

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. Spl.Comm./AA/FPS Appeal/F&S/2023/1230-32

Dated: 19/9/2024

In the matter of:

M/s Shyam Store,
FPS No. 7455, Circle-03 (Timarpur)
Dera Baba Banda Bahadur,
Bhai Parmanand Colony, Delhi-110009

ORDER

1. This order shall dispose of the Representation dated 13.06.2019 filed by Sh. Gajraj Proprietor M/s Shyam Store, FPS No. 7455, Circle-03 (Timarpur), Dera Baba Banda Bahadur, Bhai Parmanand Colony, Delhi-110009 against the cancellation Order dated 27.02.2019 passed by the Licensing Authority/Assistant Commissioner (North), against which the petitioner had filed 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. A surprise inspection on 03.10.2018 was carried out at FPS No. 7988, M/s Shyam Store, Circle-03 (Timarpur) by a team constituted by the Food and Supplies Department on a complaint received from Deputy Secretary, Ministry of Food Public Distribution, Government of India and a net variation of stock short to the tune of 132.40 Qlts. (Wheat 129.68 Qlts. & Rice 02.72 Qlts.) was observed.
 - ii. The Licensing Authority AC (North) issued a Show Cause Notice dated 11.01.2019 to the Appellant and subsequent to unsatisfactory reply filed by the Appellant the authorization of the said FPS was cancelled vide challenged order dated 27.02.2019.
 - iii. Thereafter, the inspecting team with the approval of Competent Authority filed a Tehrir/complaint in Police Station Mukherjee Nagar on 13.02.2019.
 - iv. The aggrieved Prop. Sh. Gajraj has filed the instant appeal and requested the Appellate Authority to set aside the impugned order dated 27.02.2019 and restore the Fair Price Shop No. 7455.
3. The submissions of the Appellant in his representation are summarized as under:
 - i. That the order of cancellation dated 27.02.2019 is void ab-initio and has been passed mechanically by way of violating principles of natural justice as the Appellant was neither provided copy of the Whats app Complaint dated 03.10.2018 of Deputy Secretary, Ministry of Food & Public Distribution, Govt. of India and was also not provided with any stock variation statement allegedly prepared on 03.10.2018 and has relied upon Regulation 4 of Delhi Specified Articles (Regulation and Distribution) Order, 1981 and

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- has also relied on judgment dated 16.12.2021 passed by Delhi High Court in W.P.(C) No. 13394/2021 in case titled "M/s Arora Provision Store vs. Govt. of NCT of Delhi & Ors."
- ii. That the Appellant also submitted that the alleged huge variation of 132.40 Qtls. (129.68 Qtls-Wheat and 02.72 Qtls.- Rice) short is also perverse and wrongly calculated and in order to substantiate the same, following has been submitted:
- a) Admittedly the inspection was carried out on 03.10.2018 by the officials of respondent department, on which date the officials only handed over a copy of Entry-cum-Search-cum-Recovery-cum- Counting-cum-Weighment Memo dated 03.10.2018 to one Rajpal. However, in the said document dated 03.10.2018 there is not even a single whisper of any allegation of variation found in the Fair Price Shop of the appellant.
 - b) That the concerned officials on the said date of inspection i.e. 03.10.2018 wrongly calculated the stocks available in the Fair Price Shop as 305 bags of Wheat and 81 bags of Rice were lying at the Fair Price Shop of the appellant. Accordingly, only due to deficient counting of food grain bags, the entire controversy of variation has been initiated against the appellant.
 - c) The fact that there was no variation in the Fair Price Shop of the appellant and the stock of SFA available in the appellant Fair Price Shop is further fortified by further two documents. Firstly, on the same date of inspection i.e. 03.10.2018, the said FSO Ashwani Kumar, Circle-03, Timarpur visited in the morning at 11.30 A.M., again visited the appellant Fair Price Shop at 3.30 P.M. and made the following entry in the Inspection Book of the appellant:
"Visited the FPS No.7455, M/s. Shyam Store on 03.10.2018 at 3.30 P.M. and found FPS opened, inspected the relevant records."

Secondly, the alleged variation / shortage of 129.68 quintals of Wheat 2.72 quintals of Rice is also falsified by the fact that the same quantity of SFA, was already distributed to the entitled card holders in the month of October, 2018 itself without any objection from the Food and Supplies Department.

- d) That it is very crucial to note that it was only on 11.01.2019 for the first time after expiry of three months from the date of inspection, the appellant was served with a Show-cause Notice alleging variations in question.
 - e) That the very fact that the Department did not initiate any action for three months from the date of inspection in a case where in such a huge quantity of SFA was found short, itself falsify the case of the respondent. The fact that during those three months the appellant was permitted to distribute SFA to the entitled card holders without any complaint also cannot be ignored and overruled.
4. The submissions of the respondent and arguments are as under:
- i. That in response to the complaint received from Deputy Secretary, Ministry of Food Public Distribution, Government of India a surprise inspection was carried out on 03.10.2018 by the staff of Food and Supplies Department. During inspection a net variation of stock to the tune of 132.40 Qtls. (Wheat 129.68 Qtls. & Rice 02.72 Qtls.) was observed.



- ii. Thereafter, a Show Cause Notice on 11.01.2019 was issued to the appellant with the direction to appear before the Licensing Authority in person or through the authorized representative on 16.01.2019 at 04.00 PM along with explanation in writing about the above mentioned variation of SFAs noticed during the inspection.
 - iii. That the Authorized Representative Sh. Shailendra submitted reply of the appellant to the Licensing Authority and after perusing the reply nothing concrete was found and thereafter the authorization of the said FPS was suspended.
 - iv. That the Appellant was further provided opportunities to be heard on 25.01.2019 and 22.02.2019. The authorized representative Sh. Shailendra of the appellant submitted that the inspecting team visited twice the said premises on the day of inspection (03.10.2018) at 11.30 AM and 03.30 PM and the officials seized relevant records of the FPS i.e. stock register, sales register, cash memo and prepared entry-cum-search-cum-recovery-cum-counting-cum-weightment memo.
 - v. That the Licensing Authority after perusing the said submissions of the Licensee, rejected the same stating that the copy of inspection book of the FPS signed by the FSI in question at 03.30 PM could have fabricated and cancelled the authorization of the said FPS vide order dated 27.02.2019.
 - vi. That subsequently, as per the guidelines issued by the department and after obtaining the approval of the Competent Authority, the inspecting team filed a Tehrir/complaint against the Proprietor Gajraj of M/s Shyam Store, FPS No. 7455 in Police Station Mukherjee Nagar on 13.02.2019.
 - vii. That the appeal filed by the appellant is not maintainable on merits so it is prayed that the said appeal of the FPS Licensee may be set aside.
5. After hearing the contentions of both the parties, examining their written submissions and perusing other relevant records placed in the case file, it is noted that:-
- I. That there was an apparent delay on the part of the respondent in conducting the enquiry against the Appellant in view of the following reasons:
 - a) Admittedly, it was in pursuance of a Whats-app Complaint dated 03.10.2018 by Deputy Secretary, Ministry of Food & Public Distribution, Govt. of India that Appellant FPS was inspected and allegedly huge variation of shortage of 129.68 Qlts. of Wheat 2.72 Qlts. of Rice was found. However, instead of immediately suspending the license of the Appellant, it was only after 3 months on 11.01.2019, for the first time show-cause notice was served upon the Appellant.
 - b) The very fact that the Appellant was allowed to continue to distribute food grains to the card holders for the month of October, 2018, November, 2018, December, 2018 also raises question on the part of the Respondent in conducting the enquiry against the Appellant.
 - c) Allegedly there is a huge variation of shortage of 129.68 quintals of Wheat 2.72 quintals of Rice, however, the Respondent has not placed on record any complaint by any card holder of not receiving the ration, which also indicates that the variation may be unsubstantiated.
 - d) From the perusal of the record it appears that no proper opportunity was afforded to the Appellant to file reply to the show-cause notice dated 11.01.2019 as neither



a copy of the Whats-app Complaint dated 03.10.2018 was provided to the Appellant nor a copy of the stock variation statement allegedly prepared on 03.10.2018 was given to the Appellant which also gets confirmed from Entry-Cum-Search Cum-Recovery-Cum-Counting-Cum-Weighment Memo dated 03.10.2018 as in the said document dated 03.10.2018 there is no clear allegation of variation found in the Fair Price Shop of the appellant.

- e) The Hon'ble High Court in a similar case in W.P.(C) No. 13394/2021 in case titled "M/s Arora Provision Store vs. Govt. of NCT of Delhi & Ors." had set-aside the cancellation order, where requisite record was not furnished by the Respondent and remanded the matter back to the Respondent.

- II. In the light of the aforesaid the impugned order is accordingly set aside, the matter is remanded back to AC (North)/Respondent with a direction to conduct a fresh enquiry against the Appellant 7455, M/s Shyam Store under the circle-03 (Timarpur) 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 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 fault 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.



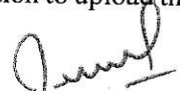
(SUSHIL SINGH)
SPECIAL COMMISSIONER (F&S)/
APPELLATE AUTHORITY

No.SPL.COMM./AA/FPS Appeal/F&S/2023 /1230-32

Dated: 19/9/2024

Copy to:-

1. The Asstt. Commissioner (North), F&S Department, GNCT of Delhi.
2. Sh. Gajraj Proprietor M/s Shyam Store, FPS No. 7988, Circle-03 (Timarpur), through Assistant Commissioner (North).
3. SSA (IT), F&S Deptt., K-Block, VikasBhawan, Delhi with the direction to upload the order on Departmental website.



(SUSHIL SINGH)
SPECIAL COMMISSIONER (F&S)/
APPELLATE AUTHORITY