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

\+ W.P.(C) 9564/2024, CM APPL. 39230-39231/2024

YADAV RATION SHOP .....Petitioner

Through: Mr. Yogesh Kumar, Advocate.

versus

THE SPECIAL COMMISSIONER DEPPT. OF FOOD AND SUPPLIES AND ANR. .....Respondents

Through: Mr. Udit Malik, ASC (Civil), GNCTD with Mr. Vishal Chanda, Advocate for R-1, 2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **15.07.2024**

1. The present petition assails the order dated 11th January, 2024,[1] passed by the Financial Commissioner, Delhi,[2] thereby confirming the order dated 18th October, 2022, holding the Petitioner liable for violating the provisions of Delhi Specified Articles (Regulation of Distribution) Order, 1981.

2. The brief background leading to the filing of the present petition is as follows:

2.1. The Petitioner, a Fair Price Shop,[3] is authorised to distribute Specified Food Articles [4] such as wheat and rice to the National Food Security[5] card

[1] "impugned order"
[2] "the Financial Commissioner"
[3] "FPS"
[4] "SFAs"
[5] "NFS"

holders at subsidized rates by Department of Food and Supplies, Delhi.[6]

2.2. On 04th July, 2018, the Petitioner's FPS was suspended upon suspicion of diversion and siphoning of SFAs of 25 NFS card holders. Consequently, on 26th September, 2018, Respondent No. 2 cancelled Petitioner's authorization to run the said FPS by stating that the Petitioner failed to produce the 25 NFS card holder to whom the SFAs were dispensed.

2.3. Aggrieved from the such cancellation order, on 15th October, 2018, the Petitioner preferred an appeal before the Commissioner of Food Supplies, Delhi/Appellate Authority, however, the same was not being entertained by the Appellate Authority.

2.4. Subsequently, the Petitioner filed a writ petition bearing No. W.P.(C) 3112/2021 before this Court and through order dated 10th March, 2021, the Appellate Authority was directed to dispose of the Petitioner's appeal in a time bound manner, after affording an opportunity of hearing to the Petitioner, within a period of 30 days.

2.5. Thereafter, two contempt petitions bearing No. Cont. Cas (c) 511/2021 and Cont. Cas (c) 615/2021 were instituted by the Petitioner before this Court on the ground that the order of the Court dated 10th March, 2021 was not complied with, however, the same was dismissed as withdrawn being premature.

2.6. Eventually, the Petitioner filed another writ petition bearing No. W.P.(C) 5459/2022 whereby through order dated 11th July, 2022, the Appellate Authority was again directed to dispose of the appeal within a period of 4 months.

2.7. In compliance of the order dated 11th July, 2022, the Appellate

[6] "the Department"

Authority, on 18th October, 2024, dismissed the Petitioner's appeal and the cancellation order dated 26th September, 2018 was upheld by observing that the Petitioner has not followed the requisite procedure while distributing the SFAs.

2.8. The Petitioner then preferred a second appeal before the Financial Commissioner which was dismissed through impugned order dated 11th January, 2024 and it was held that there is no basis to interfere with the decision rendered by the Appellate Authority. The reasons disclosed in the impugned order are as follows:

> *"5. Both the sides were heard on 29.09.2023. Both the sides were also given opportunity to file written submissions along with citations, rf any, within four weeks from 29.09.2023. The contentions of the parties already on record are considered while passing the orders.*
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> *6. The appellant is aggrieved by the cancellation of its Fair Price Shop (FPS) by the licensing authority and dismissal of their appeal by the appellate authority. The appellant had challenged the action ff the department on the ground that there was no diversion of Specific Food Articles by him. The department has implemented bio-metric system to regulate genuine transaction between the FPS and the cardholders. The bio-metric system was first introduced by way of thumb impressions to authenticate the transaction which was not found very successful due to lack of proper thumb impressions as the cardholders are generally persons who are involved in manual labour and there was dis in getting their thumb impressions. Due to this reason, the department introduced two new methods of authentication, firstly by scanning of iris of the cardholders and secondly by sending One Time Password on the registered mobile number of the cardholders which was fed in the machine to facilitate authentication of the genuine transaction and supply of SFAs to rightful persons. As per appellant, the department has issued the show cause notice as well as cancellation order without taking into consideration that the appellants have no access to the IT branch of the Department and the Specified Food Articles were issued to the cardholders after getting OTP on their registered mobile numbers in which the appellant has no role to play. It is also contended by the appellant that in issuing the Ration Card, the FPS holder has no role to play as the same are issued after verification by the department. It is contended by the appellants that after feeding the OTP received by the cardholders on their mobile number, he has issued the SFAs to the concerned cardholder and no siphoning of any article was done by*

the FPS.

7. The show cause notice, cancellation order and impugned orders passed by the appellate authority were seen. It is observed that the licensing authority on the basis of door to door survey conducted has taken cognizance that there were 25 cardholders who were not found residing at their given addresses and it is suspected that there is diversion of Specified Food Articles to the tune of 6.09 quintals of wheat, 1.56 quintal of rice and 0.01 quintal of sugar. The licensing authority has also taken into consideration the report of the IT branch of the department which has reported that the appellant has not followed the due procedure while distributing SFAs. The Appellate Authority has observed that the appellant should have been more circumspect before issuing SFAs to beneficiaries after ascertaining their authenticity. The Appellate Authority has further observed that the appellant has been found functioning and distributing SFAs during odd/non-working hours of the FPS which was indicated by first and last entry which is violation on the part of appellant. It is thus held that the FPS holder has violated the terms and conditions of its authorization and accordingly, the authorisation of the FPS was cancelled on 26.09.2018 after providing adequate opportunities to the appellant to present its case.

8. The appellate authority while passing the impugned order has also sought comments from the Assistant Commissioner which stated that the department had introduced ePOS at all FPSs in Delhi to distribute SFAs' in the month of January, 2018. During the course of functioning of e-POS, Department also started OTP service in which one time password was sent on the registered mobile number of beneficiary w.e.f. 01.03.2018 to facilitate the beneficiaries who were deprived of getting their entitled quantity of SFA's due to non-authentication of thumb/finger impressions in e-POS machine. Department stopped the OTP service from 17.03.2018 and all the Assistant Commissioners were directed to conduct door to door survey of OTP cases to verify the genuineness of these Card holders. It is further observed by the Commissioner(F&S) that the appellant did not follow the laid down procedure which casts doubt over the genuineness of transactions made by the appellant. The Appellant should have been more vigilant in following the established procedure before issuing SFAs by way of first going through bio-metrics and on failure of biometrics, the procedure of IRIS to be followed and in case of failure of both these methods then it should be verified through OTP. As per the report of the IT Branch of the Department, in the case of the appellant, there were 04 cases where finger was attempted and in 01 case both finger and IRIS were attempted. The Appellate Authority has also taken into consideration that the licensing authority has directed the appellant to produce all 25 card holders which was not done by the appellant. However, before the Appellate Authority, the appellant has submitted that since the cards are still active; the case may be remanded for re-verification. The Appellant Authority on *the basis of status report of the Assistant Commissioner observed that the cards are still active but the beneficiaries are not lifting ration for the last one year except three card holders which cast doubt over the genuineness of transactions carried out by the Appellant.*

*9. From the facts of the case, it is seen that there have been serious violations on the part of appellant which warrant no interference from this Court in the impugned orders dated 18.10.2022 passed by the Appellate Authority/ Special Commissioner (F&S) especially when the Appellate Authority/ Special Commissioner(F&S) has relied on the report of the IT branch of the Department and status of the card holders submitted by the Assistant Commissioner. Accordingly, the appeal bearing No. 217/2022 titled **M/s. Yadav Ration Shop vs. Special Commissioner(F&S) & Anr.** is dismissed. No order as to costs·"*

2.9. In light of the above, the Petitioner has now approached this Court seeking cancellation of the impugned order.

3. Counsel for the Petitioner makes the following submissions:

3.1. The Financial Commissioner has failed to appreciate that it is the Department who issues the NFS card to the card holders after due verification and taking into account the Aadhar Card of the beneficiaries. Hence, it is the Department who is responsible for lapse, if any. The FPS holders have no role to play to play in this process and, therefore, the Petitioner is not duty bound to verify the addresses of the card holders.

3.2. The Petitioner is only obligated to issue the SFAs to the card holders on the production of One Time Password [7] by them and the said SFAs have been issued to the NFS card holders upon the production of the OTP which was sent by the Department on the registered mobile numbers of the card holders. Therefore, the allegation of siphoning of food articles by the Petitioner is completely misconceived and untenable.

3.3. The Petitioner's FPS has been non-functional since 04th July, 2018

[7] "OTP"

merely on the basis of a presumption that the Petitioner has caused the diversion of foodgrains to the extent of entitled quantity of 25 NFS card holders.

3.4. The Petitioner has not violated any provision of Delhi Specified Articles (Regulation of Distribution) Order, 1981. Further, none of the beneficiaries/ card holders attached with Petitioner have ever made any complaint against him regarding any discrepancy detrimental to their interest. All these facts have escaped the attention of the Financial Commissioner and, therefore, the impugned order is arbitrary, illegal and unconstitutional and deserves to be set aside.

4. The Court has given due consideration to the aforenoted submissions, however, remains unconvinced.

5. It is to be noted that the Petitioner's obligation not only confined to issue SFAs to the card holders on the production of OTP but it also extends to following the procedure established by the Department before issuing SFAs. The said process includes going through biometrics and, on failure of biometrics, following the procedure of IRIS. In the event of failure of both the methods, then OTP verification ought to have been done. As observed by the Financial Commissioner, there is a report of IT Branch of the Department indicating that there were only four cases where the biometric through fingerprint was attempted and only in one case where both biometrics through fingerprint and IRIS were attempted.

6. In such circumstances, the Appellate Authority gave an opportunity to the Petitioner to establish that it was not a case of siphoning by producing all 25 NFS card holders, which was not done. Moreover, such card holders were not found to be residing at the given address when a door-to-door

survey of such NFS card holders was conducted by the Assistant Commissioners of the Department.

7. Therefore, in the opinion of the Court, while the Petitioner's contention may have some bearing to the extent that the Department is responsible for the issuance of NFS cards and the Petitioner does not have to verify the same, however, it cannot dilute the fact that the Petitioner also had an obligation to ensure that the entire procedure laid down by the Department should have been followed before delivering the SFAs.

8. In light of the above, the Court does not find any fault in the reasoning of the Finical Commissioner, Delhi.

9. Therefore, the present petition is without merit and the same is dismissed.

SANJEEV NARULA, J

JULY 15, 2024
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