

**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/ 716-17  
**Appeal No. 09/2020**

Dated: 24.12.2020

**In the matter of:**

**M/s. Shambhu Dayal**  
FPS No. 4651, Circle-26,  
(Madipur), Delhi

**Sh. Ravinder Kumar**

..... **Appellant**  
Versus

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

..... **Respondent**

**ORDER**

Whereas, the instant 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 25.06.2020 passed by the Assistant Commissioner (West).

Shri Ravinder Kumar, Prop. alongwith Shri Sanjiv Kumar, Counsel and Shri Ram Avtar Meena, Assistant Commissioner (West) were present.

An information was received from the SHO, Khayla, New Delhi about the misappropriation of SFA's by FPS No. 4651 that the SFA's have been transferred to a nearby shop located at M-111, Raghbir Nagar. On receiving the information FSO, Circle-26 immediately visited the FPS 4651 at M-138, Shivaji Market, Raghbir Nagar, New Delhi in presence of several Police personnel and the following stock was found.

Wheat: 300 Kg.  
Rice : 181 Kg.

The nearby shop located at M-111 Shivaji Market was got opened wherein 21 bags of Rice were found stocked there. The Licensee admitted that this quantity of Rice belongs to said FPS. This clearly shows diversion of 10.50 Qtls. of SFA's which misconduct on the part of licensee is. An FIR No. 253/20/PS Khayala, dated 31.03.2020 was also lodged in this regard and the relevant record was seized by the FSO. The shop was suspended vide order dated 03.04.2020 with the direction to explain reason of this misconduct on 07.04.2020 at 10:30 AM. The shop was cancelled vide order dated 25.06.2020 after considering the reply of licensee which was not satisfactory as the licensee has failed to provide any authorised document duly signed by the Competent Authority for use of premises at M-111, Shivaji Market, Raghbir Nagar, New Delhi. He has also given any intimation neither to Assistant Commissioner Office nor to the Circle Office in this regard.

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

The Counsel of the appellant submitted and argued as under:-

1. That the impugned cancellation order dated 25.06.2020 is arbitrary, illegal and without application of mind. The respondent without affording an opportunity to explain the circumstances and without following the principles of natural justice and without the application of mind had issued suspension cum show cause notice and had forfeited the security amount of the appellant. This conduct of the respondent with a preconceived mind to penalize the appellant had forfeited the security amount while issuing a suspension cum show cause notice.
2. That the FSO never checked the SFA available in the shop accurately. The amount of wheat mentioned in the suspension cum show cause notice was actually the quantity of rice and the amount of rice mentioned in the suspension cum show cause notice is the quantity of wheat. Inspection done by the FSO at the time of checking was done in a very haphazard manner. The appellant had mentioned the same in the reply to the show cause notice but nothing was considered by the respondent.

Contd....2/-



3. That the allegation levelled against the licensee in the show cause notice as well as the grounds for cancellation of the license vide impugned order are that the licensee had transferred SFA's to a nearby shop located at M-111, Raghbir Nagar, Delhi and the same SFA's belong to FPS No. 4651 thus making that a diversion of 10.50 qtls. (21bags x 50kgs.) of SFA's. The licensee had already informed the department regarding the shop taken on rent by the licensee and the same will be used by the licensee for stocking the goods due to overcrowding and less space in his shop. Under the circumstances, the conclusion drawn of diversion is totally unfounded and unreasonable.
4. That while passing the impugned order the Ld. Authority failed to appreciate the due to pandemic disease of COVID-19, the applicant will be receiving excess stock of wheat and rice and other articles in the shop and he was facing the difficulty of adjusting the same and distributing the same to the card holders.
5. That the Ld. Authority while passing the impugned order failed to appreciate that there was need to maintain social distancing in the shop of appellant due to COVID-19 problems and the appellant had already distributed wheat and rice to the card holders against proper receipt/acknowledgment. The card holders took the quota of wheat from the appellant and assured the appellant that they will lift the stock of rice to the tune of 10.50 qtls. from the appellant in a few days, hence the appellant under compulsion had to shift the 10.50 qtls of rice in the premises no. M-111, Raghbir Nagar, New Delhi which is bang opposite the FPS of the licensee. That the stock found in the premises no. M-111, Raghbir Nagar, New Delhi belong to the card holders and the same was stated by the card holders in their respective statements, the respondent neither considered nor appreciated the same and passed the impugned order.
6. That the respondent never appreciated the statements given by the card holders regarding the distribution of the SFA's. The respondent never made an effort to do a door to door survey regarding the distribution of the SFA's.
7. That the Ld. Authority while passing the impugned order failed to appreciate that the appellant has unblemished record for last 32 years and no complaint has been made by the card holder against the appellant. The appellant never made any delay in the distribution of the SFA's to the card holders.
8. That the respondent failed to pass a speaking order in respect of which terms and conditions were violated by the appellant under provisions of Delhi Specified Articles (Regulation of Distribution) order 1981 and terms and conditions of the licensee. That the above FPS is only source of income for the appellant.

The respondent submitted that on the information received from SHO Khyala regarding misappropriation of SFA by FPS No. 4651 the inspection was conducted and after giving sufficient opportunity to defend the shop has been cancelled on 25.06.2020. The appellant has already admitted in his appeal that the quantity and SFA's found in M-111 Raghbir Nagar. He has never taken any permission from the FSO nor submitted any intimation to Licensing Authority for using the said premises as an additional storage space of SFA's.

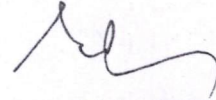
The representation from the card holders were submitted by the appellant after one month (i.e. 23.04.2020) of the commencement of the proceedings against him. The late submission of the list by the appellant is an afterthought with melafide intention to cover-up. No beneficiary has made any representation to circle FSO for releasing of their quota of rice for the month of April, 2020 i.e. after the sealing of the FPS on 31.03.2020 hence there was no need of any door to door survey in the matter.

After hearing contentions of both the parties, perusing their written/verbal submissions and examining other relevant records placed before me, it appears that while passing the Cancellation Order the Licensing Authority/Assistant Commissioner (West) did not consider or examine the contention of the appellant regarding door to door survey of SFA's beneficiaries and seems not properly addressed before cancelling the shop.

Therefore, the case is remanded back to Asstt. Commissioner (West)/ Licensing Authority with the direction to pass speaking order after considering the contentions of the petitioner and decide the matter afresh on merits, within one month of receipt of this order after due consideration of facts and circumstances of the case.

The appeal stands disposed off.

Ordered accordingly. Parties be informed.



(G.S. MEENA)

COMMISSIONER (F&S)/APPELLATE AUTHORITY

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Dated: 24.12.2020

Copy to :-

1. The Asstt. Commissioner (West), F&S Deptt., Delhi.
2. Sh. Ravinder Kumar M/s Shambhu Dayal, FPS No. 4651, Circle-26 (Madipur), Delhi through Asstt. Comm. (West).



(G.S. MEENA)

COMMISSIONER (F&S)/APPELLATE AUTHORITY