

OFFICE OF THE COMMISSIONER /APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
GOVT. OF NCT OF DELHI
ROOM No. 101, 1st FLOOR, K-BLOCK, VIKAS BHAWAN, I.P. ESTATE
NEW DELHI-110002
Ph.No. 011-23379252

No.PS/COMM./AA/FPS Appeal/F&S/2021/ 338-341

Dated: 21-09-2021

Review Appeal No.16/2021
Review Appeal No.154/2016
Appeal No.137/2016

In the matter of:

M/s. Puran Mal, Jai Pal Jain.
FPS No. 1108, Circle-21,
(Matia Mahal), Delhi

Sh. Rattan Jain

Appellant

Versus

The Assistant Commissioner (Central)
Deptt. Of Food Supplies & Consumer Affairs
Delhi.

Respondent

Date of Hearing : 15.09.2021

ORDER

Whereas, the instant Review Appeal has been filed by the appellant under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 and PDS Order, 2001 against Cancellation Order dated 30.01.2017 and 10.10.2017 passed by the Assistant Commissioner (Central) and the then Appellate Authority/Special Commissioner respectively.

Shri Rattan Jain, Appellant alongwith Shri Shailendra, Authorised Representative were present.

Shri Rajesh Shakkarwal, Assistant Commissioner (Central), Respondent was present for hearing.

The case was called and both the parties were heard at length.

The brief facts of the case are as under:-

- (i). An inspection of FPS No. 1108 was carried out by Enforcement Team on 11.08.2016.
- (ii). The Inspecting Team reported following discrepancies :-
 - a. Stock variation to the tune of 107.35 Qtls. (Wheat-80.81 Qtls. + Rice-12.89 Qtls. + Sugar-14.17 Qtls.) (Short) was found.
 - b. Talpatti for the month of August, 2016 was not available in the FPS.
 - c. One LPG Cylinder and some grocery items, i.e. Noodles, Soaps, Detergents were also found in the FPS.
 - d. Stock position was not mentioned on the Notice Board.
 - e. Complaint Register was not available in the FPS.

Contd...2/..

1356/SSA/JS

22/09/2021

Mamish

Pl. upload.

22/9/2021

- f. Procedure for making complaint and the authority for redressal of grievance of the consumer was not available in the FPS.
 - g. The Licensee did not co-operate with the inspecting team during the inspection.
- (iii). An FIR No. 0194 dated 12.09.2016 was lodged against the licensee in P.S. Kamla Market, Delhi.
- (iv). The Licensing Authority suspended the FPS vide order dated 20.09.2016.
- (v). The FPS holder preferred an appeal against above cited Suspension Order and after hearing both the party the then Appellate Authority/Special Commissioner (F&S) remanded back the case to the Licensing Authority to give one more opportunity to the appellant and pass speaking order within one month.
- (vi). After hearing, the Licensing Authority vide Order dated 30.01.2017 cancelled the FPS.
- (vii). Aggrieved with the decision of Licensing Authority/Assistant Commissioner (Central), the petitioner filed Review Appeal on 06.02.2017 which was heard and dismissed on merit by the then Appellate Authority/Special Commissioner (F&S) on 10.10.2017.

The Appellant filed the present review appeal petition stating therein that the order dated 10.10.2017 was written on Note-Sheet. Neither the proper order was passed nor was conveyed to him timely. After making request vide letter dated 09.12.2019 and its reminder dated 30.06.2021, he came to know about the fate of his case on 01.07.2021 vide speed post letter no. 405115860IN. He submitted that the then Appellate Authority passed a non-speaking order without going into the merit of the case. He requested to review the present petition in context with original appeal dated 06.2.2017.

The Authorised Representative reiterated the chain of incidents in brief. He stated that the shop was inspected on 11.08.2016 and a variation to the tune of 107.87 Qtls. (Wheat-80.81 Qtls. + Rice-12.89 Qtls. + Sugar-14.17 Qtls.) (Short) was reported hypothetically by the Inspecting Team without going into the submission of FPS holder. On 21.09.2016 the appellant sought time to file reply in response to charges levelled against him, but the said request was declined by the respondent. The appellant was not supplied any document enabling to file reply against the Show Cause Notice. When the appellant appeared before the respondent on 21.09.2016, plain paper sheets were given with the direction to write the reply instantly. Since, the respondent is Licensing Authority the reply was written and filed without preparation. He submitted that no reasonable opportunity and proper hearing was afforded by the respondent to submit contentions in defence.

He stated that POS machine was installed at the FPS of the appellant, which sometimes does not function properly due to technical glitches and in the past the appellant registered complaints a number of times against such problem with the FSO concerned as well as the officer concerned of the company which installs such POS machines at the FPSs. He submitted that as per circular and instructions by the Department if POS machine do not function properly, the food grains may be supplied to the card holder by the FPS holder by way of maintaining records manually. So, the appellant, for the convenience of the card holders, supplied food grains to some of them as per conventional mode for the relevant period and recorded the sale manually. He stated that the said records are lying with the appellant and if these records are taken into accounts, the charge of alleged shortage shall not be made out against the appellant.

The Authorised Representative adduced a copy of disbursal and allocation statement for the month of June, July and August, 2016 which was obtained from Departmental online portal and argued that the closing balance in all the months was shown NIL. He added that the said entry was done by the Department on the basis of DR-IV & V submitted by the petitioner at the relevant time. On the basis of DR-IV & V the then FSO made entry of closing balance as NIL on NFS portal and the Department made

same allocations accordingly. Hence, the charge of alleged shortage is not maintainable. Moreover, the charge of alleged shortage of food grains is not sustainable because even a card holder did not make any complaint against the appellant for denial of food grains or non disbursal of SFAs till date.

The Authorised Representative submitted the closing remarks stating that the FPS is the only source of income for the survival of the family of Appellant and requested to pass a speaking order as well as review the order dated 10.10.2017 passed by the then Appellate Authority/Special Commissioner (F&S) on merit.


The Assistant Commissioner (Central), Respondent contended that due to shifting of Circle Office the record i.e. DR-IV & V submitted by the FPS holder is not readily traceable. He admitted that the entry was done by the Department on the basis of DR-IV & V submitted by the petitioner at the relevant time and on the basis of DR-IV & V the then FSO made entry of closing balance as NIL on NFS portal and the Department made same allocations accordingly. The Respondent also agreed and endorsed the copy of disbursal and allocation statement for the month of June, July and August, 2016 which was obtained from Departmental online portal by the FPS holder wherein the closing balance in all the months was shown NIL.

After hearing contentions of both the parties, examining written/verbal submissions and perusing other relevant records placed before me, it is noted that the authorised representative and appellant argued and relied that if the manual records lying with the appellant regarding disbursal of Specified Food Articles to the eligible beneficiaries for the period when the POS machine malfunctioned, were considered, there would have been no shortage of SFAs but while preparing Stock Variation Statement, the same were not taken into account by the Licensing Authority. So, I am of the considered view that the contentions, clarifications and documents submitted by the appellant require further examination by the licensing authority.

Therefore, keeping in view of principle of natural justice, fair and impartial adjudication, the case is remanded back to Assistant Commissioner (Central)/ Licensing Authority with the direction to afford one more opportunity of hearing to the petitioner and decide the matter afresh on merits, after due consideration of facts, circumstances and examining documents/contentions adduced by the appellant in the case.

The appeal stands disposed of.

Ordered accordingly. Parties be informed.


21/09/2021

(PADMINI SINGLA)

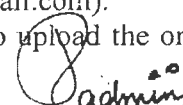
COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.PA/COMM./AA/FPS Appeal/F&S/2021/ 338 - 341

Dated: 21-09-2021

Copy to :-

1. The Assistant Commissioner (Central), F&S Deptt. GNCT of Delhi
2. Shri Rattan Jain, Prop. M/s. Puran Mal Jai Pal Jain (FPS No.-1108), Circle-21, through Asstt. Commissioner (Central).
3. Shri Rattan Jain, Prop. M/s. Puran Mal Jai Pal Jain (FPS No.-1108), Circle-21) R/o D-83, Turkman Road, Minto Road, New Delhi - 110002. (Email : rara1245.rj@gmail.com).
4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.


21/09/2021

(PADMINI SINGLA)

COMMISSIONER (F&S)/APPELLATE AUTHORITY