

**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

No.PA/COMM./AA/FPS Appeal/F&S/2020/722-723

Dated: 29-12-2020

**Appeal No. 14/2020**

**In the matter of:**

**M/s Bhavya Divya Company**  
FPS No. 9190, Circle-34,  
52, Nangli Sakrawati, Delhi

**Sh. Bharat Bhushan**

.....  
Versus

**Appellant**

The Assistant Commissioner (South-West)  
Deptt. Of Food Supplies & Consumer Affairs

.....  
**Respondent**

**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 07.11.2017 passed by the Assistant Commissioner (South-West) and order dated 15.03.2019 passed by the then Appellate Authority.

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

**The appellant submitted and argued as under:-**

1. That the Appellant is a Fair Price Shop (FPS) owner and has been authorized by the department of Food and Supplies, Delhi to distribute specified food articles i.e. wheat, rice etc. to the card holders at subsidized rates.
2. That on 19.05.2017, the Hon'ble Food & Supplies Minister, Delhi paid visit at Circle-34 (Matiala) and allegedly found some Food Security cards which were undispached to the card holders.
3. That after passing of more than two and half months period, a show cause notice dated 05.08.2017 was issued to the appellant by the respondent alleging that the inspecting team have reported these card holders were found untraceable. As per show cause notice an opportunity was given by the Circle FSO to these card holders to appear before him by issuing a call memo to them, but the same was returned back with the remarks undelivered. So on the basis of said report, the respondent presumed that they are not receiving their food articles as they are not residing at their given address.
4. That the above notice was pertaining to only one card no. 077004761652 of one Smt. Pushpa Devi. Thereafter, the appellant appeared before the respondent and filed his written reply which is on record.
5. That the hearing of the above show cause notice was conducted on 08.08.2017 and on the same day the license/authorization of the appellant was suspended by way of Suspension-cum-show cause notice dated 08.08.2017 itself. It is pertinent to mention herein that on 09.08.2017, the next day after suspension order, the respondent issued corrigendum to the above suspension cum show cause notice whereby two more card bearing nos. 077004956565 and 077004956573 were added. So total number of three cards holders were allegedly not found residing at their given address.
6. That thereafter, the last opportunity was given to the appellant and the final hearing was conducted on 07.11.2017 and on the same day, the license of the appellant was cancelled with forfeiture of entire security amount by the respondent by way of passing impugned cancellation order dated 07.11.2017.
7. That as per direction, the appellant tried his level best to contact these card holders at their given addresses, but on each and every occasion he could not contacted them due to various reasons as explained in replies filed by the appellant to the respondent. However, the appellant produced on 01.11.2017, one card holder out of three namely Smt. Prakashini having card no. 077004956565.



8. It is submitted that the FPS of the appellant was allotted on 30.10.2015 and alleged cards were attached to the above FPS in the month of December, 2015 by way of transfer from other FPSs. It is submitted that the food security cards can also be retrieved online and the department consider online version of the same valid like original issued and delivered by the department to the card holders at their addresses. It is submitted that the appellant issued food articles to only those card holders who came at his FPS with valid food cards after issuing of proper cash memos.

9. It is submitted that the appellant tried his best at the moment to file the present appeal to trace the alleged two card holders. However, it is submitted that the appellant is not responsible if any card holder is not traceable/not found residing at his given address and it is the duty of the department to verify the status of the card holder before issue of card. It is submitted that food security cards are linked with Aadhaar number of the beneficiaries to avoid duplication as well as faking of the same.

10. That in case no. 126/84-CA, titled as M/s Raja Ram Munshi Ram, FPS No. 1319 Vs State, the Hon'ble Lieutenant Governor of Delhi has pleased to hold vide order dated 16.10.1984- that " I have considered the submission made by both the parties. I am of the opinion that the petitioners were neither required under law to verify the authenticity of the ration cards nor had they any machinery to do so."

11. That in WP (C) 10876/2015 the Hon'ble High Court also upheld that FPS holder is not responsible if the card holders are not residing/traceable.

12. That while passing the cancellation order and order under review the submissions of the petitioner have not been appreciated and totally ignored. The benefit of permissible shortage of SFA's had not been given to the petitioner as well as by the then Appellate Authority before passing cancellation order dated 07.11.2017 and order dated 15.03.2019.

13. That the above FPS is only source of income for the petitioner and the present petition could not be filed in time as he became jobless due to non functioning of his FPS which resulted adverse family circumstances and financial crunch to the petitioner. With the support of relative and friends the petitioner has arranged legal expenses and filed the present petition with the request to entertain the review petition by way of condoning of delay.

13. The appellant submitted that he has not violated any provision of the control order as well as any other direction / circular / order issued by the department. So the cancellation of his license with forfeiture of entire amount of security inappropriate and harsh punishment passed by the respondent in impugned order. Hence the impugned order is arbitrary, beyond the provision of law. So the same is liable to be set aside.

**The respondent submitted and argued as under:-**

1. A surprise inspection was undertaken by the Hon'ble Minister, F&S, on 19.05.2017 in Circle-34 (Matiala) and during his visit, some NFS food cards were found inn-dispatched. Out of these cards the following card were found linked with M/s Bhavya Divya Company, FPS No. 9190:-(1) 07004761652 issued in the name of Smt. Pushpa Devi (4 units). (ii) 077004956565 issued in the name of Smt. Prakash (1 unit). (iii) 077004956573 issued in the name of Smt. Momina (2 units).

2. These card holders were found untraceable and therefore, an opportunity was given to these beneficiaries by the then circle FSO to appear before him by issuing a Call Memo. Since these Call Memos were returned back as undelivered, therefore, it was established that these beneficiaries were not residing at their given addresses and not receiving their SFAs since long.

3. A Show Cause Notice No. F.No.AC(SW)/C-34/9190/1379-83 dated 05.08.2017 was issued to Sh. Bharat Bhushan, Licensee of FPS No. 9190 (M/s Bhavya Divya Company) to show cause in writing as to why the license/authorization of the said FPS may not be suspended for the above said irregularities. In response to the SCN, the authorized licensee appeared before the undersigned and submitted his written reply the he was already directed by the Circle Office to not issue the SFAs of RC No. 077004761652 issued in the name of Smt. Pushpa Devi (4 units) through an entry in his Inspection Book. However he failed to produce the Inspection Book during course of hearing due to which his reply was considered unconvincing and unsatisfactory. The FPS holder was thus presumed to be guilty of committing the irregularities therefore M/s Bhavya Divya Company was placed under suspension vide Order dated 08.08.2017.



4. Following the principle of natural justice, and to give him ample opportunity of his defence, the FPS holder was given a series of hearing on 16.08.2017, 28.08.2017, 06.09.2017, 13.09.2017, 30.10.2017 and 07.11.2017. On the last hearing held on 07.11.2017, the FPS holder produced one of the card holder namely Smt. Prakash (NFS Card No. 077004956565) alongwith her ID proof which was accepted as bonafide card holder. For the remaining two other beneficiaries, the FPS holder failed to reply satisfactory about their whereabouts despite sufficient opportunity and time was given to him. Also the FPS holder failed to give justification about the SFAs of these two cards which amounts to the tune of 30 Kg. (4 units + 2 units = 6 units) per month.

5. The FPS of the appellant was allotted on 30.10.2015 and the aforementioned two cards were attached with the above FPS in January, 2016. The first allocation of these two cards arrived on FPS No. 9190 in February, 2016. It is true that the department has given the option of downloading of e-ration cards to the beneficiaries which is equal to the original NFS card in its validity and availing benefits.

6. It is true that the appellant is not responsible if any card holder is not traceable /not found residing at his given address during any inspection. However FPS holder is responsible for submission of proof of either issuance of SFAs to the bonafide card holder or filing the closing balance of the aforementioned two cards.


7. It is true that the petitioners are neither required under law to verify the authenticity of the ration cards nor had they any machinery to do so. However FPS holder is responsible for submission of proof of either issuance of SFAs to the bonafide card holder or filing the closing balance of the aforementioned two cards.

After hearing contentions of both the parties perusing their written/verbal submissions and examining other relevant records placed before me, it is noticed that the shop has been cancelled on the report of inspection team wherein it was reported that three beneficiaries Smt. Prakash (Card No. 077004956565) Smt. Pushpa Devi (Card No.077004761652) and Smt. Momina (Card No.077004956573) were not traceable. Earlier, the petitioner produced only one beneficiary Smt. Prakash (Card No. 077004956565) before the Licensing Authority and now vide rejoinder Appellant informed that he has also traced out remaining other two Card Holders in question i.e. Smt. Pushpa Devi (Card No.077004761652) and Smt. Momina (Card No.077004956573) and they both are ready to witness for proving that they received full quantity of food grains as per their entitlement during the relevant period. Further, considering the facts and circumstances of the case, the delay in filing the review appeal is condoned

Therefore, keeping in view of principle of natural justice, fair and impartial adjudication, the case is remanded back to Asstt. Commissioner (South - West)/ Licensing Authority with the direction to afford another opportunity for hearing and decide the matter afresh on merits, within one month of this order after due consideration of facts and circumstances of the case.

The appeal stands disposed of.

Ordered accordingly. Parties be informed.

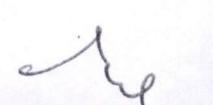
  
(G.S. MEENA)  
COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.PA/Comm./AA/FPS Appeal/F&S/2020/722-723

Dated: 29-12-2020

Copy to :-

1. The Asstt. Commissioner (South-West), F&S Deptt., Delhi.
2. Sh. Bharat Bhusan, Licensee of FPS No. 9190, through Asstt. Comm. (South-West).

  
(G.S. MEENA)  
COMMISSIONER (F&S)/APPELLATE AUTHORITY