

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/2021/141-144.

Dated: 17-6-21

DOH : 09.06.2021

Previous Appeal No. 15/2019

Review Appeal No. 50/2019

M/s. Sunhara Sansar Co. Store
FPS No. 298, C-57 (Patparganj)
Shri Chawal Singh, (Prop.)

.....Appellant

V/s

The Assistant Commissioner (East)
Deptt. of Food Supplies & Consumer Affairs,
Delhi .

.....Respondent

ORDER

The instant Review Appeal has been filed by Shri Chawal Singh, Prop. M/s. Sunhara Sansar Co. Store, FPS No. 298, Circle -57 (Patparganj) under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against the Cancellation Order dated 13.11.2019 passed by Assistant Commissioner (East).

Shri D.S. Dedha, Advocate/Counsel on behalf of Shri Chawal Singh, Prop. and Shri Mahesh Chand, FSI (C-57) on behalf of Assistant Commissioner (East) were present.

The brief facts of the case is as under :-

History: The FPS was inspected by the Enforcement Team alongwith Hon'ble Minister (F&S) and Special Commissioner (F&S) on 17.12.2018. The team found gross deficiencies alongwith net variation of SFAs 207.58 Qtls. (Wheat - 166.15 Qtl. + Rice 41.43 Qtl.) (Short) and after ample hearings the Assistant Commissioner (EAST) cancelled the FPS authorisation vide order dated 02.01.2019. A FIR has been lodged by the Inspection Team of Enforcement Branch against FPS Holder in Police Station Mandawali, Fazal Pur, Delhi - 110092 for violation of the Essential Commodity Act, 1955 vide DD No 34 B dated 27.12.2018 with the approval of Competent Authority.

The Licensee preferred an Appeal No. 15/2019 on 31.01.2019 under Clause 6 of Delhi Specified Articles (Regulation of Distribution) Order, 1981 before the then Appellate Authority and after hearing both the parties, the then Appellate Authority vide order dated 01.05.2019 remanded back the matter to the Licensing Authority with the direction to verify

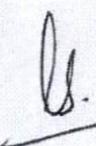
1043/SSSA/IT
18/06/2021

the contention adduced by the appellant during the course of hearing that the variation of SFAs reported by the inspection team does not pertain to the month in question. The SFAs for the month of December, 2018 was distributed to the NFS beneficiaries. The SFAs received for the month of January, 2019 was already been transferred to nearby FPSs. The Licensing Authority was also directed to verify the facts regarding FIR filed in the matter and pass an appropriate order as per law.

Accordingly, the Assistant Commissioner (East) re-examined the contentions in entirety and after examining the facts as detailed in order dated 13.11.2019, maintained the Cancellation Order dated 02.01.2019. Now, the appellant has preferred review appeal before the Appellate Authority against the order dated 13.11.2019. Vide comments dated 02.03.2020 the Assistant Commissioner (East) stated that the appeal being devoid of merits be set aside.

The Case was called and heard at length.

The Counsel of the Appellant reiterated the contents of Review Appeal dated 24.12.2019 as well as Rejoinder filed by him. He emphasised that the main objection in the cancellation order is variation of SFA's Wheat and Rice, but it was not variation because SFA's of the month of December, 2018 already distributed among the beneficiaries. He submitted that SFA's already distributed in the month of December, 2018 upto 11th of December, 2018 (upto afternoon) because on 11th December, 2018 his Cousin (brother) marriage ceremony was going on and the appellant already told to the beneficiaries that they must collect their SFA's upto 11th of December or before. The Counsel added that no single complaint against the FPS holder about non distribution of SFA's in the month of December, 2018 from the beneficiaries received. He submitted that the SFA's of the month of January, 2019 had already been transferred to the linked shop which also supported from the statement of FSO concerned.

 The Counsel stated that there were no variation at the time of inspection and it was the misunderstanding and the inspection team thought that the existing SFA's available in FPS belongs to the month of December, 2018 instead of January, 2019 as the SFA's for the month of December, 2018 had already been distributed and whatever SFA's kept in the shop was for the month of January, 2019. The counsel of the Appellant stated that the Assistant Commissioner / Licensing Authority had no right to cancel the shop and the Officer did not follow line of law so the cancellation order was not sustainable. It is submitted by the Counsel that the Appellant orally informed to the inspection team about the visit of his servant to Circle Office to submit the DR - 4 & 5 and it is just a co-incidence. The appellant assured to team that he will submit all the records very next day to the circle office and he fulfilled his promise by submitting the record next day in circle office but circle officer did not give receiving and it is the work culture there and what the SFA's were available in the shop pertains to the month of January, 2019 and these SFA's were not the variation. The Counsel submitted that the appellant randomly picked beneficiaries ration card numbers and there were matched with the details mentioned in the sales register which is already on record.

The FSI (C-57) present on behalf of Assistant Commissioner (East) showed inability to add any new fact and stood with the records and comments earlier submitted by the Licensing Authority.

The Licensing Authority vide Comments dated 02.03.2020 submitted that the decision to cancel the FPS was made in accordance with law and procedure. The transferred SFA's are not in contention and neither grounds of cancellation. It is only the unvouched sales that were claimed by the Appellant and taken as shortage by the Inspecting Team. The pre-occupation with Election Work caused some inadvertent delay in considering the remand back order and also reference had to be made to officer who had originally dealt with the matter. The distribution record was not made available to the inspecting team by the FPS which led to action against the FPS. Neither the Stock Register, Sales Register nor the Cash Memos were shown to the visiting enforcement team at the time of visit which led to the conclusion that sales were unvouched. No random picking has been done.

The Licensing Authority after scrutinizing the complete details mentioned the following variation :-

	WHEAT (In Qtls.)	RICE (In Qtls.)	SUGAR
Closing Balance of November, 2018	0.96	0.24	Nil
SFA Received on November, 2018 for the month of December, 2018 (As per delivery acknowledgement)	166.44	41.61	Nil
SFA received on 10 th December, 2018 for the month of January, 2019 (As per the release order)	72.91	41.32	Nil
TOTAL	240.31	83.17	Nil
LESS : SFAs Physically found by the Inspecting Team at the time of visit	73.2	41.5	Nil
Quantity claimed as Sale but not supported by documents	167.11	41.67	Nil
Total Stock Transfer to other FPSs	166.42	41.61	Nil

After hearing contentions of both the parties, examining written/verbal submissions and perusing other relevant records placed before me, it is noticed that the Appellant's appeal rested mainly on two contentions i.e. :-

1. The stock claimed as transferred was erroneously taken as shortage, And;
2. Non availability of record was due to the fact that the record was sent to Circle Office for submitting November, 2018 Sales Statement.

Both the contentions have already been examined by the Licensing Authority in entirety and it is admitted by the Appellant that he was not even in possession of Cash Memo, Sales Register and Stock Register for December, 2018 during the visit of Enforcement Team which itself is an irregularity as Cash Memos are not required to be taken to Circle Office along with Sales Reports. Secondly, due to non availability of requisite records at the time of visit

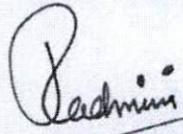
the stocks taken as short by the Enforcement Team were actually transferred is also not tenable as stocks of Wheat – 166.42 Qtls. and Rice – 41.61 Qtls. physically available and accumulated till 26.12.2018 only were stock transferred. The stock claimed as sale, not backed by documentary evidence was taken as variation (Shortage) and stocks physically available at the time of inspection as well as later receipts were meant for January, 2019 only, were transferred to other FPSs. The reply of FSO Shri G.J. Itankar revealed that SFAs Wheat 166.42 and Rice 41.79 were transferred and food cards also linked to nearby FPSs vide order dated 26.12.2018.

In view of above, considering the facts, circumstances and in the interest of principle of natural justice and fair adjudication, it is noted that as per the terms and conditions of the License, the Fair Price Shop holder is responsible for carrying out retail sale of Specified Food Articles in accordance with the directions and instructions issued from time to time regarding purchase and sale of SFA's. The misconduct at the level of FPS holder e.g. Mandatory display board was not available, SFA distribution details was not provided and Stock Register, Sales Register and Cash Memos etc. were not provided to the Inspecting Team at the time of inspection to ascertain actual data is not acceptable. All these violations are serious in nature

The Public Distribution System (Control) Order, 2001 and Delhi Specified Articles Order, 1981 of FPSs clearly summarise the duties and obligations of FPS holder but in this case the FPS holder failed to maintain the sanctity of orders, in letter and spirit. He has violated terms and conditions laid down in licence. Therefore, I do not see any reason to modify or set aside the Order passed by the Assistant Commissioner / Licensing Authority in the matter.

The appeal is accordingly disposed of.

Parties be informed accordingly.


(PADMINI SINGLA) 17/06/2021

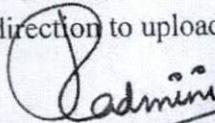
COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.PA/COMM./AA/FPS Appeal/F&S/2021/141-144

Dated: 17-6-21

Copy to :-

1. The Assistant Commissioner (East), F&S Deptt. GNCT of Delhi.
2. Shri Chawal Singh, Prop., M/s. Sunhara Sansar Co. Store (FPS No. – 298), C-57 through Assistant Commissioner (East).
3. Shri Chawal Singh, Prop., M/s. Sunhara Sansar Co. Store (FPS No. – 298), R/o House No. 430, Shop No. 01, Main Road, Mandawali, Fazalpur, Delhi – 110092.
4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.


(PADMINI SINGLA) 17/06/2021

COMMISSIONER (F&S)/APPELLATE AUTHORITY