Licencing Authority.

3. It is the case of the petitioner that the petitioner has been holding an FPS Licence since 17.04.1980. The petitioner is a Partnership Firm with two partners namely Mr.Nyathar Mal, who has 60% shares in the partnership and his son namely Mr.Naresh Kumar, who has 40% shares in the partnership.

4. Mr.Nyathar Mal is 86 years old and has been missing since 07.12.2017 and a Missing Person Report bearing DD No.012A dated 10.01.2018 has been registered at Police Station Samai Pur Badli, District Rohini, Delhi.

5. The petitioner applied for renewal of the FPS Licence and on such application, the respondent no.3 vide Call Memo dated 23.06.2018, called upon the both the partners of the Partnership Firm to be personally present. As Mr.Nyathar Mal was missing and could not appear, the respondent no.3 first passed an order dated 02.07.2018 suspending the licence of the petitioner and thereafter passed the Impugned Order dated 12.07.2018 cancelling the licence of the petitioner.

6. The petitioner's appeal filed against the above order was also dismissed by the respondent no.2 vide order dated 21.02.2019.

7. The learned counsel for the petitioner has placed reliance on the order dated 17.06.2002 issued by the Principal Secretary-Cum-Commissioner, Food and Supplies, Government of NCT of Delhi whereby policy conditions were stipulated for allowing changes in the constitution of the licencee, in case of death of the licencee/authorization holder, to their successors/legal heirs. He submits that the respondent nos.2 and 3 could have treated Mr.Nyathar

Mal as dead and could have transferred the licence in favour of his son, Mr.Naresh Kumar who was the other partner in the Partnership firm.

8. Placing reliance on the order dated 04.05.2009 passed by this Court in WP(C) 2025/2008, titled ***Pruthi Oil Depot thr. its surviving Licencee Naresh Kumar v. Govt. of NCT of Delhi and Ors***. and the order dated 20.10.2010 of this Court in WP(C) 209/2008, titled ***M/s. Janta Fair Price Shop through: Sunil Kumar v. Govt. of NCT of Delhi & Ors,*** the learned counsel for the petitioner submits that in case of death of a partner, this Court has directed the respondents to renew the FPS Licence in the name of the remaining partner as a sole proprietor. He also places reliance on the judgment dated 17.09.2013 of the Calcutta High Court in W.P.(C) No. 2/2013, tilted ***Sambhu Nath Agarwal v. State of West Bengal & Ors.,*** to contend that even otherwise, there is no requirement under the Delhi Specified Articles (Regulation of Distribution) Order, 1981 for calling all the partners of a partnership firm at the time of renewal. He submits that under Section 18 of the Indian Partnership Act, 1932, one of the partners can act as an agent of the firm for the purposes of the business of the firm, including applying for renewal of the licence.

9. On the other hand, the learned counsel for the respondents has placed reliance on the Policy/Circular dated 20.03.2006 to contend that in terms of Clause 4(i) thereof, the licencee has to submit three specimen signatures appended on the original Licence/Authorization duly verified and attested by the Circle FSO. Clause 4(ii) further requires the licencee to appear in person before the Licencing

Authority. He submits that in the present case, as Mr.Nyathar Mal had not appeared before the Licencing Authority, the licence could not be renewed.

10. As far as the judgements of this Court referred hereinabove, he submits that these cases related to the death of a partner and were, in fact, passed as the respondents failed to produce the Policy Circular dated 17.06.2002 before the Court. As far as the judgment of the Calcutta High Court, he submits that the same, in fact, records that on death of one of the two partners, the partnership stands dissolved and that there is no provision in the Control Order which mandates appointment of the sole surviving member of a dissolved Partnership Firm as a licencee of the Fair Price Shop.

11. I have considered the submissions made by the learned counsels for the parties. It is not in dispute that the licencee is the Partnership Firm wherein 60% share is of Mr.Nyathar Mal and the remaining 40% share is of Mr.Naresh Kumar. It is also not in dispute that Mr.Nyathar Mal has been missing since on 07.12.2017.

12. In terms of Section 107 and 108 of the Indian Evidence Act, 1872, as Mr.Nyathar Mal has not been missing for more than seven years, he cannot be presumed to be dead. Therefore, the Circular dated 17.06.2002, which applies to a case of death of a licencee, cannot be applied.

13. At the same time, in the peculiar facts of the present case, the insistence of the respondents on the personal presence of Mr.Nyathar Mal and in absence whereof, the decision to terminate/deny renewal of the licence cannot also be sustained. In the present case, the

licencee clearly could not produce Mr.Nyathar Mal as he has been missing and not because of any other reason. It is to be noted that the petitioner has been enjoying the licence since 17.04.1980, that is more than 39 years. In such circumstances, cancellation/non-renewal of the licence merely on the ground of one of the partners not appearing before the respondents, would be totally arbitrary and cannot be sustained. The petitioner has been denied the benefit of the Policy Circular dated 17.06.2002 on the ground that the partner cannot be presumed to be dead, while at the same time, the respondents have denied him the renewal of the licence, which is otherwise permitted, only because the missing partner could not appear in person before the Licencing Authority. If the licencee is a Partnership Firm, Section 18 of the Indian Partnership Act, 1932 would clearly authorize one of the partners to represent the firm at the time of the renewal.

14. For the reasons stated hereinabove, the Impugned Orders dated 12.07.2018 and 21.02.2019 cannot be sustained and are accordingly set aside. The respondent no.3 is directed to renew the licence of the petitioner, if otherwise eligible, within a period of four weeks from today.

15. The petition is allowed in the above terms, with no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 06, 2020/Arya