

**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/ 712-713

Dated: 24-12-2020

In the matter of:

M/s Shiva Store
FPS No. 8868, Circle-36 (Bijwasan)
Delhi
Sh. Vinod Kumar

Appellant

Versus

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

Respondent

ORDER

Whereas, Sh. Vinod Kumar, the licensee/partner of M/s Shiva Store, FPS No. 8868, Circle-36 (Bijwasan) filed instant appeal under Clause 6 of Delhi Specified articles (Regulation of Distribution) Order, 1981 and PDS Order, 2001 against the cancellation order dated 24.08.2020 passed by the Assistant Commissioner (South-West).

The petitioner and respondent were called for hearing on 12.11.2020 at 12:00 PM. Sh. Dhruv Aggarwal, Counsel of the Petitioner and Sh. Deshraj, Asstt. Commissioner (South-West) were present.

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

The petitioner submitted the following:

1. The cancellation order no. F.No. FPS No. 8868/AC(SW)/F&S/308 dated 24.08.2020 is to be quashed and FPS of the appellant be revoked.
2. The shop was inspected on 01.04.2020 by the Hon'ble Minister (F&S) alongwith Asstt. Commissioner (South-West) and two FSI's of the Department and as per their report a variation of 07.16 Qntl. Wheat (Short) and 0.31 Qntl. Rice (Short) was reported. It is submitted that the area of the appellant was under contentment zone due to COVID-19.
3. The cancellation is improper / illegal as the respondent did not consider reply filed by the appellant in proper manner.
4. The inspection was done in an arbitrary and hazy manner as the country was under lockdown and there was immense pressure upon the FPS owners to distribute the regular as well as additional quota of SFA's by mentioning social distancing. The inspection was done in a sudden manner when the appellant was distributing the SFA's to its beneficiaries because of which the appellant had no time to handle the situation and the FSI's seized the articles as mentioned as suspension order by their own and without asking for anything from the appellant. The appellant is 58 years old heart patient and got frightened and confused by the manner of the inspection was conducted.
5. That no document/seizure memo as well as SVS was handed over to the appellant which is a clear violation.
6. That no reasonable opportunity was given to the appellant to defend himself before passing the alleged suspension order dated 25.04.2020 which became infructuous by the impugned cancellation order dated 24.08.2020.

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7. The appellant got success tracing the missing 05 beneficiaries comprising of 18 units and obtain their respective affidavits. Further, the appellant was not given the benefit of shortage order dated 07.03.2018 issued by the department in r/o of the SFA's.
8. That after submitting the details of untraced beneficiaries comprising of 18 units, the shortage thus finally calculated (as per impugned cancellation order) as 128 Kg. (for Wheat, as per impugned order) minus 108 Kg. (18 units for the month of April, 2020) thus total is 20 Kg. for wheat and as far as rice is concerned, it is submitted that on 01.04.2020, the sale of rice was opened with 103 Kg. rice out of which 28.5 Kg. of rice was distributed thus balance comes to be 74.5 kg. but the appellant was not able to distribute and further, the same amount of rotten rice i.e. 74.5 Kg. is still lying in the custody of the appellant which was not accounted by the respondent. It is submitted that the benefit of shortage order should also be given to the appellant.
9. That the appellant was granted the license to run the FPS since the year of 1997 and the same has been renewed time to time without any complaint and his behaviour with the beneficiaries and the concerned officials are trust worthy. The appellant is following and maintaining disciplined in observing the guidelines/rules of PDS.
10. That the appellant is sole bread earner of his family and he has wife, one son studying in college and two daughters who are totally dependent on him and the appellant had no other source of income from any side. It can be easily imagined that in the situation of COVID-19, the appellant had not earned even a single penny and he and his family is at the stage of starvation and the appellant had already suffered a lot during the present proceedings. Therefore, even on humanitarian grounds, therefore the shop deserves to be revived with immediate effect.

The respondent stated the following:

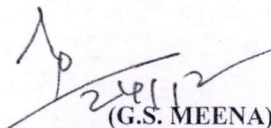
1. During the course of hearing it has been stated by the respondent that the physical inspection was carried out on 01.04.2020 by Hon'ble Minister (F&S) alongwith Assistant Commissioner (West) and 02 FSI's of the department. The FSO vide SVS dated 25.04.2020 had reported variation of 07.16 Qntl. Wheat (Short) and 0.31 Qntl. Rice (Short). Accordingly, the shop was suspended vide order dated 25.04.2020 and thereafter cancelled.
2. That the licensee appeared before the undersigned and made his written/oral submission that the complete records were not seized by the inspecting team. He made oral submission that the signature of the beneficiaries who were distributed SFA's on 01st April, 2020 were not obtain by him as he was alone on the date of inspection and to expedite the distribution he did not obtain the signature of the beneficiaries. He further pleaded for conducted a door to door verification in support of his claim of having made the distribution to the beneficiaries as per details in cash memos dated 01.04.2020.
3. The enforcement branch consented for conducting door to door verification of all the beneficiaries who obtained SFA's as per cash memos dated 01.04.2020 claimed to be left unaccounted in sales register that were seized. The area FSI conducted door to door inspection regarding on such cash memos. As per report of FSI 05 ration card comprising of 18 units could not be verified at the given address.
4. As regard the claim of shortage the same cannot be allowed as per record shown by him and after following due process and giving opportunity the shop was cancelled.

After hearing contention of both the parties, perusing their written/oral submissions and examining other relevant record placed before me, it is noted that as per departmental order dated 07.03.2018, certain shortage on account of retail sales of SFA's is allowed at the time of stock taking on inspection and as the appellant claim to trace out the missing 05 beneficiaries comprising of 18 units and submitted their affidavit alongwith the photocopies of their ration cards and I-cards so the same can be examined for taking into account by Licensing Authority/Assistant Commissioner (SW) after proper verification.

Therefore, keeping in view of the principle of natural justice, fair adjudication and after taking into account humanitarian ground during COVID crises, the case is remanded back to Licensing Authority/Assistant Commissioner (South - West) with the direction to decide the matter afresh on merit within one month of this order after due consideration of complete facts, circumstances of the case, addressing all the contentions of the petitioner.

Parties be informed.

The appeal is accordingly disposed of.


(G.S. MEENA)

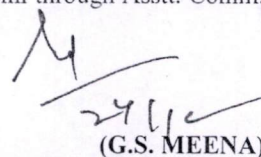
COMMISSIONER (F&S)/APPELLATE AUTHORITY

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Copy to :-

1. The Asstt. Commissioner (South West), F&S Deptt., Delhi.
2. Sh. Vinod Kumar, M/s Shiva Store, FPS No. 8868, Circle-36 (Bijwasan), Delhi through Asstt. Comm. (South-West).


(G.S. MEENA)

COMMISSIONER (F&S)/APPELLATE AUTHORITY