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

Date of decision: 04th OCTOBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 11261/2023 & CM APPLs. 43844-45/2023**

M/S AGGARWAL STORE THROUGH ITS LICENCE HOLDER
..... Petitioner

Through: Mr. Ashok Kumar Sharma, Senior Advocate with Mr. Vibhav Mishra, Ms. Anshul Rajora, Advocates.

versus

GOVT OF NCT OF DELHI THROUGH SECRETARY-CUM-COMMISSIONER & ANR. ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner seeks to challenge the Order dated 22.06.2023 passed by the Special Commissioner, Department of Food Supplies and Consumer Affairs, GNCTD in Appeal No.6/2023 affirming the Order dated 06.03.2023 passed by the Assistant Commissioner (North), Department of Food Supplies and Consumer Affairs, GNCTD cancelling the licence granted to the Petitioner for running a Fair Price Shop (FPS) and the Order dated 09.03.2023 correcting the typographical errors regarding the net variation of the specific articles (SFAs) from 19.91 quintals to 199.18 quintals passed by Assistant Commissioner (North), Department of Food Supplies and Consumer Affairs, GNCTD.

2. The brief facts leading to the present writ petition are as under:-

i. An inspection was carried out by Circle Officials of the

Department of Food Supplies and Consumer Affairs in the Fair Price Shop (FPS No.8757) belonging to the Petitioner on 14.02.2023 wherein net variation of specified articles in the available stock was found in the premises of the Petitioner with regard to wheat, rice and sugar. The variation is as under:-

S. No		Stock as per ePOS machine and release orders from DSCSC (kg)			Stock found physically available during inspection (kg)	Variation (kg).
		Stocks per ePOS	Stock release orders/not entered in ePOS machine	Total		
1	Wheat	3021.99	13860	16881.99	9350	7531.99
2	Rice	5366.89	9240	5366.89	2489	12117.89
3	Sugar	159	110	269	00	269
	Total	8547.88	23210	8657.88	11839	18818.88

ii. A perusal of the above table shows that there was a variation of 7531.99 kg in the stock of wheat, and 12117.89 kg in the stock of rice and 269 kg in the stock of sugar.

iii. Apart from this stock variation, certain other irregularities were also found which are as under:-

1. Authorization is found in damage condition.
2. Certificate of weight and measurement not provided.
3. List of beneficiaries not displayed.
4. Stock board not displayed.

5. Board of opening closing time found in damaged condition.

6. Vigilance committee board found in damaged condition.

iv. Show Cause Notice (SCN) dated 22.02.2023 was issued against the Petitioner to demonstrate as to why action should not be taken against the Petitioner under the Delhi Specified Articles (Regulation and Distribution) Order, 1981, and why the entire security given by the Petitioner for the same should not be forfeited.

v. An inquiry was conducted which saw the Petitioner's participation. The Petitioner filed a reply to the SCN dated 22.02.2023 contending that the food processing officials had been conducting regular visits since the year 2019, with the latest being conducted on 20.01.2023. He stated that no discrepancies had been found and that the officials found that everything was in order.

vi. It is further stated that none of the discrepancies reflected in the SCN are correct. It is further stated that when the officials from the Department entered the shop, there was a general panic because of which the Petitioner could not explain the situation properly and that, if provided an opportunity, the Petitioner would demonstrate that there was no variation in stock.

vii. Hearing was conducted on 06.03.2023 and post the proceedings, the Assistant Commissioner (North), Department of Food Supplies and Consumer Affairs, GNCTD passed an order cancelling the licence of the Petitioner on the ground that the fair price shop holder, i.e., the Petitioner herein, was unable to run the shop in a business-like manner, which was against the terms and conditions of the authorization issued to the Petitioner to run the fair price shop.

viii. It is also stated that the way the fair price shop is being run is detrimental to the Public Distribution System. It is stated that the Petitioner violated the terms and conditions which are mandatory for continuation of authorization for running the fair price shop. It is stated that the discrepancies found are sufficient to cancel the licence of the Petitioner.

ix. It is pertinent to mention that on 09.03.2023, a corrigendum was issued by which the discrepancy in the net variation which is stated in the Order dated 06.03.2023 was corrected from 19.91 quintals to 199.18 quintals.

x. Aggrieved by the said two Orders, the Petitioner has filed an appeal under Rule 6(6) of the Delhi Specified Articles (Regulation and Distribution) Order, 1981 before the Special Commissioner, Department of Food Supplies and Consumer Affairs, GNCTD.

xi. In the appeal, it was stated that the inspection was carried out at about 11:20 AM when there was a continuous out-flow of stock and the tally could have been made only in the evening and the discrepancy arrived at by the inspecting team at that juncture cannot be accurate. It is further stated that the SCN was issued only after 9 days of inspection and had there truly been a discrepancy then, the Respondents would have immediately issued an SCN.

xii. It is further stated that the SCN was issued with *mala fide* intention only to close the fair price shop. It is further contended that there was no reason to wait for 9 days to issue the SCN if there was grave urgency in the matter involved. It is further stated before the Appellate Authority that adequate time has not been given to the Petitioner to prepare a proper defence and that the SCN was delivered to the Petitioner on 23.02.2023 and the Petitioner was directed to file reply on the very next date, i.e., 24.02.2023.

xiii. After giving a hearing, the Appellate Authority found that when the inspection was conducted, the same was done as per the procedure, with the fair price shop being temporarily sealed, and the inspection stock assessment being carried out in the presence of the Petitioner itself. There had been no objection on the part of the Petitioner and it had been proved beyond reasonable doubt that there was a substantial variation in the stock of the Petitioner.

xiv. It was also stated that the stock report was generated at the time of inspection from the ePoS device of the Fair Price Shop No.8757 on biometric authentication by the FPS proprietor/nominee which had been self-signed by the Petitioner and the same was updated on real time data which was controlled by the NIC, Hyderabad, which rules out any malice or defect in the procedure adopted at the time of inspection. The Appellate Authority rejected the contention of the Petitioner that there was no variation in the stock.

xv. The Appellate Authority also did not accept other arguments raised by the Petitioner *viz.* there was no entry made in the inspection book, assumption of stock was made in haste as the inspection of the stock had been conducted during rush hour and no time had been given to the Petitioner to explain the variation.

xvi. The said Order dated 22.06.2023 passed by the Appellate Authority/Special Commissioner, Department of Food Supplies & Consumer Affairs, GNCTD has been challenged before this Court.

3. Learned Senior Counsel for the Petitioner assailed the Order of the Special Commissioner Department of Food Supplies & Consumer Affairs, GNCTD contending that there have been regular inspections since 2019 onwards with the last one of them being conducted on 20.01.2023 wherein everything was found to be in order. He states that the so-called inspection which led to the impugned Order was conducted on 14.02.2023 which was not even one month after the last inspection dated 20.01.2023 and was only done with the purpose to close the fair price shop of the Petitioner. He contends that the stock report has been generated from the ePoS device of FPS No.8757 at 11:22 AM and another stock report was generated from online AePDS Portal at 13:55 PM which is at variance.

4. Learned Senior Counsel for the Petitioner has contended that the finding of the Appellate Authority that the stock report generated from the ePOS FPS No.8757 at 11:22 AM that the Petitioner had merely distributed 51 kg of wheat, 34 kg of rice and 1 kg of sugar from 11:22 AM to 13:55 PM which was only 4-5 card holders is completely incorrect because there was a huge rush at the fair price shop and the finding of the Appellate Authority goes beyond the finding of the Deputy Commissioner (North). He, therefore, contends that the order of the Appellate Authority must be set aside on that

ground itself. He prays that the matter should be remanded back to the Commissioner.

5. Heard.

6. Section 6 of the Delhi Specified Articles (Regulation and Distribution) Order, 1981 reads as under:-

> *"6. Appeal.*
>
> *(1) Any person aggrieved by the order of the Deputy Commissioner made under sub-clause (1) or sub-clause (2) of clause 4 may prefer an appeal in writing before the commissioner within a period of thirty days from the date of receipt of the order by such person:*
>
> *Provided that the commissioner may entertain the appeal after the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time;*
>
> *Provided further that the person aggrieved by the order of the Deputy Commissioner made under sub-clause (2) of clause 4 shall deposit the forfeited amount of security before filing the appeal.*
>
> *(2) Every appeal filed under sub-clause (1) shall be in the form of a memorandum signed by the appellant and shall be accompanied by an attested copy of the order appealed against. It shall be presented in person or sent by registered post to the Commissioner.*
>
> *(3) The appeal shall be liable to be summerily rejected if the appellant fails to furnish an attested copy of the order appealed against or in ease of an order under sub-clause (2) of clause 4 if he fails to deposit the amount equivalent to the forfeited amount of security before filling the appeals.*
>
> *(4) If the commissioner admits the appeal, he shall fix*

a date for hearing of which notice shall be sent to the appellant as also to the Deputy Commissioner. Pending disposal of the appeal, the Commissioner may stay the operation of the order appealed from;

Provided that no stay order shall be granted in case of an order passed under sub-clause (2) of clause 4.

(5) The Commissioner, may after giving the parties an opportunity of being heard as aforesaid, confirm, vary or set aside the order appealed from or pass such other order as he may deem fit.

(6) The Commissioner may, upon application either on behalf of the Food and Supplies Department or the aggrieved person or of his own motion revise any order passed by the Deputy Commissioner or review his own order that of his predecessor.
Provided that the provisions relating to appeals contained in sub-clauses (1), (2), (3) and (4) shall mutatis mutandis apply to the applications for revision or review.
Provided further that no order which is likely to effect any person adversely shall be passed unless such a person has been given an opportunity of being heard.

(7) Any person aggrieved by the order of the Commissioner passed by him suo moto revising the order of the Deputy Commissioner under sub-clause (6) may prefer an appeal in writing before the Financial Commissioner, Delhi Administration, Delhi. The procedure laid down in regard to submission of appeal before the Commissioner under sub-clause (1) to (5) shall mutatis mutandis apply to the appeals before the Financial Commissioner, Delhi Administration under this sub-clause.

(8) Notwithstanding anything contained in this order, the Administrator may call for and examine suo moto

> *the record of any proceedings before the Financial Commissioner or the Commissioner or any officer subordinate to him, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order recorded or passed by the Financial Commissioner and Commissioner or any other subordinate to him and pass thereon such order(s) as he thinks fit."*

7. A scrutiny of the material on record discloses that the Petitioner has in fact has filed an appeal before the Financial Commissioner (Annexure P-12 of the writ petition) and the Financial Commissioner is yet to dispose of the appeal.

8. In view of the fact that a remedy is provided under the Delhi Specified Articles (Regulation of Distribution) Order, 1981, this Court is not inclined to proceed ahead with the writ petition, especially, in view of the fact that the Petitioner has already availed the alternate remedy by approaching the Financial Commissioner provided under the Delhi Specified Articles (Regulation of Distribution) Order, 1981. Any observation made against the Petitioner will prejudice the case of the Petitioner in the appeal before the Financial Commissioner.

9. After availing the remedy under Section 6 of the Delhi Specified Articles (Regulation of Distribution) Order, 1981, it was not open to the Petitioner to avail the remedy of filing a writ petition. In view of the availability of an alternate remedy which has been availed by the Petitioner, this Court is not inclined to examine the order of the Special Commissioner under Article 226 of the Constitution of India.

10. The writ petition is being disposed of with a direction to the Financial Commissioner to dispose of the appeal within four months from the receipt

of the copy of the instant order.

11. The writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 04, 2023
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