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

Date of Decision : 07.07.2020

+ **W.P.(C) 3587/2020 & CM No.12766/2020**

KAILASH

..... Petitioner

Through: Mr.Nipun Arora, Adv.

versus

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through: Mr.Shadan Farasat, ASC,
GNCTD with
Mr.Bharat Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioner feeling aggrieved of the order dated 12.06.2020 issued by the respondent cancelling the recommendations of the Selection Committee regarding allotment of Fair Price Shops under Public Distribution System in Circle-12 (Mangolpuri) under District West. The Impugned Order records that the Selection Committee did not evaluate the candidates on the basis of the criteria as laid down in Clause 3(6) of the Delhi Specified Articles (Regulation of Distribution) Order, 1981 (hereinafter referred to as the 'DSAO'),

specifically in relation to the suitability of the premises for proper storage and sale of specified articles; the suitability of the applicant in view of his past record of dealing in essential commodities and other business, if any, being carried on by him or his near relations; and the financial position and capacity of the applicant in performing the functions of a Fair Price Shop holder.

3. The Impugned Order further holds that the Selection Committee has evaluated the candidates on basis of the knowledge of Rules and Regulations and Personality, which are not objective criteria.

4. In view of the above, by the Impugned Order, the recommendations of the Selection Committee have not been accepted and the matter has been remanded back to the Selection Committee to reconsider the applications in accordance with the laid down principles and criteria for consideration of applications for allotment of FPS as specified in the DSAO.

5. The learned counsel for the petitioner has placed reliance on the Minutes of meeting of the Selection Committee that have been placed by the respondent on record along with its counter affidavit, to submit that the Selection Committee has taken into account all the relevant criteria as prescribed in the DSAO. He further submits that in terms of the “Policy for issue of licence of Fair Price Shops(FPS) in Delhi” dated 27.07.2015, as far as financial standing of the applicant is concerned, the applicant is required only to have an account in a bank branch in the NCT of Delhi. The

Selection Committee was not to carry out a comparative test of the financial standing of the applicants in this regard. He places reliance on the judgment dated 02.11.2017 of this Court in WP(C) 7672/2017 titled *M/s Khemwals Store & Ors vs. Government of NCT of Delhi & Ors.*

6. The learned counsel for the petitioner further submits that the counter affidavit filed by the respondent itself discloses that the same criteria was followed by other Selection Committees as well, however, their recommendations were accepted by the respondents and FPS allotted to the recommended candidates. He submits that in the present case clearly there is a *mala fide* against the petitioner because of which only the case of the petitioner has been singled out and the recommendation not accepted by the respondent.

7. On the other hand, the learned counsel for the respondent submits that the Minutes of the Selection Committee clearly reflect that the Selection Committee failed to consider the relevant criteria of the suitability of the premises for proper storage and sale of specific articles; suitability of the applicant in view of the past record of dealing in essential commodities etc.; as also the financial position and capacity of the applicant in performing the functions of a FPS holder. He submits that the criteria adopted by the Selection Committee was, apart from not being in conformity with the DSAO, was also subjective in nature and therefore, could not be sustained and accepted by the Competent Authority, that is, the Commissioner.

8. As far as the other Selection Committees' recommendations are concerned, he submits that clearly the same have been wrongly accepted by the Commissioner and infact, in one of such cases, once the complaint was received from the unsuccessful candidate, by an order dated 14.03.2019, the allotment was set aside and the matter was remanded back to the Selection Committee for reconsideration. He, however, fairly admits that the said order was challenged before this Court by way of a Writ Petition being WP (C) No.3771/2019 titled ***M/s Ankit Store vs. The Commissioner (Food and Supplies Department), Govt of NCT of Delhi and Ors.***, and this Court, due to non-compliance of the Principles of Natural Justice, set aside the said order and remanded the same back for a fresh consideration after giving due notice to the parties. He submits that in any case, the petitioner has not been singled out and all the recommendations of the Selection Committee in question have been recommended back for fresh consideration including the case of the petitioner herein.

9. I have considered the submissions made by the learned counsels for the parties. DSAO, in Clause 3 (6) lays down the following criteria on which the applicants have to be assessed for allotment of the FPS:-

"3. Issue of Authorization to a wholesalers and fair price shop holders

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(6) Every application for the issue of an authorization shall be considered having due regard to :-

(1) The need for authorized wholesalers or fair price shops in the area or locality of in which the business premises of the applicant/applicants are situated.

(2) The suitability of the premises for proper storage and sale of specified articles.

(3) The suitability of the applicant in view of his past record of dealings in essential commodities and other business, if any, being carried on by him or his near relations in the same premises or the same area or locality or elsewhere in the Union Territory of Delhi.

(4) The financial position and capacity of the applicant in performing the functions of an authorized wholesaler or a fair price shop holder as the case may be.

(5) Any other factor considered relevant to the grant of an authorization under this order."

10. The 2015 policy that has been relied upon by the petitioner, in Clause 2 lays down the eligibility criteria for the applicants. The same would clearly be the basic minimum eligibility required of an applicant to apply for grant of a FPS. The same, as held by this Court in the Judgment of *M/s Khemwals store & Ors.* (Supra), cannot override the DSAO. Therefore, the basic minimum requirement of an applicant as far as the financial standing is concerned, is that the applicant must have a bank account in a branch in NCT of Delhi, however, at the same time, in terms of the DSAO, all applicants have to be assessed by the Selection

Committee on basis of the financial position and capacity of the applicant in performing the functions of an authorized wholesaler or a Fair Price Shop holder. In such assessment clearly the Selection Committee has to consider whether the applicant, apart from having a bank account, also has the financial position and capacity to perform his functions as a FPS holder.

11. In terms of Clause 3(6)(2) of the DSAO, the Selection Committee is also to determine the suitability of the premises for proper storage and sale of specified articles. Though the respondent has refused to accept the recommendation of the Selection Committee on the ground that this criteria was not also considered by the Selection Committee, I cannot agree with the same. The relevant extract of the recommendation of the Selection Committee are reproduced hereinbelow:-

"The Selection Committee has meticulously examined each file and the circle report including physical verification of the proposed premises in order to verify /determine the suitability, eligibility and bona fide of applicants for issuance of new license /authorization to run a Fair Price Shop (FPS), under the Public Distribution System. After considering the facts /documents regarding educational qualification of the applicants, dimension of proposed business premises; guidelines and terms and conditions laid down for authorization of PDS outlet and other aspects viz., existence of back doors/windows, if any, open space for public as well as performance of the applicants in interview, the Selection Committee recommended the following applicants against their chosen Notified

*Areas for allotment of authorization of Fair Price Shop
under jurisdiction of Circle-12 (Mangol Puri)."*

12. A reading of the above Minutes would clearly show that the Selection Committee has taken into account the dimensions of the proposed business premises; existence of the backdoors/windows, if any, open space for public etc. This would clearly meet the criteria as specified in Clause 3(6)(2) of the DSAO.

13. As far as the criteria of the past record of the dealings of the applicant in essential commodities and other businesses is concerned, the Minutes of the Selection Committee do not reflect the same being considered by the Selection Committee. The criteria of "personality" and "knowledge of rules and regulations" that is reflected in the Minutes of the Selection Committee for marking the candidates, cannot meet the said requirement. What the condition requires is experience of dealing in essential commodities or running a business and not mere paper knowledge of Rules and Regulations.

14. In view of the above, the Impugned Order insofar as it records that the Selection Committee did not adopt or mark the candidates on the basis of all the criteria that have been mentioned in Clause 3(6) of the DSAO, cannot be faulted.

15. As far as the submission of the learned counsel for the petitioner that the petitioner has been singled out by the Impugned

Order, the same can also not be accepted. As has been pointed out by the learned counsel for the respondent, the Selection Committee in question had made recommendations for four shops. The recommendations for all the four shops have been rejected by the respondent, by way of its Impugned Order. As far as acceptance of recommendations of other Selection Committees are concerned, the learned counsel for the respondent has submitted that in case of any complaint being received, the same shall also to be considered by the Competent Authority. As noted hereinabove, he has in fact, drawn attention of this Court to one of the orders passed by the Competent Authority with respect to one of such recommendations. Even otherwise, in absence of all the relevant parties in the present petition, no comment can be made on such recommendations or acceptance thereof as this may prejudice applicants who are not parties to the present petition. In any case, the petitioner cannot invoke Article 14 in the negative.

16. As far as the submission of the learned counsel for the petitioner of there being a *mala fide* against the petitioner, the same also cannot be sustained. The petitioner has not made any allegation against any specific Officer of the respondent nor made him/her a party to the present petition. It is settled law that in absence of specific allegation of *mala fide* and such party being impleaded in the petition, such allegations cannot be sustained or accepted by the Court.

17. In view of the above, I find no merit in the present petition. The same is dismissed. However, taking note of the fact that the process of the selection of the FPS has been pending since October 2017, the respondent is directed to expedite the process of reconsideration as directed by the impugned order. There shall be no order as to costs.

NAVIN CHAWLA, J

**JULY 07, 2020
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