

**OFFICE OF THE SPECIAL COMMISSIONER/ APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
GOVT. OF NCT OF DELHI
ROOM No. 110, 1st FLOOR, K-BLOCK, VIKAS BHAWAN, I.P. ESTATE,
NEW DELHI-110002**

No. F. SPL.Comm/AA/FPS Appeal/F&S/2022/ 1089-93

Dated: 18/10/2022

Appeal No. 05/2022

In the matter of:

M/s. Dhanno Devi Fair Price Shop,
FPS No. 6837, Circle-65 (Seelampur), Delhi.
Sh. Rishipal

Appellant

Versus

The Assistant Commissioner (North - East)
Deptt. Of Food Supplies & Consumer Affairs
Delhi

Respondent

ORDER

The order shall dispose of the appeal filed by Shri Rishi Pal, Prop. **M/s. Dhanno Devi Fair Price Shop, FPS No. 6837, Circle -65** under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against the Cancellation Order No. F. AC(NE)/F&S/FPS-6837/C-65/2021/1281-1287 dated 27.11.2021 passed by Assistant Commissioner (North-East),

Shri Rishi Pal, Appellant/Prop. alongwith Counsel Shri Satya Prakash Gautam, Advocate were present.

Shri Lalit Kumar Gautam, Assistant Commissioner (North-East), Respondent alongwith Shri Nilesh Kumar, FSO (C-65) were present.

Brief facts of the case are as under :-

1. A telephonic communication was received in the Department of Food & Civil Supplies from the Police Station Jafrabad, Delhi on 03.04.2020 at 10.30 AM wherein it was informed that the Police had received a complaint against the FPS No.6837 situated at C-567, Chauhan Banger, Gali No.17, Seelampur, Delhi. Shri Sushil Singh, S.I. Delhi Police also informed on telephone that the FPS was reportedly closed at the time of seizure of 04 bags i.e. in the night of 02.04.2020 and neither FPS Licensee nor Salesman was available at the spot. Though the bags were not weighed but they contained rice and the same were placed in the Police Station, Jafrabad, Delhi.
2. On the complaint from Police Station, Jafrabad, Delhi an Inspecting Team of F&S Department visited the FPS No. 6837, M/s. Dhanno Devi at 1.30 P.M. on 03.04.2020 and carried out the inspection wherein mainly net variation to the tune of 807 Kg (Wheat - 750kg {Excess} Rice - 57kg {Short} **750kg+57kg=807kg**) was found. Other discrepancies as detailed in cancellation order dated 08.07.2020 were also reported.
3. Vide Suspension cum Show Cause Notice dated 16.04.2020, the Licensee was given opportunity to explain the reason of shortcomings on 20.04.2020. Shri Rishi Pal appeared and asked for more time on medical ground accordingly the case was adjourned for 25.04.2020. On his request, the photocopies of the documents as asked were supplied on 28.04.2020 and the hearing was fixed for 01.05.2020, on the date he again sought some more time to file his reply. On 23.05.2020 he filed his reply.

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4. In his reply, Shri Rishi Pal denied the charges stating that he was not aware from where the Police recovered 04 bags of rice in question and those 04 bags of Rice have not been recovered from his shop.
5. As per Cancellation Order there was no concrete explanation & evidence to justify the variation of 807 kg reported by the Inspecting Team hence, found the reply unsatisfactory.
6. In Appeal he stated that neither the bags were belonging to the shop of appellant nor rice contained inside the bags. It was also submitted by him that the bags seized by police were Plastic Bags whereas, the appellant was receiving supply of rice in Jute bags. The entire conspiracy was workout to implicate the appellant in false case through fabricated and concocted facts. The complaint against appellant was false and based on 04 planted plastic bags.
7. The Appellant pleaded in the Appeal that the Inspecting staff miscalculated the variation. Moreover, it was submitted that the quantity of stock was not physically calculated but based on guess.
8. The matter was **remanded back to the Assistant Commissioner to enquire and decide** the matter afresh. **After making inquiry and door to door survey it was concluded that nothing adverse was emerged and the Licensing Authority restored the shop vide order dated 25.10.2021.**
9. Vide Cancellation Order dated 27.11.2022 the Assistant Commissioner again cancelled the shop on the plea that the **police investigation is pending.**
10. The appellant filed the present appeal for relief stating therein that if once the Assistant Commissioner gave clean chit to FPS, then only on the simple telephonic direction of Hon'ble Minister he cancelled the FPS not because of any irregularity or breach of rule or law. He stated that the Respondent violated the Principle of Natural Justice hence relief be sought.

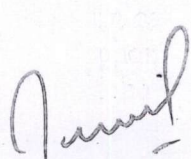
The Case was called and heard at length.

The Counsel of the Appellant reiterated the course of incidents from 02.04.2020 and submitted that neither the owner nor the salesman of shop was available on the spot and his client was not aware from where the Police recovered 4 bags of rice in question and these bags neither belongs to him as the PDS supply comes in jute bags whereas these bags were plastic bags and seems to be planted. He stated that his shop is situated at sensitive area and after unfortunate communal riots, some anti social elements of the area started conspiracy against the FPS. On 02.04.2020 some anti social elements of area came at the shop in question and threatened to appellant that either leave that shop or he will face consequences.

The Counsel added that the matter was remanded back to the Assistant Commissioner to enquire and decide the matter afresh by the then Commissioner (F&S)/Appellate Authority vide order dated 24.05.2021. After making inquiry and door to door survey it was concluded that nothing adverse emerged and the Licensing Authority restored the shop vide order dated 25.10.2021.

The Assistant Commissioner again cancelled the FPS vide Cancellation Order dated 27.11.2021 on the plea that the Hon'ble Minister has telephonically directed that relief only be granted if police investigation conclusively establishes the innocence of the dealer. The FIR as on date stands, as no report of closure has been received from the police.

The Counsel of appellant added that if once the Assistant Commissioner after due investigation gave clean chit to FPS holder then how only on the simple telephonic direction of Hon'ble Minister he cancelled the FPS without query of any irregularity or breach of rule or law. He referred the proviso of Section 4 of Sub-Clause (1) or Sub Clause (2), of Delhi Specified Food Articles (Regulation & Distribution) Control Order, 1981 and submitted that the reasonable opportunity of being heard was not offered to the petitioner before passing the IInd cancellation order in question. He strongly argued on the point that FIR does not means that a person is guilty rather every person is innocent until proven guilty and the same is often held by the Supreme Court of



in number of cases also. He also submitted that in this case the Assistant Commissioner (North-East) had already discharged the petitioner on merits vide his order dated 25.10.2021 hence, the FIR has become automatically infructuous, the Licensing Authority cannot play hot and cold at the same time. He ended his argument with the remarks that the Respondent violated the Principle of Natural Justice hence relief may be given. He also filed written submission in this regard.

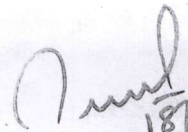
The Assistant Commissioner (North-East)/Respondent reiterated the contents of both the cancellation order and submitted that as per the record, cancellation order dated 24.11.2021 was issued on the telephonic direction of Hon'ble Minister (F&S) by the then Assistant Commissioner (North-East).

After hearing contentions of both the parties, examining written/verbal submissions and perusing other relevant records placed before me, it is noted that after due enquiry e.g. door to door survey and another test by way of ration lifting on e-pos, which is now adopted method of distribution whereby the Licensing Authority found nothing adverse and vide order dated 25.10.2021 restored the FPS in question but just on the telephonic message on the ground of pendency of FIR the FPS was again cancelled without offering any opportunity of hearing to the petitioner. The cancellation order dated 27.11.2021 does not clarify any further breach of law by the petitioner and as regard innocence of the FPS holder, the Assistant Commissioner already enquired the matter by different ways at his level and no adverse remark was noted in his restoration order dated 25.10.2021. As regard pending FIR it is a principle of law that a person is innocent until proven guilty.

Therefore, keeping in view of principle of natural justice, fair and impartial adjudication, the Order of Assistant Commissioner (North-East) dated 27.11.2021 is set aside and the Licence/Authorisation in respect of M/s. Dhanno Devi, FPS No.6837, Circle-65 (Seelampur) is restored.

The appeal stands disposed of.

Ordered accordingly. Parties be informed.


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(SUSHIL SINGH)

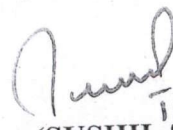
SPECIAL COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.SPL.Comm./AA/FPS Appeal/F&S/2022/1089-93

Dated: 18/10/2022

Copy to :-

1. The Assistant Commissioner (North-East), F&S Deptt. GNCT of Delhi
2. Shri Rishi Pal, Prop. M/s. Dhanno Devi (FPS No. - 6837), C-65 (Seelampur) through Asstt. Commissioner (North-East).
3. Shri Rishi Pal, Prop. M/s. Dhanno Devi Fair Price Shop (FPS No. 6837), Circle-65 (Seelampur) R/o 4/2257, Street No.2, Bihari Colony, Shahdara, Delhi-110032.
4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.
5. PS to CFS for information pls.


18/10/2022
(SUSHIL SINGH)

SPECIAL COMMISSIONER (F&S)/APPELLATE AUTHORITY