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

+ **W.P.(C) 11445/2024 & CM APPLs. 47523-47525/2024**

M/S ASHOK KUMAR

.....Petitioner

Through: **Mr. Yogesh Kumar, Advocate.**

versus

THE SPECIAL COMMISSIONER & ANR.

.....Respondents

Through: **Ms. Puhumi Aditya, Advocate.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

20.08.2024

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1. The Petitioner is a Fair Price Shop¹ authorised by the Department of Food and Supplies, New Delhi to distribute specified food articles i.e., wheat, rice etc., to cardholders at subsidized rates.
2. On 30th January, 2019, an Enforcement Crack Team comprising of the FSO of C-01 and 07 and FSI, C-64 visited the Petitioner's FPS and found variations in the quantity of the specified food articles to the tune of 15.53 quintals, of which wheat was found to be 9.83 quintals short, whereas rice and sugar were found to be 5.68 quintals and 0.02 quintal in excess respectively.
3. On account of these irregularities, on 14th February, 2019, Respondent No. 2 – Assistant Commissioner, Department of Food and Supplies issued a suspension-cum-show cause notice to the Petitioner. Thereafter, responses

¹ "FPS"



were filed by the Petitioner on 28th February, 2019 and 5th March, 2019, explaining his stand. Eventually, the show cause notice culminated into an order of cancellation dated 15th March, 2019, forfeiting the Petitioner's entire security amount. The matter was then carried in appeals before the Appellate Authority/ Commissioner, Department of Food and Supplies, which was unsuccessful. The Review Petitions against the said orders were also declined. Ultimately the matter was carried out in further appeal before the Court of the Financial Commissioner, Delhi, who has also dismissed the appeal through the impugned order dated 10th May, 2024.

4. Through the present writ petition, the Petitioner contends that all the authorities have failed to appreciate that in actuality there was no variation and stock of wheat, rice and sugar, as found by the Enforcement Crack Team. In this regard, reliance is placed on the entry in Inspection Book dated 1st February, 2019, made by the Circle FSO who visited the Petitioner's FPS and conducted a physical count of the quantities of stock two days after the impugned inspection of the Enforcement Crack Team. It is also urged that the Financial Commissioner as well as Respondents authorities failed to appreciate that the bags of wheat and rice had been placed in the Petitioner's FPS in a haphazard manner and hence the enforcement team could not properly count the bags, thereby generating an erroneous report which forms the basis of the proceedings against him.

5. The Court has considered the aforementioned contentions but does not find any merit in the Petitioner's submissions. In the impugned order dated 10th May, 2024, the Financial Commissioner has meticulously examined all the facts and observed as follows:

7. *The appellant has now approached this Court against the orders*



dated 01.09.2023 passed by the Special Commissioner(F&S)/Appellate Authority whereby the second review filed by the appellant was dismissed.

8. *The appellant has again contended that his FPS was cancelled by the Licensing Authority without taking into consideration the facts of the case. The Enforcement Crack Team visited the FPS and during inspection found net variations of 15.53 quintals of Specified Food Articles i.e. wheat, rice and sugar. This variation resulted in issuance of show cause notice and subsequent cancellation of FPS authorisation. The main contention raised by the appellant is that at the time of inspection, the stock of food articles available in the FPS was placed in haphazard manner by the labour due to which there were discrepancies observed by the inspecting team although when the stock was checked again by the FSO on next day, there was no variation found.*

9. *The sole ground taken by the appellant is that there was no variation found on the next day of inspection when the FPS was opened in the presence of FSO. In rebuttal, the department has taken the stand that the FPS was not sealed by the inspection team on 30.01.2019 and the FPS was under the complete control of the FPS owner and there is a gap in inspection and opening of sale on next day due to which no variation was found by the FSO after checking each and every bag of SFAs intact. The Department submitted that there is a possibility of managing the things during the inspection and opening of sale on next date as the FPS was under the custody of FPS owner. There was detailed verification of stock done by the Crack Team and the contention of the appellant that the variation was wrongly calculated was not supported by any tenable evidence.*

10. *The Special Commissioner in the impugned orders has observed that the averments of the appellant were duly heard in all the appeals but were not found tenable due to time gap between inspection and opening of sale. It was also held by the Special Commissioner that there was irregularity regarding variation in the quantity of SFAs found during inspection which is serious in nature and clear cut violation of Delhi Specified Articles (Regulation and distribution) Order, 1981, therefore, cancellation order of Assistant Commissioner and subsequent orders 2-4 passed by the appellate authorities are upheld.*

11. *The appellant has based his entire case on the ground that the stock available was wrongly taken as variation by the inspection team and the stock when checked next day by the FSO was found correct. All the appellate authorities of the department after giving ample opportunities to the appellant to plead his case, have come to the conclusion that there is no merit in the case of appellant and have accordingly dismissed the appeal on 28.01.2020, review appeal on 08.07.2021 and second review on*



01.09.2023.

12. *It is noted that the Special Commissioner has also taken into consideration the directions passed by this Court on 16.03.2023 while passing the impugned orders.*

13. *It is also noted that the appellant has raised no new grounds to support his case that has not been adequately addressed by the Special Commissioner, Food & Supplies in the impugned orders.*

14. *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. 283/2023 titled **M/s Ashok Kumar Vs. Special Commissioner, Department of Food & Supplies & Anr.** is dismissed. No order as to costs.*

15. *Pronounced in the open Court on 10th May, 2024.”*

6. The Petitioner is attempting to discredit the findings of the Enforcement Crack Team dated 30th January, 2019, by placing reliance on the report of the FSO, that was prepared two days later on 1st February, 2019. The said report has been discredited by all the authorities and has been found to be irrelevant in terms of the variations of stock found by the Enforcement Crack Team on 30th January, 2019. Further, the fact that the FPS was not sealed by the Enforcement Crack Team during their inspection and was under the complete control of Petitioner, lends considerable doubt on an inspection report generated two days' later.

7. The report prepared by the Enforcement Crack Team makes no observation of any dispute being raised by the Petitioner regarding counting of the bags during the physical inspection of the goods found at that point of time. Thus, the variation in the quantity of specified food articles which were found short or in excess, has been clearly established through the inspection carried out by the Enforcement Crack Team. Such variations found at an FPS constitutes as a violation of the Delhi Specified Articles



(Regulation and Distribution) Order, 1981. In the circumstances and on account of factual disputes being urged by the Petitioner in the present writ proceedings, the impugned action calls for no interference from this Court.

8. In light of the above, the Court finds no ground to entertain the present writ petition. The same is disposed along with pending application(s).

SANJEEV NARULA, J

AUGUST 20, 2024

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