

OFFICE OF THE COMMISSIONER/APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
GOVT.OF NCT OF DELHI,
ROOM No.108,1ST FLOOR,K-BLOCK,VIKAS BHAWAN,I.P.ESTATE,
NEW DELHI-110002.

No.SPL.COMM./AA/FPS Appeal/F&S/2023 | 23 - 25

Dated: 26.05.23

Appeal No.14/2022

M/s. Devki Nandan,
FPS No.6006, C-04, Adarsh Nagar

Shri Madan Lal Gupta, (Prop.).

.....

Appellant

Versus

The Assistant Commissioner (North)
Deptt. of Food Supplies Consumer Affairs,
Delhi.

Respondent

Date of Hearing:- 05.05.2022

ORDER

The instant Appeal has been filed by Sh. Madan Lal Gupta, Prop. **M/s. Devki Nandan, FPS No. 6006, C-04, Adarsh Nagar** under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against the Cancellation Order No F.AC(N)/F&S/FPS-6006/2018/542-47 dated 03.03.2018 passed by Assistant Commissioner (North).

Shri Madan Lal Gupta, Appellant/Proprietor along with his counsel Sh Yogesh Kumar, Advocate was present.

Sh Ajay Sinandi, Assistant Commissioner (North)/Respondent was present.

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



Brief facts of the case are as under:-

The authorization of M/s. Devki Nandan, FPS No. 6006, C-04, Adarsh Nagar was valid upto 03.03.2018 and the License was due for renewal on 13.02.2018. The proprietor of the FPS Sh. Madan Lal Gupta submitted application for renewal in the circle office on 29.01.2018. The circle office had not recommended his application for renewal of authorization/ license citing reasons the FPS holder has already completed 60 years of age and there is no nominee for partnership. In response to the proposal/recommendation of circle office, circle-04, Adarsh Nagar, the then licensing authority cancelled the authorization on 03.03.2018 because DOB recorded in the PAN Card of Sh. Madan Lal Gupta is 11.06.1948 and he has completed 60 yrs of age and as per departmental orders/guidelines, the renewal of existing FPSs shall not be allowed if age is more than 60 yrs of the licensee.

The proprietor of FPS filed an appeal on 12.07.2022 against the cancellation order dt 03.03.2018. The appellant prayed to quash impugned cancellation order dated 03.03.20218 passed by the respondent and restore the FPS license of the appellant, issue appropriated direction for its renewal and condone delay in filling of the present appeal and entertain it.

The appellant submitted:-

That he was running a FPS. In 2018 , the appellant approached office of the respondent for renewal of his authorization for further three years with effect from 13.02.2018 but his authorization/license was not renewed and vide impugned order dated 03.03.2018, the license was cancelled by the respondent citing the reason that date of birth of the appellant is 11.06.1948 and he has completed 60 years of age and as per guidelines of the department renewal of an existing license shall not be allowed to shoes who are more than 60 years of age.

That on 08.07.2022, the appellant came to know through his counsel regarding order No. F5(7)/2013/F&S/MISC/P&C/226-231 dated 21.03.2018 issued by policy branch of the department with prior approval of the competent authority whereby age limit in case of existing/old license for renewal of license has been dispensed with.

That after coming into force order no F5(7)/2013/F&S/MISC/P&C/226-231 dated 21.03.2018, the cancellation order dated 03.03.2018 passed by the respondent becomes infructuous and invalid. It is submitted that relevant part the guidelines dated 27.07.2015 has been amended by virtue of said order and hence, it is submitted that according to the fresh licensee. In case of existing/old licensee there is no age bar for holding license to run the FPS by him and renewal of his license.

That the above FPS is only source of income for the appellant. It is submitted that under the facts and circumstances of the present case, impugned cancellation order is not maintainable against the appellant and is liable to be quashed. It is submitted that the appellant has already suffered a lot as the authorization to run the above FPS is non-

functional on account of impugned cancellation order passed by the respondent, Moreover, the appellant has no financial support from his sons.

Further written argument were submitted by the appellant counsel during appeal proceeding on 08.05.2023 wherein it is submitted that:-

That in year 2018, the appellant approached office of the respondent for renewal of his authorization for further three years with effect from 13.02.2018 and his authorization/license was not renewed and vide impugned order dated 03.03.2018, the license of the appellant was cancelled by the respondent citing the reason that date of birth of the appellant is 11.06.1948 and he has completed 60 years of age and as per guidelines of the department renewal of an existing license shall not be allowed to those who are more than 60 years of age.

That for the benefit and livelihood of those licensee who had become senior citizen being over 60 years of age, an order No. F. 5(7)/2013/F&S/Misc./P&C/226-231 dated 21.03.2018 was issued by the Policy Branch so as to enable them to run their FPSs whatever be their age. It is submitted that relevant part of the guidelines dated 27.07.2015 has been amended by virtue of said order and hence, it is submitted that according to amended guidelines of the department age criterion is applicable for a fresh licensee In case of existing/old licensee there is no age bar for holding license to run the FPS by him and renewal of his license. It is submitted that issuance of policy order in question has also been admitted by the respondent in his reply and proceedings dated 03.05.2023.

That no prior/show cause notice was given to the appellant before passing of the impugned cancellation order by the respondent. It is submitted that under the facts and circumstances of the case, the respondent is not competent to pass the impugned cancellation order in his suo-moto capacity. It is submitted that the respondent cancelled authorization of the appellant by way of exercising his power under section/clause 5 of the Delhi Specified Articles (regulation of Distribution) order 1981, It is submitted that there are certain conditions under sub clause (3) of clause (5) of the order 1981 under which the Deputy Commissioner may cancel authorization of a FPS holder in his suo-moto capacity but none of such conditions are applicable in case of the appellant. Hence, the cancellation order dated 03.03.2018 passed by the respondent becomes invalid.

That in the light of policy order in question and being aggrieved by the impugned cancellation order dated 03.03.2018; the appellant filed the present appeal on 12.07.2022. It is submitted that on 08.07.2022, the appellant came to know through his counsel regarding policy order in question whereby age limit in case of existing/old licensee for renewal of license has been dispensed with. It is submitted that if the appellant had knowledge about order dated 21.03.2018 at the relevant time; the present appeal would have been filed on time. So there is delay in filing of the present appeal because of above reason.

That the above FPS is only source of income for the appellant. It is submitted that under the facts and circumstances of the present case, impugned cancellation order is not maintainable against the appellant and is liable to be quashed. It is submitted that the appellant has already been suffered a lot as the authorization to run the above FPS was cancelled on 03.03.2018 and till date, the above FPS is non-functional on account of impugned cancellation order passed by the respondent. Moreover, the appellant has no financial support from his sons.

In response to the appeal filed the Assistant Commissioner (North), Respondent submitted:-

That order no F5(7)/2013/F&S/MISC/P&C/226-231 dated 21.03.2018, wherein the age for renewal of license vide policy letter no.F.5(7)/P&C/Misc/P.File/1071-1075 dated 27.07.2015 which was less than 60 yrs of age has been amended as *"the point 2 Clause B(iv) may be read as age for renewal of license may be dispensed with"*.

However the policy order dated 21.03.2018 does not speak about the implementation of above order whether it is prospective or retrospective in nature from the date of issuance. As any adverse decision may invite many other such appeals and a precedent will be set.

All the submission made by the appellant and respondent available on record are carefully and judiciously examined. On scrutiny of the arguments and documents submitted by the respondent during appeal proceeding it has been found that the license/authorization was cancelled by the then licensing authority as per direction provided vide sub-para (iv) of para B of order no.F.5(7)/P&C/Misc/P.File/1071-1075 dated 27.07.2015 on the basis of age more than 60 yrs. at the time of application submitted by the appellant.

The appellant contention regarding the exercising of the power under section 5 of Delhi Specified Articles (Regulation of Distribution) order 1981 and the cancellation order dated 03.03.2018 is invalid. In this regard Deputy Commissioner, F& S is enshrined with all the powers for suspension/cancellation/termination of authorization as per the section-4 and 5 of Delhi Specified Articles (Regulation of Distribution) order 1981 and the issued raised by the appellant is untenable. Further, the appellant submitted that no prior/show cause notice was given to the appellant before passing of the impugned order, in this regard no clarification was warranted from the appellant as the cancellation order is as per the departmental policy hence no need to issue show cause notice to the appellant.

Vide order no F.5(7)/2013/F&S/MISC/P&C/226-231 dated 21.03.2018, the age for renewal of licensee shall be less than 60 years for renewal of authorisation/license on the date of submitting application. In the instant case the age of licensee on the date of submitting application was above 60 years and hence the application for renewal was not considered by the licensing authority is found legitimate and lawful at the point of time.

On perusal of order no F5(7)/2013/F&S/MISC/P&C/226-231 dated 21.03.2018 wherein point 2 clause B (iv) may be read as " *the age shall be calculated on the last date of submitting application for a fresh license. Age for renewal of license may be dispensed with*" however no retrospective benefits have been provided vide this order. As the license of appellant was cancelled on 03.03.2018 and at that time the policy vide order dated 21.03.2018 was not in force whereas the policy for issuance and renewal of authorisation/license is governed by guidelines enumerated vide order dated 27.07.2015.

Therefore, considering the above facts and submission made during appeal proceedings, I do not find any merit in the appeal hence, the order dated 03.03.2018 of Assistant Commissioner (North) 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.


(RAIHUL SINGH) 26/5/2023

SPL. COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.SPL.COMM./AA/FPS Appeal/F&S/2023 | 23 - 25

Dated: 26.05.23

Copy to:-

- ✓ The Assistant Commissioner (North ~~West~~), F&S Deptt. GNCT of Delhi
Sh. Mohan Lal Gupta, Prop. M/s. Devki Nandan, FPS No.6006, C-04 through
Assistant Commissioner (North).
- Sh. Mohan Lal Gupta, Prop. M/s. Devki Nandan, FPS No.6006, C-04 R/o 157/4,
village Azadpur Delhi
- ✓ SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the
order on Departmental website.


(RAIHUL SINGH) 26/5/23

SPL. COMMISSIONER (F&S)/APPELLATE AUTHORITY