

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
Ph.No. 011-23379252 NEW DELHI-110002

No. PS/Comm/AA/FPS Appeal/F&S/2021/ 279-288

Dated: 01/09/2021

Review Appeal No. 02/2021

Review Appeal No. 05/2020

Appeal No.48/2019

In the matter of:

M/s Durga Store,
FPS No. 9237, Circle-03 (Timarpur),
Delhi.

.....

Appellant

Versus

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

.....

Respondent

ORDER

The instant Review Appeal has been filed by the Appellant under Clause 6 of Delhi Specified Articles (Regulation of Distribution) Order, 1981 and PDS Order, 2001 against cancellation order dated 28.08.2019 and order dated 14.07.2020 passed by the Assistant Commissioner (North) and compliance of orders dated 24.06.2020 & 17.12.2020 passed by the then Appellate Authority.

A surprise visit/inspection was made by Hon'ble Minister (F&S), GNCT of Delhi on 03.08.2019 at 11.05 A.M. alongwith the Inspection Team deployed by the Enforcement Branch in the Camp Office of the Minister (F&S) at the business premises of FPS No.9237, M/s. Durga Store and the following discrepancies were found :-

1. The Stock Entry was not made in the Stock Board.
2. The net variation comes to the tune of 01.31 Qtls. (Wheat-01.31 Qtls. excess).
3. The Team has found three loose original cash memos of PR category dated 02/08 and out of these three figures/calculation made on front side and back side of the cash memos tally on some.

Shri Sanjay Kumar Chawla, on behalf of appellant alongwith Shri Shailendra, Authorised Representative of appellant were present.

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Shri Vinod Kumar, FSO (C-03) (Timarpur), on behalf of Assistant Commissioner (North) was present.

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

Authorised Representative argued point wise :-

1. That the stock position was very much written on the stock board by white chalk at the time of opening of the shop on the day of inspection.
2. That the inspection team miscalculated in SVS wherein excess Wheat of 131kg (01.31 Qtls.) shown. He stated that the concerned officials calculated the sale of Wheat (PR) upto 03.08.2019 as 15.04 Qtls. and they calculated book balance as 204 Qtls. He further submitted that as per recovered Sale Register of Wheat (PR) the sale on 01.08.2019 was 7.88 Qtls, Sale on 02.08.2019 was 6.28 Qtls and 0.60 Qtls on 03.08.2019. That total sale from 01.08.2019 to 03.08.2019 in fact comes to 14.76 Qtls. whereas the inspecting team calculated this figure as 15.04 Qtls. So the team counted the excess balance as 28 kg. Rest of the excess ration belongs to four Card holders i.e. Ration Card No.4423555 (Ms. Neelam Pandey)- 20 Kg. Wheat & 5 Kg. Rice, Ration Card No.4424493 (Ms. Nargis) - 24 Kg. Wheat & 6 Kg. Rice, Ration Card No.5234200 (Ms. Anita Singh) - 16 Kg. Wheat & 4 Kg. Rice and Ration Card No.2355538 (Ms. Zafri) - 40 Kg. Wheat & 10 Kg. Rice. The ration is available at the time of inspection, as the ration card holder left the same to arrange a Rikshaw. He further submitted that the three card holders out of four appeared in person before the Licensing Authority and filed Affidavit. The Licensing Authority did not consider their statement and affidavit before passing the impugned cancellation order.
3. During the course of hearing he strongly argued that the main contention was not addressed by the Licensing Authority even though directed by the then Appellate Authority in her order dated 24.06.2020 vide which she had remanded back the case with the remarks that the "Cancellation order dated 28.08.2019 of the Assistant Commissioner (North) is not 'speaking' in nature. From the contents of the Order, it is not clear whether the contentions of the Appellant regarding Stock Variation Statement were duly considered by the Licensing Authority or not. The Cancellation Order dated 28.08.2019 is silent on the issue."
4. The Authorised Representative of the petitioner reiterated the above and stated that in compliance of order of the then Appellate Authority, Order dated 14.07.2020 was passed by the Assistant Commissioner (North) but nothing new has been added by him except to explain the case in detail. Secondly, the main contention of Stock Variation Statement was not considered/addressed by him while passing such order dated 14.07.2020. He added that aggrieved by the decision the review appeal was again filed and the then Appellant Authority after hearing both the parties, vide order dated 17.12.2020 again remanded back the case to Licensing Authority with the direction to

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ensure compliance of Order dated 24.06.2020. Vide Order dated 07.01.2021 the Licensing Authority decided the matter against the petitioner without hearing to the appellant and without going into merit of the case and directions issued by the Appellate Authorities.

5. He further submitted that in reference to order dated 24.06.2020, Licensing Authority has not mentioned anything regarding Stock Variation Statement (SVS) in its order dated 07.01.2021 and earlier order dated 14.07.2020 and not followed the directions of the Hon'ble Court. He stated that the respondent has not decided the matter on merit as he failed to consider the SVS, in which there was mistake on the part of inspecting team pertaining to 28 kg of food grains. The Respondent also failed to consider those 04 card holders in question who left 100 kg of Wheat at FPS to arrange a Rikshaw. The reason explained above was the reason for excess of wheat to the tune of 101 kg which was calculated in stock of the FPS. The Affidavit and statements furnished by the 4 card holders in question were not considered.

The FSO (C-03) appeared on behalf of Respondent contended that :-

1. That the Inspecting team followed the rules & regulation in conducting the inspection of FPS. The Order dated 28/08/2019 and 14.07.2020 was issued after following due process and giving sufficient opportunity to FPS holder to explain the shortcomings.
2. That the net variation of SFAs to the tune of 1.01 Qtls. (Wheat 01.31 Qtl. in excess) was found at the time of inspection conducted by the Enforcement Team of the Department alongwith 3 loose original cash memos of PR category dated 02.08.2019 and out of these 3 figures/calculation made on front side and back side of the cash memos tally on some.
3. The FSO admitted that the matter was decided ex-parte and stated that another opportunity of being heard may be given to petitioner so that all the above mentioned contentions of the Appellant got addressed properly. He further added that the matter regarding verification of statement and affidavit furnished by 04 card holders in question needs to be examined minutely. He added that an opportunity of being heard to petitioner would serve the purpose to meet out the justice.

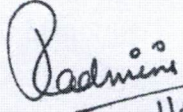
After hearing contentions of both the parties, examining their written/verbal submissions and perusing other relevant records placed before me, I agree with the views of my predecessors as detailed in their orders dated 17.12.2020 and 24.06.2020. Moreover, FSO concerned also admitted that the case needs to be examined again minutely. The written statements and affidavits submitted by 04 card holders need to be examined while deciding the matter afresh. An opportunity of being heard should be given to the appellant before passing order in the matter.

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Therefore, keeping in view of principle of natural justice, fair and impartial adjudication, the case is again remanded back to Licensing Authority/Assistant Commissioner (North) with the direction to ensure compliance of order dated 24.06.2020, 17.12.2020 and decide the matter afresh on merits within one month of this order after due consideration to complete facts, circumstances the case, addressing all the contentions of the petitioner and after taking into account all the papers adduced by the appellant.

The review appeal stands disposed of.

Ordered accordingly. Parties be informed.


11/09/2021

(PADMINI SINGLA)

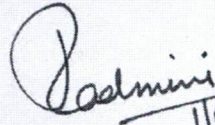
COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.PS/COMM./AA/FPS Appeal/F&S/2021/ 279-282

Dated: 01/09/2021,

Copy to:

1. The Asstt. Commissioner (North), F&S Deptt. GNCT of Delhi.
2. M/s Durga Store (FPS No. - 9237), Circle-3 (Timarpur) through Asstt. Commissioner (North).
3. Smt. Poonam Narang, Prop.of M/s Durga Store (FPS No. - 9237), C-354, Nehru Vihar, Delhi.
- ✓ 4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.


11/09/2021

(PADMINI SINGLA)

COMMISSIONER (F&S)/APPELLATE AUTHORITY