

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/2019/384-385

Dated: 06/10/2020

APPEAL NO. 37/2019

In the matter of:

M/s. Sonu Store,

FPS No. 7722, Circle -09(Kirari),

1B/Kh. No. 917, B-Block, Prem Nagar, Delhi

Through its proprietor Smt. Kamlesh Pawar -----

Appellant

V/s

The Assistant Commissioner (N.W.)

Deptt. of Food Supplies & Consumer Affairs,-----

Respondent

ORDER

Whereas, Smt. Kamlesh Pawar, the licensee of M/s Sonu Store, FPS No. 7722, Circle 09 (Kirari) C-354, Nehru Vihar, Delhi, has filed an Appeal under the Delhi Specified Articles (Regulation of Distribution) Order, 1981 and PDS Order, 2001 against the Cancellation Order No. F.6/AC/ (NW)/F&S/FPS-7722/2019/824-828 dated: 24.06.2019 issued by the Assistant Commissioner (N.W.), Respondent. The grounds of Cancellation of authorization were based on the findings of surprise visit/inspection conducted by the inspection team deployed vide Order dated 05.02.2019 issued by Assistant Commissioner (N.W.).

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

The Appellant submitted the following:

- (i) The impugned cancellation Order dated: 28.08.2019 is erroneous, arbitrary and illegal as the inspection team did not properly inspected the record/ stock as per law, and respondent has not adopted procedure prescribed in law.
- (ii) The Appellant has run the FPS since 1987 without any complaint from any beneficiary.
- (iii) The Respondent has not provided a copy of the complaint in view of which the inspection was carried out and it is unknown who the complainant was. Appellant is sure that if Respondent informed about the complainant he/she would himself/herself appear before this Hon'ble Court and depose in Appellant's favour.
- (iv) The Respondent did not consider that the appellant has stated to the inspection team that board displaying necessary information related to RTI, Vigilance Committee and Helpline number was damaged as it was very old and the appellant has ordered a new board which was to be obtained in a day or two.
- (v) The inspection team did not weigh the stock material at any point in time.
- (vi) The Respondent has failed to consider that the inspection team did not adopt the prescribed procedure and seized incomplete documents. The inspection team seized

- (vi) The Respondent has failed to consider that the inspection team did not adopt the prescribed procedure and seized incomplete documents. The inspection team seized the record in a hurry without providing any seizure memo. Some entries pertaining to sale were required to be made in the stock register. Also, the inspection team did not take Cash Memo booklet bearing S. No. 201-300 wherein some sale had been carried out.
- (vii) Sh. Rajesh Pawar has filed an affidavit saying that he did not sign any memo as representative of the Proprietor of the FPS as stated by the Respondent. Also, Appellant has not authorized any person as her representative.
- (viii) The Appellant vide letter dated 04.07.2019 requested the Respondent to provide copy of the stock verification statement, recovery memos and statement of Sh. Rajesh. The request was honored by the Respondent only after the intervention of this Hon'ble Court.
- (ix) The Respondent did not consider the recent judgment passed by the High Courts in the matter.

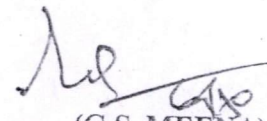
The Respondent stated the following:

- (i) The Cancellation Order has been issued after following due process of law, considering all the facts of the case and report of the inspection team. The reply submitted by the FPS holder herself was also considered.
- (ii) The FPS was inspected on 05.02.2019 by the duly constituted Enforcement Team, and a number of discrepancies were found:
 - a. Helpline Number, RTI Board and Vigilance Committee Board were not displayed at the FPS at the time of visit.
 - b. NFS card holders stated that the FPS was not opened on time.
 - c. Wheat = 22.49 Qtl (Short).
 - d. Rice = 03.68 Qtl (Short).
 - e. Sugar = 0.11 Qtl (Short).
- (iii) The identity of complainant and reason for visit does not matter; the final outcome of the visit i.e. huge stock variation of 26.28 Qtl is the important material aspect for which the Appellant is liable for penalty.
- (iv) The argument of Appellant that he informed the inspection team that the information board was old and he had ordered for a new one is denied being just an excuse to avoid the material aspects of the case.
- (v) The inspection was done in the presence of representative of the FPS holder and his signed statement is on record along with acknowledgement on Entry-Cum-Search-Cum-Recovery-Counting-Cum-Weighment memo. Now the excuse that stock was not weighed is just an afterthought and is false.
- (vi) The issue of cash memo No. 201-300 has duly been considered and reflected in the Cancellation Order. The said cash memos could not be produced at the time of inspection. Perusal of records revealed that sales made vide these CMs were mentioned in sale register and has already been duly considered by the inspecting team while calculating the variation.

(vii) The reference to Hon'ble High Court judgment is vague, incomplete and meaningless.

After hearing contentions of both the parties, perusing their written submissions and examining other relevant records placed before me, it is seen that the Cancellation Order dated 05.07.2019 of the Assistant Commissioner (N.W.) is not 'speaking' in nature. From the contents of the Order, it is not clear whether the contentions of the Appellant regarding the Stock Variation Statement were duly considered by the Licensing Authority or not. The Cancellation Order dated 05.07.2019 is silent on the issue. For instance the Appellant has produced sale record pertaining to AAY category whereas the Cancellation Order reflects corresponding quantity of sugar as variation. Therefore, in the interest of justice and fair play the case is remanded back to Assistant Commissioner (N.W.), Licensing Authority with the direction to decide the matter afresh, within one month of this Order, after due consideration of facts and circumstances of the case.

The appeal stands disposed of. Parties be informed accordingly.


(G.S. MEENA)

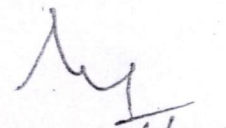
COMMISSIONER (F&S)/APPELLATE AUTHORITY

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Copy to :-

1. The Assistant Commissioner (North), F&S Deptt., GNCT of Delhi.
2. Smt. Kamlesh Pawar, Proprietor of M/s Sonu Store (FPS No.- 7722), Circle-09 through Assistant Commissioner (N.W.).


(G.S. MEENA)

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