

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/ 714-15

Dated: 24.12.2020

Appeal No. 19/2020

In the matter of:

M/s Laxmi Chand Ram Prasad
FPS No. 580, Circle-19, Gulabi Bagh, Delhi

Sh. Sewa Ram

..... **Appellant**
Versus

The Assistant Commissioner (Central)
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 01.10.2020 passed by the Assistant Commissioner (Central.)

Sh. Sewa Ram, appellant alongwith Sh. K.K Goswami, Advocate and Sh. Satyaveer Singh, FSO (C-19) were present.

A communication through Mobile No. 9350785386 (Mr. Sonu) followed by a mobile call from Hon'ble Area MLA, Sh. Som Dutt has been received that government ration is being shifted by FPS No. 580 through a tempo no. DL-1LV-9834 carrying 17 bags of Urad Dal and the tempo owner stated that the FPS No. 580 directed him to deliver the same at Azadpur for a consideration amount of ₹600/-. The statement of tempo owner was recorded in the Police Station, Sarai Rohilla, Delhi and an FIR against the FPS holder was registered. During de-sealing of the shop the department has found variation of Wheat 18.00 Qntl. excess, Rice 15.00 Qntl. excess, Urad Dal 102 Kg. excess and Kala Chana 160 Kg. short. The net variation of SFA's has been calculated as 35.62 Qntl. accordingly, the license of the FPS No. 580 was cancelled vide cancellation order dated 01.10.2020.

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

The Counsel of the petitioner submitted that the said tempo carrying 17 bags of Urad Dal was not recovered from the premises of the FPS No. 580 but it was caught somewhere else in the market on its way to Azadpur and the FPS No. 580 has no concern either with the seizure of 17 bags of Urad Dal or the driver of tempo bearing No. DL-1LV-9834.

As per show cause notice 21.09.2020 it has been alleged that during the de-sealing of FPS the department found variation of Wheat 18.00 Qntl. excess, Rice 15.00 Qntl. excess, Urad Dal 102 Kg. excess and Kala Chana 160 Kg. short. The net variation of SFA's has been calculated as 35.62 Qntl. In this regard it is submitted that the variation has been wrongly assessed, whatever has been shown in excess that was to be shown in the opening balance of FPS. Secondly on 02.07.2020 when the licensee was distributing SFA's to the cardholders he became unconscious and was immediately taken to hospital by his son. On the way to the hospital all the relevant documents related to the FPS e.g. Sale Register, Stock Register, Bill Book etc. was also carried in the bag on a scooter which was lost somewhere in mid way. A FIR to this effect was also registered by the petitioner on 03.07.2020 and a copy of the same was also supplied to FSO, Circle-19 on 08.09.2020.

Due to non-availability of relevant documents and sealing of FPS premises the FPS holder failed to submit the monthly DR-IV-V report in circle office and in absence the circle office has not taken over the previous month balance of SFA's in the opening balance and therefore the quantity shown has been excess. Regarding short of 160 Kg. Kala Chana, it is intimated that the same quantity of Kala Chana was initially received short from DSIDC godown, which has been already recorded by the FPS holder on the face of talpatti at the time of unloading of SFA's in the FPS premises.

Contd....2/-

The respondent submitted that Food & Supply department received a mobile call from Mobile No. 9350785386 (Mr. Sonu) followed by a mobile call from Hon'ble Area MLA, Sh. Som Dutt that government ration is being shifted by FPS No. 580 through a tempo carrying 17 bags of Urād Dal and the tempo owner stated that the FPS No. 580 directed him to deliver the same at Azadpur for a consideration amount of ₹600/-. The statement of tempo owner was recorded in the Police Station, Sarai Rohilla, Delhi and an FIR against the FPS holder was registered.

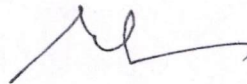
The licensee of FPS No. 580 vide suspension cum show cause notice dated 09.07.2020 was given opportunity to explain on 15.07.2020, but the licensee did not appear before the undersigned not submitted any written reply. Again FPS holder was opportunity to explain on 05.08.2020 vide SCN dated 28.07.2020. In response of the same Sh. Lalit Mittal who introduced himself as a S/o Sh. Sewa Ram, proprietor of FPS No. 580 appeared and submitted a written information that his father is not well and sought new hearing date. Again, the license, FPS No. 580 was issued SCN dated 17.08.2020 to give another opportunity to explain on 26.08.2020. On 26.08.2020, a written reply was submitted by Sh. Lalit Mittal, authorized representative of Sh. Sewa Ram, proprietor of FPS No. 580 wherein he has stated that he has no relation with the confiscated tempo bearing registration no. DL-1LV-9834 with loaded 17 bags of Urad Dal with driver Sh. Raghav. During de-sealing of the shop the department has found variation of Wheat 18.00 Qntl. excess, Rice 15.00 Qntl. excess, Urad Dal 102 Kg. excess and Kala Chana 160 Kg. short. The net variation of SFA's has been calculated as 35.62 Qntl. Accordingly, the license of the FPS No. 580 was cancelled vide cancellation order dated 01.10.2020.

After hearing contention of both the parties, perusing their written submissions and examining other relevant records placed before me, it has been considered that the FPS holder Shri Sewa Ram, could not get the opportunity of hearing due to self illness. It has also been considered that during the commutation to hospital the relevant documents related to the FPS e.g. Sale Register, Stock Register, Bill Book etc. was lost somewhere on the way. A FIR to this effect was also registered by the petitioner on 03.07.2020 and a copy of the same was also supplied to FSO, Circle-19 on 08.09.2020.

Keeping in view of the principle of natural justice and fair adjudication, the Licensing Authority/Assistant Commissioner (Central) need to go into depth of the matter and find out whether the Appellant is taking the pleas of illness and lost of documents just to conceal the deliberate diversion of food grains. Therefore, the case is remanded back to Asstt. Commissioner (Central)/ Licensing Authority with the direction to grant another opportunity for hearing and pass a speaking order 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)

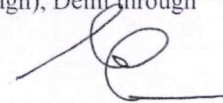
COMMISSIONER (F&S)/APPELLATE AUTHORITY

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Copy to :-

1. The Asstt. Commissioner (Central), F&S Deptt., Delhi.
2. Sh. Sewa Ram M/s Laxmi Chand Ram Prasad, FPS No. 580, Circle-19 (Gulabi Bagh), Delhi through Asstt. Comm. (Central).



(G.S. MEENA)

COMMISSIONER (F&S)/APPELLATE AUTHORITY