

**BEFORE THE APPELLATE AUTHORITY/SPECIAL COMMISSIONER
DEPARTMENT OF FOOD SUPPLIES & CONSUMER AFFAIRS
GOVERNMENT OF NCT OF DELHI
K Block, Room No. 108, 1st Floor, Vikas Bhawan I.P. Estate New Delhi-11002.**

No.SPL.COMM./AA/FPS Appeal/F&S/2023/58-62

Dated: 22-06-23

Appeal NO. 06/2023

IN THE MATTER OF:-

M/s Aggarwal
Fair Price Shop No. 8757,
A-42, Village Haiderpur, Dehi.

Sh Anil Kumar Gupta

• • • Appellant

Versus

The Assistant Commissioner (North)
Department of Food and Supplies
Govt of NCT of Delhi
Delhi.

• • • Respondent

ORDER

The instant review appeal has been filed by the appellant under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against the cancellation orders dated 16/07/2016 and 03.10.2017 passed by the respondent.

Sh. Anil Kumar Gupta, Prop, Sh. Viabhav Mishra, Appellant and Counsel/AR of appellant were present.

Sh. Ajay Kumar AC (North), Smt. Asha Rani, FSO C-14, Respondent was present.

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

1. Brief facts of the case are as under:-

An inspection of the business premises of M/s Aggarwal Store (FPS No. 8757) was carried out by the Circle officials of C-14, Shalimar Bagh of department on 14.02.02023 on basis of complaint received against the FPS No.8757. The FSO and FSI of C-14 visited the FPS no .8757, M/s Aggarwal Store, and following reported:-

- a) Net variation of SFAs was 199.18 Quintal. (Short)
- b) Authorization is found in damaged condition.
- c) Certificate of Weight and Measurement not provided by the FPS.
- d) List of beneficiaries is not displayed.

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- e) Stock board was not displayed.
- f) Board of opening closing time found in damaged condition.
- g) Vigilance committee board found in damaged condition.

Accordingly, a show cause notice was issued to the licensee on 22.02.2023 to appear before licensing authority in person or through authorized representatives. The proprietor seek adjournment to 01.03.2023, due to other official commitments the case was heard on 06.03.2023. On 06.03.2023 Sh. Anil Kumar Gupta, Prop. submitted that I could not get the SFAs counted at the time of visit due to crowd on this FPS. He further submitted that authorization, weight and measurement certificate, list of beneficiaries, stock board were displayed on the FPS, The reply filed by the licensee is not found satisfactory by the licensing authority hence cancelled the authorization of M/s Aggarwal Store FPS no.8757 as FPS holder has violated the terms and conditions of its authorization which are mandatory for continuation of authorization and attracts stern action under the provisions of Delhi Specified Article (Regulation and Distribution) Order, 1981 and instruction issued thereunder.

Thereafter, the proprietor filed an Appeal against the cancellation order dated 06.03.2023 of AC (North).

2. The appellant submitted and argued as under:-

- a. A surprise inspection was carried out on 20.01.2023, wherein everything was found intact. Not only this, none of the anomalies mentioned in clause (4), as above, were ever found by any inspection team from 2019 onwards, herein more than 50 inspections have been carried out so far.
- b. That regarding alleged shortage of wheat, rice and sugar, it is apparent from the show-cause notice itself that inspection was conducted at 11:20 AM and it is the time when stock has continuous out-flow since morning and only after closing, there can be full and complete tally of stock.
- c. That the perversity of the show-cause notice is apparent from the fact that if there would have been any shortfall or any other above anomaly, the FSO or FSI Circle-14 would have endorsed the same on the inspection book or complaint book kept at the shop.
- d. That there is no endorsement- either by the FSI or FSO that there is any shortfall of the Wheat, Rice or Sugar in the shop and it can be verified at any time that all stock are completely in place, which was also told to the Assistant Commissioner during reply to the show-cause notice.
- e. That if the inspection was carried out on 14.02.2023 and anomalies were found in terms of shortage, it is beyond reason as to why the License was not suspended immediately or the show-cause notice was issued after a delay of 9 days (including date of inspection), which clearly smacks malice on the part of Assistant Commissioner.
- f. That the show-cause notice dated 22.02.2023 was received to the appellant on 23.02.2023, which mandated the appellant to appear on 24.02.2023. It is most respectfully submitted that if there was such urgency to take action against the appellant, it is beyond reasons why the Assistant Commissioner waited for 9 days to issue show-cause notice to the appellant, which shows perversity and high-

handed approach of the Assistant Commissioner, thereby making the appellant condemned without properly being heard.

- g. That despite that, the appellant appeared before the opposite party and on 24.02.2023 and sought some time to reply, as the notice dated 22.02.2023 was received on 23.02.2023. The matter was fixed for 06.03.2023, wherein the appellant satisfactorily explained the OP on each and every count and demanded that the shop be re-inspected, as neither there was, nor there is any short-fall of any commodity as alleged wrongly in the show-cause notice, which has been summarily rejected by the OP, without providing any reason whatsoever.
- h. That no stock in short in the shop of the appellant and the opposite party has, without any sound and cogent reason and without following the Principles of Natural Justice, decided to cancel the license of the appellant.
- i. That the haste and arbitrary approach of the Assistant Commissioner is also apparent from the fact that the Assistant Commissioner, without giving any hearing to the appellant on the quantum of sentence passed the order of cancellation and forfeiture of security amount, which again violates the principles of natural justice.
- j. That no order of sentence can be passed by any adjudication body without hearing on the quantum of sentence, which, ipso-facto, is a violation of the Principles of Natural Justice.
- k. That the appeal of the appellant deserves to be allowed and the security forfeited deserves to be refunded.

During appellate proceedings the appellant submitted application for re-assessment of stock and submitted that:-

- a. The grounds of this application for re-assessment/calculation of stock are the part the parcel of the accompanying appeal and are not repeated herein for the sake of brevity.
- b. That the balance of convenience lies in favour of the appellant. The appellant has a good prima-facie case, as his license has been cancelled without following the principles of natural justice and if the cancellation order is not revoked, it shall cause irreparable loss to the appellant, for it shall hamper the livelihood of the appellant.
- c. Therefore, in the interest of justice, the re-calculation/ assessment of stock may kindly be allowed.

3. The licensing authority submitted para wise comments in response to the appeal and argued as under:-

- a. At the time of inspection on the said date which was 14.02.2023 at the premises of the said FPS No. 8757 around 11:20 AM, the visiting team/officials of circle-14 (Shalimar Bagh) of the department found certain anomalies/irregularities at the said premises. Details of the same are mentioned below:
 - i. Authorization is found in damaged condition.
 - ii. Certificate of Weight and Measurement not provided by the FPS.
 - iii. List of beneficiaries is not displayed.

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- iv. Stock board was not displayed.
 - v. Board of opening closing time found in damaged condition.
 - vi. Vigilance committee board found in damaged condition.

Apart from the above said, a huge variation of 19918.88 Kgs in the stock of SFAs at the time of said visit/inspection was also noticed/found.

- b. The report of FPS as per the inspection of said visit dated 14.02.2023 by the team/officials of circle-14 (Shalimar Bagh) of the department not at all satisfactory. Apart from anomalies/irregularities found at the premises of the said FPS there was variations in the stock of SFAs was also found. The entire inspection was carried out in the presence of the Licensee/Proprietor of the said FPS namely Sh. Anil Aggarwal. The same has been mentioned in the inspection-cum-search report prepared, on spot, by the visiting team/officials of the circle-14 (Shalimar Bagh) of the department. Said inspection-cum-search report has also been signed by the said FPS Licensee/Proprietor.
- c. Since, 2019 onwards no such inspection of FPS was conducted however visits made by the officials of the department/circle were either regarding opening of sale/distribution of SFAs or to check the smoothness of distribution of SFAs to the beneficiaries by the FPS holder.
- d. The inspection was carried out and started by the said visiting team/officials of circle-14 (Shalimar Bagh) of the department at 11:20 AM and the current stock position receipt of the said FPS was generated at 11:22:43 AM from the e-POS device of the FPS itself. From this receipt only the variations of SFAs were calculated after checking the physical stock of SFAs found lying at the premises of FPS at the said time of inspection/visit. Further at the time of inspection about 3 to 4 beneficiaries were in queue to collect the SFAs. Stock position of the FPS from the AePDS portal of the department 14.02.2023 at 13:55:18 PM was also checked. So, there is no question of continuous out-flow since morning, as mentioned by the appellant in the said para of the appeal.
- e. The variations in the stock of SFAs found at the time of visit/inspection, details of the same mentioned above, have not been marked/mentioned in the inspection book or complaint book maintained by the FPS Licensee/Proprietor, INADVERTENTLY.
- f. As mentioned above, the variations in stock of SFAs at the time of visit/inspection have been calculated from the CURRENT STOCK POSITION receipt of the said FPS of the given date and time, as generated from the e-POS device of the FPS and also getting the stock position of the FPS as on 14.02.2023 at 13:55:18 PM, from the AePDS portal of the department. Also, in the reply to the SCN as issued by the Assistant Commissioner (N) of the department, submitted by the FPS Licensee/Proprietor, nothing has been mentioned by him in writing about the variations in the stock of SFAs found short by the visiting team/officials of the circle on the given date and time.
- g. It is hereby submitted that Assistant Commissioner (N) of the department, who is the Competent Authority, as far as this matter is concerned, is also imparted with the duties of the Assistant Commissioner of the Enforcement Branch of the department, by the higher authorities of the department. And this office is situated at the Headquarters of

the department, which is at the ITO, New Delhi, which is far away from the O/o the Assistant Commissioner (North) of the Department, which is situated at Gulabi Bagh, Delhi. Moreover, he is not looking after this current case only. He has many other important works to do, as handed over to him by the higher authorities of the department. So, the delay could be due to his preoccupation in some other important official work/meetings.

- h. Furthermore, keeping in view of natural justice opportunity of being heard was provided to the FPS holder twice on 24.02.2023 & 06.03.2023. In response to the SCN issued to the said FPS Licensee/Proprietor, in his reply submitted before the Assistant Commissioner (North) on 06.03.2023, he nowhere mentioned anything IN WRITING about the variations in the stock of SFAs found by the visiting team/officials of circle-14 of the department. Neither has he mentioned anything in writing about the re-inspection at the premises of his FPS.
- i. The appellant is mentioning about the wait of 9 days by the Assistant Commissioner (North) for issuance of SCN and in para he is mentioning about the haste and arbitrary approach of the Assistant Commissioner. However, keeping in view of natural justice opportunity of being heard was provided to the FPS holder twice on 24.02.2023 & 06.03.2023 and the cancellation orders of the License of the said FPS and forfeiture of the entire security amount as deposited by him has only been issued as the said FPS Licensee/Proprietor failed to tender any satisfactory reply mainly about the variations in the stock of SFAs found short at his premises i.e. the premises of his said FPS during the time of said visit/inspection and he also failed to submit any document/material fact about the said variations in the stock of SFAs.
- (j) *Strongly requested not to allow the said appeal of the FPS Licensee/Proprietor as the same only encourages the law breakers who grossly and willfully conduct irregularities which includes pilferage and black marketing of SFAs, which belongs only and only to the deserving beneficiaries. And the same also discourage the officials of the department to perform their duties in a true way.*

4. Further during appeal proceeding the appellant argued and was asked to submitted written arguments, the same is as given below:-

1. INCORRENT DESCRIPTION OF ANOMALIES:

In the show cause notice 6 anomalies were identified. However in the inspection report as submitted, the anomaly No. 2 i.e. certificate of weight and measurement not provided was never identified, which means that the show cause notice and inspection report have striking dissimilarity and proves malafide of the issuing Authority.

2. DELAYED SHOW CAUSE NOTICE:

The inspection is said to have been conducted on 14.02.2023 and a show cause notice was issued on 22.02.2023, i.e. after a delay of 8 days. This clearly means that there was no laps, otherwise the issuing Authority would have put the license

of the FPS immediately under suspension under Rule 4 (1) of the DSA Order, 1981, which is not the case in hand.

3. INCORRECT SHOW CAUSE NOTICE:

The quantity of Rice in the show cause notice which is alleged to have been inspected and found as shortage do not tally. From the bare perusal of figures, the show cause notice is defective and therefore, is liable to be set aside along with all consequential actions taken in furtherance of the show cause notice.

4. NO ENTRY OF INSPECTION IN THE INSPECTION BOOK:

The inspection is alleged to have unearth huge discrepancy. However, there is no entry of the inspection in the inspection book, which raises question on the bonafide of the inspection.

5. NO MATCHING OF STOCK WITH e-POS

The physical inspection of stock has not been corroborated with the e-POS Machine, therefore the show cause notice is illegal and devoid any merit.

6. HASTY AND IMPOSSIBLE ASSESSMENT OF STOCK

The inspection said to have started at 11:20 AM and concluded 30 minutes. During this time it is surprising that a total of 31, 757388 kgs. of stock was evaluated, allegedly e-POS examined and that distribution work was also in progress. It requires super human qualities for 2 individual to conduct such tedious task in minutes.

7. INSPECTION WITH PREJUDICE MIND RESULTING IN MALAFIDE

The bare perusal of the language of inspection sheet reflects that the inspecting authorities had pre-conceived notion that the FPS will be having anomalies.

8. IMPOSSIBILITY OF GROUNDS MENTIONED IN THE SHOW CAUSE NOTICE:

In the show cause notice 6 anomalies were identified. However in the inspection report as submitted, the anomaly No. 2, i.e. certificate of weight and measurement not provided was never identified, which means that the show cause notice and inspection report have striking dissimilarity and proves malafide of the issuing Authority. Further, the photographs annexed clearly prove that none of the anomaly mentioned in the show cause notice existed on the date of inspection. Further the pervious inspection was carried out on 20.01.2023 when no anomaly was detected.

9. NO INSPECTION DESPITE REQUEST FOR RE-ASSESSMENTS OF STOCK:

The appellant made a request on the last date of hearing and also filed an application for reassessment of stocks to prove his innocence as he was condemned un-heard, which is against the principles of natural justice. The request of reassessment of stock has not yet been granted by the appellate authority, which goes against the roots of the established principle of law.

5. In response to the written arguments submitted by the appellant, the respondent submitted counter reply dated 18.05.2023 as given below:

At the time of inspection on the said date, which was 14.02.2023, at the premises of the said FPS No. 8757 around 11:20 AM, the visiting team/officials of circle-14 (Shalimar Bagh) of the department found certain anomalies/irregularities at the said premises.

- i. Authorization is found in damaged condition.
- ii. Certificate of Weight and Measurement not provided by the FPS.
- iii. List of beneficiaries is not displayed.
- iv. Stock board was not displayed.
- v. Board of opening closing time found in damaged condition.
- vi. Vigilance committee board found in damaged condition.

However, at the time of writing down the said anomaly, the said visiting team inadvertently left out the column no. 5 of the description of anomalies in the inspection-cum-search report without writing anything, which is regarding "WHETHER CERTIFICATE OF WEIGHT AND MEASUREMENT FOUND". However, it's a reality the FPS holder failed to provide the said document to the visiting team of the department at the time of said visit and same was mentioned in the report forwarded AC (North). But same could not be mentioned in inspection report due to clerical mistake.

It is hereby submitted that Assistant Commissioner (North) of the department, who is the Competent Authority, as far as this matter is concerned, is also imparted with the duties of the Assistant Commissioner of the Enforcement branch of the department, by the higher authorities of the department. And this office is situated at the Hqrs of the department, which is at the ITO New Delhi, which is far away from the O/o Assistant Commissioner (North) of the Department, which is situated at Gulabi Bagh, Delhi. Moreover, he is not looking after this current case only. He has many other important works to do, as handed over to him by the higher authorities of the department. Further the AC (North) is the designated ERO of AC-04, Adarsh Nagar matters and has to attend the meeting in this regard time to time. So, the delay could be due to his preoccupation in some other important official work/meetings.

It's a fact the quantity of rice calculated after adding the stock as per e-POS and stock release orders/Not entered in e-POS machine and subsequently mentioned in the SCN dated 22.02.2023 issued to the said defaulter FPS Licensee were mismatched. But the same is an inadvertent and typographical error. But it is pertinent to mention here that the said mismatched figure does not affect the variation at all. The figure of variation (in kgs.) found at the time of inspection is a correct one in spite of above said mismatched figures in the calculation of RICE as mentioned in the said SCN.

The variations in the stock of SFAs found at the time of visit/inspection, details of the same mentioned above, have not been marked/mentioned in the inspection book or complaint book maintained by the FPS Licensee/Proprietor, INADVERTENTLY.

The inspection was carried out and started by the said visiting team/officials of circle-14 (Shalimar Bagh) of the department at 11:20 AM and the current stock position receipt of the said FPS was generated at 11:22:43 AM from the e-POS device of the FPS



itself. From this receipt only the variations of SFAs were calculated after checking the physical stock of SFAs found lying at the premises of FPS at the said time of inspection/visit and also after getting the stock position of the FPS as on 14.02.2023 at 13:55:18 PM, from the AePDS portal of the department. So, there is no question of continuous out-flow since morning, as mentioned by the appellant in the said para of the appeal. Copy of the said CURRENT STOCK POSITION receipt of the said FPS of the given date and time, as generated from the e-POS device of the FPS and stock position of the FPS as generated from the AePDS portal of the department has already submitted before the Hon'ble Appellate Authority. Furthermore, the SFA for the forthcoming month was also delivered on the FPS which was not updated on the ePOS machine however the variation was calculated after duly considering the same.

It's a wrong fact that the said visiting team of the department evaluated and calculated 31.757.88 kgs. of the stock of SFAs lying at the said FPS at the date and time of inspection, after inspection, found only 118.39 qtls. Of SFAs lying the FPS. And, the said quantity of SFAs roughly calculated and comes to 237 bags of 50 kgs. each. And nearly 30-40 minutes of time is good enough for calculating the said no of bags of SFAs for a professional team of the department. Moreover, the said bags found to be lying in a stacked manner and not in hap hazard way.

It's totally wrong and baseless. The said inspection/visit has been carried out only after receiving of a complaint against the said FPS licensee/proprietor which was duly forwarded by the O/o Commissioner of the department. Apart from other anomalies/irregularities found at the premises of the said FPS there was variations in the stock of SFAs were also found. The entire inspection was carried out in the presence of the licensee/proprietor of the said FPS namely Sh. Anil Aggarwal. The same has been mentioned in the Inspection-cum-search report prepared, on spot, by the visiting team/officials of the circle-14 (Shalimar Bagh) of the department. Said inspection-sum-search report has also been signed by the said FPS Licensee/Proprietor.

Reply to the argument regarding weight and measurement certificate has already been given at point no. 1 of this reply. However, no photographs of the inspection were annexed by the circle officials with any reply or documents or file, at any stage of this case before any Authority. Further, anomalies can be detected or identified at any point of time. It's not necessary that if none of the anomalies found at a particular time then it could not be found at another date. In this case, anomalies were detected and identified on the given date and time of inspection at the FPS of the defaulter Licensee

The entire inspection on 14.02.2023 was carried out in the presence of the Licensee/Proprietor of the said FPS namely Sh. Anil Aggarwal who willingly sign the inspection report after satisfactory completion of process. As the FPS holder cooperated with the team and satisfied with the inspection and stock calculation hence the FPS was never sealed by the team and after the inspection the FPS and stock was in the control /custody of the FPS holder who continuously distributed the SFA up to 09.03.2023 hence now no relevance of re-assessment of SFAs at the FPS as the FPS holder might have amended the stock as per his will.

6. After hearing exhaustive arguments of both the parties, examining their written submissions and perusing other relevant records placed before me, it is noted that :-

- (a) The appeal/request of FPSs to conduct the stock re-checking is not found feasible at this juncture because the FPS premises is under the complete control of FPS proprietor for a long time and the stock can be easily manipulated by the FPS owner without any interference as department has no control of FPSs premise. As per the procedure the FPS premise will be temporarily sealed if stock assessment was not carried out by any reasons or FPS proprietor not satisfied with the counting of Stock whereas during this inspection stock assessment was carried out in presence of proprietor himself without any objection during inspection, hence it is beyond reasonable doubt that the stock available at this FPS was inventorise inaccurately. The Stock was counted in the presence of FPS proprietor and the same is signed by the proprietor himself without any objections. So, the request of the appellant for re-assessment of SFA at this point of time has not been found reasonable and without any considerable reasons.
- (b) The appellant contention of not matching stock with the E-pos device by inspection team is not found tenable because the Stock variation statement prepared by the inspection team is on the basis of variation of stock found between the stocks available at the FPS vis-à-vis book balance stock at the time of inspection as per current stock report generated from Epos device of FPS. The current stock report was generated at the time of inspection from the Epos device of the FPS no.8757 on biometric authentication by FPS proprietor/nominee which is self-signed by the proprietor, the same is updated or real time data controlled by NIC, Hyderabad. Hence the argument submitted by the appellant is not found tenable and the appellant failed to submitted reasonable arguments on this issue raised.
- (c) The other arguments/submission made by the appellant which is counter replied by the respondent as discussed in proceeding paragraphs were not found reasonable and the same is replied by the respondent which are found reasonable and the same is provided to the appellant.
- (d) The other arguments submitted by the appellant are found insignificant as the main issue against the FPS is variation in stock found during inspection on 14.02.2023, on the basis of above, the insignificant issues like no entry made in the inspection book, assessment of stock in haste and impossible assessment of stock, weight and measurement certificate of weighing scale not available at the FPS during inspection, the appellant cannot be provided relief on the basis of these insignificant issues raised by the appellant.
- (e) Further the arguments/issues submitted by the appellant in respect of proceeding during suspensions/cancellation by licensing authority, which is counter reply by the respondent in proceeding paragraphs are found reasonable and as per departmental rules on the part of respondent. The counter reply submitted by the respondent is supplied to the appellant and no comments is filed by the appellant in this regard during appeal proceedings.
- (f) On perusal of the stock report generated from the Epos device of FPS No.8757 at 11.22 AM and another stock report generated from online Aepds public portal at 13.55 on 14.02.2023, the appellant has only distributed a mere quantity of Wheat- 51 kgs, Rice-34 kgs of Rice and Sugar- 01 Kgs of Sugar from 11.22 AM to 13.55 PM on 14.02.2023, which may be of 04- 05 cards holders approximately, hence the claim of the appellant that there was a huge rush at the time of inspection and the inspection was conducted in haste and was not possible is not found reasonable. However the inspection was conducted in conducive and friendly environment in a fair manner.

The prime motive of the Targeted Public distribution System, which is under the control of Food and Supply department, GNCTD is that the subsidized SFAs allotted under NFSA 2013 meant for the weaker socio-economic strata to reach to the eligible beneficiaries in appropriated quantities as per scale. To curb the diversion of subsidized SFA by FPSs and other agency involved in the distribution of SFA, strong steps are being initiated at each level by this department.

The appellant has failed to submit any plausible/substantive evidence in support of his submission before the appellate authority during appeal proceedings. The other issues raised by the appellant are not found significant in nature and hence cannot be commented upon because all the issues are counter replied by respondent and found reasonable.

Therefore, considering the above facts, I do not find any merit in the appeal hence, the Order dated 06.03.2023 passed by Assistant Commissioner (North) and is upheld and the appeal is accordingly dismissed. Further, the Appellant is at liberty to file appeal to the next higher authority i.e. Financial Commissioner, Govt. of NCT of Delhi against the above mentioned orders if he desires so.

The appeal is disposed of in the aforesaid terms.

Parties be informed accordingly.



(RAHUL SINGH)

SPECIAL COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.SPL.COMM./AA/FPS Appeal/F&S/2023 **58-62**

Dated: **22-06-23**

Copy to:

1. The Assistant Commissioner (North), F&S Deptt., Govt. of NCT of Delhi, Delhi.
2. Sh. Anil Kumar Aggarwal, Proprietor of M/s Aggarwal Store, FPS No.8757 through Assistant Commissioner (North)
3. M/s Aggarwal Store, FPS No.8757, A-42 Village, Haiderpur Delhi.
4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.
5. P.S. to Commissioner (F&S) for information.



(RAHUL SINGH)

SPECIAL COMMISSIONER (F&S)/APPELLATE AUTHORITY