

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

No.SPL.COMM./AA/FPS Appeal/F&S/2023/764-767

Dated: 11/9/2023

2nd Review Appeal No. 22/2022
Review Appeal No 15/2020
Previous Appeal no 24/2019

In the matter of:

M/s Ashok Kumar,
FPS No. 7572, Circle-40,

Sh. Mukesh Aggarwal, Proprietor,
R/o 118/8, Gautam Nagar,
New Delhi-110049.

Versus

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

..... Appellant

.....Respondent

Date of hearing:-10.08.2023

ORDER

The instant appeal has been filed by Sh. Mukesh Aggarwal, Proprietor of M/s Ashok Kumar (FPS No. 7572) under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against Cancellation Order dated 15.03.2019 passed by the Assistant Commissioner (New Delhi)/ Licensing Authority and to review the order dated 28.01.2020 and 08.07.2021 of the then Appellate Authority i.e. The Commissioner, Food & Supply Department.

Shri Mukesh Aggarwal, Proprietor/Appellant was present.

Shri Ashok Kumar, Assistant Commissioner (New Delhi)/Respondent was present.

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

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Brief facts of the case are as under:-

An enforcement crack team comprising FSO Circle-01 & 07, FSI C-64 in presence of Special Commissioner visited the FPS no 7572 on 30.01.2019 and found various anomalies at the FPS which are inter-alia summarized as under:-

1. FPS was found closed during working hours.
2. Mandatory Vigilance Committee board was not displayed.
3. The license of FPS had expired on 08.10.2018 and not renewed after that.
4. Net Variation of 15.53 Qtls of SFAs (Wheat – 9.83 Qtls Short, Rice – 5.68 Qtls excess and Sugar- 0.02 Qtls excess) found.

Accordingly, a Suspension-cum-show cause notice was issued to the appellant on 14.02.2019 to which reply was filed by appellant. The Licensing Authority after going through all the records, facts and considering reply of the applicant cancelled the defaulting FPS vide order dated 15.03.2019. Appellant then aggrieved with the cancellation order preferred an appeal before the Appellate Authority which was duly considered and heard. The Appellate Authority after providing due opportunity of hearing to the appellant dismissed the appeal vide order dated 28.01.2020 and upheld the cancellation order dated 15.03.2019. Later, the appellant aggrieved with both the orders filed a review appeal before the Appellate Authority which was heard and dismissed devoid of merits by the Appellate Authority vide order dated 08.07.2021.

The appellant has filed the present 2nd review appeal against the cancellation order dated 15.03.2019 and to review both the Appellate Authorities orders dated 28.01.2020 & 08.07.2021. Meanwhile, in 2020 the appellant has also filed an appeal before the next Appellate Authority i.e. Financial Commissioner, while the appeal filed was duly under consideration with Financial Commissioner Court and the appellant filed the above mentioned review appeals without bringing the facts in knowledge of Appellate Authorities. The Financial Commissioner Court dispose off the appeal of appellant vide order dated 16th March, 2023 with the direction to take appropriate action through speaking and reasoned order. However, the appellant did not intimate the Hon'ble Financial Court that his review appeal was duly considered and disposed off vide order dt 08.07.2021 and the instant appeal is the 2nd review appeal.

The Appellant argued through submission inter-alia summarized as under:-

The license of the FPS was applied online in the department on 01.10.2018 on time and the same has been renewed by the department and communicated to the FPS holder but while cancelling and upholding the order of Licensing Authority/Asst. Commissioner (New Delhi), The Commissioner F&S did not consider the facts that license of the FPS was renewed by the F&S department for the period of 09.10.2018 to 08.10.2021. Even then the same has been added as short coming by the crack team as well as by the Licensing Authority /Asst. Commissioner (New Delhi) while cancelling the authorization.



The Commissioner F&S while cancelling and upholding the order of Asst. Commissioner (New Delhi) did not consider that no variation was found by the circle FSO while opening the sale of FPS on the following day of inspection of the crack team. And after inspection the shop should have been sealed by the staff of crack team which was required but now the department cannot take the plea that there was a gap between the conduct of inspection and opening of sale.

The Licensing Authority and Commissioner F&S did not considered the fact that the crack team wrongly evaluated the quantity of SFAs received by the FPS holder and the crack team while submitting his report shown the shortage only but the real quantity which was received in the FPS was not shown in the order. The fact that the crack team during inspection of the FPS found excess of 5.68 Qtls. of rice and 0.02 Qtls. of sugar is not tenable as the godown cannot supply the SFAs in excess.

The Licensing Authority and the Commissioner, F&S did not consider the fact that no violation of provision of Delhi Specified Articles (Regulation and Distribution) order 1981 was occurred on the part of the FPS holder even then his authorization was cancelled which is quite arbitrary and against the rule of natural justice.

The Licensing Authority/Assistant Commissioner (New Delhi), Respondent submitted and argued as under:-

The Department vide its orders dated 28.01.2020 & 08.07.2021 has mentioned that the licensee has been given full opportunity considering all the facts provided by the licensee. The licensee is relying on the fact that the inspection by the crack team was carried out on 30.01.2019 and the sale was opened on 01.02.2019 by the circle FSO. There is a time gap between the inspection and opening of sale and there is a possibility of managing things since no sealing of premises took place on the 30.01.2019 after the inspection of the crack team. The order dated 28.01.2020 & 08.07.2021 was given a thought on this and passed after due consideration. There is an apparent violation of Delhi Specified Articles (Regulation of Distribution) Control Order 1981 by the FPS holder.

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

The fact regarding renewal of license was duly considered, accepted and elaborated vide Appellate Authority vide order dt 8.7.2021 but the FPS holder is reiterating the same fact again and again.

The appellant continuously through all his appeals strongly relying on the contention that while opening of sale of SFAs on the following day the FSO did not report any variation and open sale for full SFAs. Further the FSO found each and every bag of SFAs intact, sealed and with PDS marking jute bags. The same fact was duly heard in all the appeals but same is not tenable as there was time gap between inspection and opening of sale during which the FPS was under full custody of the FPS holder.



The FPS holder also contended that the FPS was not sealed by the crack team but same is not the departmental procedure as if inspection is carried out satisfactorily no sealing of FPS is required.

The crack team prepared the Stock Variation Statement in detail which is self explanatory. The Appellant contention regarding wrong calculation is not supported by any credible argument/evidence.

The irregularity regarding violation in the quantity of SFAs found during the inspection is serious in nature and clear cut violation of Delhi Specified Articles (Regulation and Distribution) order, 1981 therefore as per rules in place the FPS was cancelled after following due process considering all the facts & submissions by providing ample opportunity of being heard keeping in view the principal of natural justice.

Therefore, considering the above facts, I do not find any merit in the appeal hence, the Order dated 15.03.2019 of Assistant Commissioner (New Delhi) and order dt 28.01.2020 and 08.07.2021 of the then Appellate Authority i.e. The Commissioner, Food & Supply Department are upheld and the review 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.



(SUSHIL SINGH)

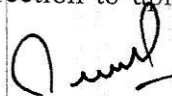
SPECIAL COMMISSIONER(F&S)/APPELLATE AUTHORITY

No.SPL.COMM./AA/FPS Appeal/F&S/2023/764-767

Dated: 01/9/2023

Copy to:-

1. The Asstt. Commissioner (New Delhi), F&S Department.
2. Mr. Mukesh Aggarwal, Prop. of M/s Ashok Kumar (FPS No. 7572), Circle-40, through Assistant Commissioner (New Delhi).
3. Mr. Mukesh Aggarwal, Prop. of M/s Ashok Kumar (FPS No. 7572), R/o. 118/8, Gautam Nagar, New Delhi-110049.
4. 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