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

+ W.P.(C) 10362/2024, CM APPL. 42535/2024 & CM APPL.
42536/2024

PRAMOD PROVISION STORE

.....Petitioner

Through: Mr. Yogesh Kumar, Advocate

versus

THE SPECIAL COMMISSIONER(F&S) & ANR.Respondents

Through: Mr. Tushar Sannu, Mr. Sahaj Karan
Singh, Advocates for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

29.07.2024

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1. The Petitioner is a Fair Price Shop¹, which had been authorised by the Department of Food and Supplies², GNCTD to distribute specified food articles to cardholders at subsidized rates.

2. The Petitioner submits that in the year 2008 he opposed the corrupt practices of the Food and Supply Officer³ who was in charge of the relevant Circle of the Petitioner and was distributing a large number BPL and AAY ration cards to some FPS holders of the area against the policy of the Government. It is contended that, in order to suppress the Petitioner from raising his voice against illegal activity and as a retaliatory measure, the said FSO falsely implicated the Petitioner in FIR No. 213 dated 3rd March, 2008

¹ "FPS"

² "DFS"

³ "FSO"



under Sections 186, 323, 353 and 34 of the Indian Penal Code, 1860.

3. Thereafter, a suspension-cum-show cause notice dated 5th March, 2008 was issued to the Petitioner by Respondent No. 2 – Assistant Commissioner (South), Department of Food and Supplies, in terms of the FIR filed against him. However, even though the Petitioner submitted his reply to the charges levelled against him, the Respondents were not convinced and on 12th May, 2008, Respondent No. 2 in exercise of powers under the Delhi Specified Articles (Regulation of Distribution) Order 1981⁴, cancelled the authorisation of the Petitioner.

4. Pertinently, after a lapse of 14 years, the Petitioner, on 24th June, 2022, preferred an appeal before the Commissioner, Food and Supplies, New Delhi. The same was dismissed on 16th August, 2023 and the order of cancellation was upheld. The Petitioner then filed the second appeal before the Financial Commissioner, Delhi which has now been rejected through the impugned order dated 30th May, 2024.

5. Counsel for the Petitioner submits that all the authorities have failed to appreciate that the cancellation order of 12th May, 2008 was illegal and arbitrary without application of mind. They proceeded merely on the basis of the FIR filed against the Petitioner and treated the same to be a contravention of the DSA Order. Petitioner contends that there was no violation of the terms and conditions of the authorization granted to him under the DSA Order.

6. Further, counsel for the Petitioner states that the criminal case under the abovementioned FIR has been settled on plea bargaining which cannot be construed to be an admission of guilt against the Petitioner. In this regard,



he places reliance on Section 265(B) of Code of Criminal Procedure, 1973⁵, to submit that the pleading by Petitioner on plea bargaining cannot attract any deficiency and disqualification to the Petitioner. Further reliance is placed on Section 265(K) of the CrPC to submit that notwithstanding anything contained in any law for the time being in course, the statements or facts presented by an accused in an application for plea bargaining shall not be used for any purpose, except for the purpose of the plea bargaining proceedings. These crucial aspects have not been taken into consideration by the Respondents while exercising their power under the DSA Order and therefore, their decision to suspend the authorization of the Petitioner is arbitrary.

7. As regards the extensive delay of 14 years in preferring the first appeal against the order dated 12th May, 2008 passed by Respondent No. 2, counsel for the Petitioner argues that the Petitioner was not medically fit at the relevant point of time and moreover since, he did not have any financial support from his children, he could not get proper legal advice for preferring the appeal in time.

8. The Court has considered the aforementioned contentions but remains unconvinced. The impugned order dated 30th May, 2024 passed by the Financial Commission in the second appeal, has meticulously considered the merits of the case as well as the question of delay. The relevant portion of the impugned order is as follows:

“5. Oral arguments of appellant were heard on 22.03.2024. Both the sides were also given opportunity to file written submissions along with citations, if any, within next two weeks from 22.03.2024. The contentions of the parties already on record are considered while passing the orders.

⁴ “DSA Order”

⁵ “CrPC”



6. The appellant is aggrieved by the cancellation of authorisation of its Fair Price Shop (FPS) by the licensing authority/Assistant Commissioner and dismissal of appeal by the appellate authority/Commissioner. It is the contention of the appellant that his license was suspended and then cancelled on 12.05.2008 on the basis of FIR filed against him by the then FSO Circle-33 (Now circle 47) on 03.03.2008. The appellant contended that he had filed several complaints against the then FSO highlighting his corrupt practises before the higher authorities. The appellant filed appeal against cancellation of his authorisation on 24.06.2022 which was dismissed vide impugned orders dated 16.08.2023. The main ground raised by the appellant is that the licensing authority is not competent to pass suspension order and then cancellation orders merely on the basis of registering an FIR against the appellant and treating the same as violation of the provisions of Delhi Specified Articles (Regulation of Distribution) Order, 1981. It is noted that the appeal before the appellate authority was filed in the year 2022 by the appellant against the order of 2008.

7. The Respondent, Food & Supply Department in reply has submitted that the then FSO reported to the Assistant Commissioner that the appellant and his son misbehaved and slapped him in his office in the presence of other staff members against which he had filed an FIR. The Assistant Commissioner/Licensing Authority after giving opportunity to the appellant to plead his case, held that the FPS holder had contravened the provisions of authorisation of FPS and cancelled the authorization of FPS with immediate effect. The appellant filed appeal against the cancellation after a lapse of 14 years and also approached the Hon'ble High Court in the year 2023 whereby directions were issued to the Food & Supplies Department to decide the appeal. Accordingly, the Special Commissioner vide impugned orders dated 16.08.2023 dismissed the appeal and upheld the cancellation orders.

8. The cancellation order dated 12.05.2008 passed by the Assistant Commissioner/Licensing Authority and impugned orders dated 16.08.2023 passed by the Special Commissioner were seen. It is noted that the appellant and his son misbehaved and slapped the FSO in his office in the presence of other staff members which resulted in filing of FIR against the appellant and his son. The Assistant Commissioner after holding that licensee has behaved in a manner totally unbecoming of a FPS holder against the FSO in circle office is serious matter and in exercise of the power conferred under clause 6(3) of Delhi Specified Articles (Regulations of Distribution) Order, 1981 cancelled the license granted to the appellant.

9. The Special Commissioner after going into the case in detail and after



taking into consideration that the appellant and his son had voluntarily pleaded guilty for commission of offense before the MM Court and moved application that the parties have worked out mutual satisfactory disposition, the MM Court decided the case. Even during the proceedings before the appellate authority, the appellant verbally accepted and felt sorry for his act. Further, the appeal has been filed after a very long gap of around 14 years and was time barred as per the provisions of the Order dated 12.01.1981.

10. From the facts of the case, it is noted that the appellant himself has accepted before the appellate authority that he behaved in a manner which is unbecoming of any person preventing a Government Officer to perform his duties in his office. Secondly, there is no tenable explanation of delay of 14 years in approaching the concerned authorities against cancellation of license which is not working in favour of the appellant. It is also seen that before this Court a medical discharge sheet has been filed to show that the appellant was not well, however, the said sheet relates to year 2008 and that too before the Case No. 204/2023 incident took place on 03.03.2008. When the appellant was well enough to visit the Circle Office on 03.03.2008 and slap the FSO Incharge when he was discharged from Batra Hospital on 08.02.2008, now taking the plea that he was admitted in hospital and could not file appeal as he was not well is not acceptable.

*11. In light of the above, this Court finds no reason to interfere in the impugned orders passed by the Appellate Authority/Special Commissioner (F&S) in the matter. Accordingly, the appeal bearing No. 113/2023 titled **M/s Gupta Store Vs. Commissioner (food & Supply) & Anr.** is dismissed. No order as to costs."*

9. The Special Commissioner meticulously considered the circumstances surrounding the Petitioner's stance and his legal actions. It is noted that the Petitioner and his son had previously acknowledged their guilt which was compounded by their expression of remorse during the appellate proceedings. However, despite these admissions, the delay of approximately 14 years in filing an appeal against the cancellation of his license was found to be unjustifiable. Regarding the explanation for this delay, the Petitioner's attempt to attribute it to his medical condition was deemed unpersuasive. The only medical evidence provided was a discharge sheet from 2008,



predating the incident in question, which underlines that the Petitioner was in a condition to confront the FSO shortly thereafter. This discrepancy casts further doubt on the validity of his claim of incapacity. The court noted that such a significant delay, devoid of a continuous and credible justification, particularly when the Petitioner had been active in relation to legal and administrative engagements, undermines the tenability of such a plea. Therefore, the absence of a substantial and consistent explanation for the 14-year delay, along with the procedural breach of the specified time limit, conclusively supports the decision to dismiss the appeal as time-barred. The Petitioner's explanation for the delay is notably deficient.

10. The Supreme Court has consistently held that in cases of inordinate delay, there must be a continuous, cogent, and credible explanation for each period of the delay. Mere assertions of personal hardship, such as medical unfitness or financial constraints, without any corroborating evidence, are insufficient to justify protracted inactivity, especially when statutory limitations are prescribed explicitly. In this case, the Petitioner has failed to provide any medical records or substantial proof that would convincingly account for the delay, nor is there evidence of any attempt to obtain legal counsel or advice that would mitigate such an extensive period of inaction. Furthermore, the DSA Order, clearly prescribes time limits for appeals, underscoring the importance of adhering to procedural timelines to ensure administrative efficiency and legal certainty. The absence of any compelling justification or significant evidentiary support renders the delay unconscionable and the appeal as time-barred

11. Consequently, the impugned order, which has duly considered these aspects, warrants no intervention by this Court.



12. Dismissed with pending application(s), if any.

SANJEEV NARULA, J

JULY 29, 2024/ab