

GOVT. OF NCT OF DELHI
OFFICE OF THE SPECIAL COMMISSIONER / APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
K-BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI-110002.

No. No. Spl.Comm./AA/FPS Appeal/F&S/2023/1289-92

Dated: 25/9/2024

Appeal No.23/2023

In the matter of:

M/s Pooja FPS,
FPS No. 9302, Circle-10 (Sultanpur- Majra)
I-967, Mangolpuri, Delhi

-----Appellant

Versus

The Assistant Commissioner (North-West)
Deptt. of Food Supplies & Consumer Affairs, Delhi -----Respondent

ORDER

1. This order shall dispose of the Representation dated 16.08.2023 filed by Smt. Yogesh Chauhan and Ms. Pooja Chauhan, Proprietors of M/s Pooja FPS, FPS No. 9302, I-967, Mangolpuri, New Delhi against Cancellation Order dated 01-06-2021 passed by the Assistant Commissioner (North-west), against which the petitioner had filed an appeal under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981.
2. The Brief facts of the case are as under:-
 - i. That on 21.05.2021, the FPS No. 9302, M/s Pooja Store was inspected by AC (NW) and other team members under the supervision of Hon'ble Minister Food & Supply.
 - ii. That during the course of inspection, inspecting team founds several irregularities in the FPS at the time of visit i.e. Shop was closed, Sale-Stock Register was not available at that time, stock board was not filled by licensee and record could not handed over for inspection by the proprietor.
 - iii. Accordingly, on the basis of above irregularities, Suspension-cum-show cause notice was issued by the then Licensing Authority to the licensee on 24.05.2021 with the direction to Appellant to appear before the Licensing Authority on 28.05.2021, however, both the partners did not appeared rather relative of proprietors appeared before the then Licensing Authority and requested for some more time for hearing due to medical issue with one of the proprietor.
 - iv. As per the request, next date of hearing i.e 01.06.2021 was given by the Licensing Authority with the direction, if any partner is not well than other partner shall appear with her written submission before the Licensing authority, however, none of the proprietor was appeared on 01.06.2021.
 - v. Consequently, the FPS was cancelled by the Assistant Commissioner (North-West) vide cancellation order dated 01-06-2021 along with forfeiting the entire security

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amount. The appellant filed the present appeal against the mentioned cancellation order dated 01-06-2021 issued by Assistant Commissioner (North-West), F & S Deptt.

- vi. That the then Licensing Authority i.e Assistant Commissioner (North-West) later on 02.07.2021 suo-moto also conducted the filed verification of ration card holders attached with the said FPS for the sale done by the FPS holder in the month of May-2021 and founds a variation of 466 kg short SFA. Accordingly, Show Cause Notice dated 03.07.2021 was again issued to the appellant.
- vii. Aggrieved with the decision of Assistant Commissioner (North-West), the Appellant filed a petition in Hon'ble Delhi High Court No. WP(C) 5905/2021 and Hon'ble High Court of Delhi in para 2, 3 & 4 of its order dated 09-08-2023 held as under:

Para 2 : *In view of the fact that there is an alternate efficacious remedy available to the petitioner, Ld. Counsel for the petitioner seeks permission to withdraw instant petition with liberty to approach Appellate Authority by filing an appeal.*

Para 3 : *Permission and liberty, as prayed for, is granted.*

Para 4 : *Let an appeal be filed within a period of 15 days from today. On the receipt of the appeal, the respondent is directed to dispose of the same within 8 weeks from the date of receipt of the appeal.*

In pursuant to the aforesaid order, petitioner filed an appeal on 16.08.2023. However, as the appeal could not be decided within 8 weeks, the petitioner also filed a contempt petition in Hon'ble Delhi High Court No. CONT CAS (C) 773/2024. Hon'ble High Court in para 8 of its order dated 13-05-2024 disposed of the aforesaid contempt petition and held as under:

Para 8 : *Considering the submissions made before this Court and considering the directions passed by this Court vide order dated 09.08.2023, it is manifest that the Appellate Authority was required to dispose of the appeal of the petitioner within 8 weeks from the order dated 09.08.2023. However, considering the submissions made before this court, it is directed that the respondents shall complete the hearing and pass appropriate orders in the pending appeal of the petitioner by 31st August, 2024.*

- 3. The submission of the Appellant in her representation are summarized as under:
 - i. That during the time of inspection on 21.05.2021, the appellant was not feeling well and gone to hospital for taking medicine so his father along with Smt. Yogesh Chauhan (other proprietor of the FPS) reached the FPS and shown all records to the inspecting team.
 - ii. That the appellant vide Suspension-cum-show cause notice dated 24.05.2021 issued by AC(NW) was called for hearing on 28.05.2021 but due to medical issue, appellant fail to attend the hearing and the same was informed by her father to the AC(NW) and seeks some more time for filing the reply of Suspension-Cum-Show Cause Notice.
 - iii. That again the appellant was called by the AC (NW) for hearing on 01.06.2021 and accordingly her father submitted the written reply to said Suspension-cum-Show cause notice to AC (NW) on 01.06.2021.



- iv. That AC (North-West) on 01.06.2021 despite considering the written submissions of the Appellant cancelled the license of the FPS.
- v. That appellant had also filed an appeal before the Hon'ble High Court of Delhi against the cancellation of the FPS and after the hearing through Video Conference on 30.06.2021, AC (NW) sought all record of the FPS from the Appellant and accordingly, all the record of the FPS was submitted by the appellant.
- vi. Subsequently, AC (NW) had conducted the field verification of the sale done by the FPS holder in the month of May-2021 and created the Variation of 466 Kg Short SFA. Further, it was submitted by the appellant that the field verification conducted by the AC (NW) is fake as it is not possible to verify the statements of 1200 Ration Card beneficiaries in such a short period.
- vii. That , AC(NW) on 03.07.2021 again issued show cause notice to the appellant wherein explanation regarding variation of 466 kg short was sought, however, neither the field verification report nor detail regarding name of beneficiaries who have provided less or nil SFA was provided by the then Licensing Authority. The appellant submitted that no ration card beneficiary had any complaint with the FPS.

4. The submission of the Respondent and argued as under:-

- i. That on the basis of inspection done on 21.05.2021, the Suspension Cum Show Cause Notice was issued to the Licensee on 24.05.2021 with the direction to appear before Licensing Authority on 28.05.2021 along with her written submission and current records.
- ii. That in response to the Suspension Cum Show Cause Notice both the partner were failed to appear on 28.05.2021 rather than father of 1st partner, Ms. Pooja Chauhan appeared and husband of 2nd Partner Smt. Yogesh Chauhan appeared with his own written submission that her daughter Ms. Pooja Chauhan (Partner) is not feeling well & under treatment. He requested to give some more time to appear.
- iii. That again hearing notice was issued to both partners with direction to appear on 01.06.2021 but again both the partners Ms. Pooja Chauhan and Smt. Yogesh Chauhan did not appear on 01.06.2021, therefore, it was presumed by the then Licensing Authority that they have nothing to say in this regard and accordingly, the licence of the FPS was cancelled on 01.06.2021.
- iv. That four inspection team were deployed by the then Licensing Authority on 02.07.2021 to conduct door to door survey of 1200 cards holders attached with the FPS for the month of May-2021 and as per report submitted by the inspection team variation of 466kg short SFA was found at the FPS.
- v. As per Department Circular, if variation is above 100 kg than immediate suspension of license with forfeiture of whole security amount is to done and also FIR be lodged against the FPS holder.
- vi. That sufficient opportunities were given to the FPS License/partners vide notice dated 24.05.2021, 28.05.2021 and 03.07.2021 but both the partners did not appear before the then Licensing Authority.
- vii. That one of the proprietor had send the reply of notice dated 03.07.2021 through WhatsApp and the said reply was not found satisfactory by the then Licensing Authority.



5. After hearing contentions of the parties, examining their written submissions and perusing other relevant records placed in the case file, it is noted that:-
- AC (NW) had passed the impugned cancellation order after giving opportunity to the petitioner by issuing notice, however, the petitioner could not present his version before the Licensing Authority as he could not appear before him due to pressing reasons.
 - In response to the submission made by the appellant regarding providing the details of door to door survey report conducted by AC (NW) for verification of sale done by the FPS in the month of May-2021 and on the basis of which variation of 466 kg short SFA arose, respondent has not given any proper justification.
6. In the light of the aforesaid the impugned cancellation order is accordingly set aside and the matter is remanded back to AC (North-West)/Respondent with a direction to conduct a fresh enquiry against the Appellant 9302, M/s Pooja FPS under the circle-10, Sultanpur Majra and pass fresh order after complying with the principle of natural justice. The respondent will furnish copies of all documents to the Appellant as requested by him within 02 weeks, where after the Appellant will have 02 weeks' time to submit their reply. After consideration of the Appellant's reply the respondent will communicate the date of personal hearing to the Appellant and thereafter pass an appropriate order in accordance with law after granting the said hearing to the Appellant.

Needless to say, this Authority has not expressed any opinion on the merit of the appellant's claim as raised in the petition except procedural deficiencies on the part of respondent. In case the appellant is aggrieved by said subsequent order passed by the respondent it will be open to the appellant to seek legal recourse as permissible in law.

The appeal is disposed of in the aforesaid terms.

Parties be informed accordingly.



(SUSHIL SINGH)

**SPECIAL COMMISSIONER (F&S)/
APPELLATE AUTHORITY**

No. No. Spl.Comm./AA/FPS Appeal/F&S/2023/1289-92

Dated: 25/9/2024

Copy to:-

- The Asstt. Commissioner (North-West), F&S Department, GNCT of Delhi.
- Smt. Yogesh Chauhan, Prop. of M/s Pooja FPS, Circle-10, (Sultanpur Majra), I-967, Mangolpuri, through Assistant Commissioner (North-West).
- Smt. Pooja Chauhan, Prop. of M/s Pooja FPS, Circle-10, (Sultanpur Majra), I-967, Mangolpuri, through Assistant Commissioner (North-West).
- SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.



(SUSHIL SINGH)

**SPECIAL COMMISSIONER (F&S)/
APPELLATE AUTHORITY**