

OFFICE OF THE SPECIAL COMMISSIONER/APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMER AFFAIRS
GOVT. OF NCT OF DELHI
ROOM NO. 101, 1ST FLOOR, K-BLOCK, VIKAS BHAWAN, I.P. ESTATE,
NEW DELHI-110002.

NO. SPL.COMM./AA/FPS Appeal/F&S/2022/1124-1128

Dated: 24/11/2022

Review Appeal No. 01/2022

Appeal No. 23/2020

In the matter of:

M/s. Shiv Store,
FPS No. 9170, Circle-02 (Burari)
Delhi.

Shri Satish Kumar

.....

Appellant

Versus

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

.....

Respondent

Date of Hearing: 20.10.2022

ORDER

The Order shall dispose of the appeal filed by Shri Satish Kumar, Prop. M/s. Shiv Store, FPS No. 9170, Circle-02 (Burari) under Clause 6(6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against Cancellation Order dated 09.02.2016 passed by Assistant Commissioner (North) and to further review the Order dated 18.12.2021 passed by the then Appellate Authority.

Shri Satish Kumar, Appellant alongwith Shri Shailendra, Authorised Representative were present.

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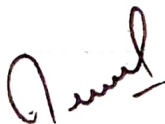
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Shri Ajay Kumar Sinandi, Assistant commissioner (North)/Respondent was present.

The Case was called and heard at length.

The Authorised Representative of the Petitioner submitted the following:-

1. That the licence No. 9170 in respect of M/s. Shiv Store, Licensee was issued which was valid upto 04.10.2018. On 09.12.2015 a team of FSO (C-02), Burari inspected the FPS of the petitioner who was away to attend a natural call for 45 minutes and had left his friend Neeraj Tyagi to look after the FPS at that time.
2. Shri Neeraj Tyagi requested Inspecting Team to wait but the same was declined by the officers and they seized the current record i.e. Sales Register, Cash Memos and Stock Register in absence of Licensee. They conducted the physical verification and prepared Entry – Cum- Search – Cum- Recovery – Cum – Counting – Cum Weightment Memo on the spot. Copy of the same was not provided to Shri Neeraj Tyagi. The Team got his signatures on blank paper which was later on produced as his statement.
3. Vide Suspension Cum Show Cause Notice dated 14.12.2015 the FPS was suspended on the ground of variation to the tune of 22.18 Qtls. Wheat and 4.62 Qtls Rice (Excess). On 06.02.2016 two show cause notices were issued in respect of the same inspection wherein one Show Cause Notice depicts Excess (13.62 Qtls) other Show Cause Notice depicts Shortage (30.26 Qtis). None of them explains as to how they have arrived at their respective conclusions.
4. That while the enquiry in suspension order dated 14.12.2015 and other show cause notices dated 06.02.2016 was pending for 15.02.2016 and 22.02.2016, the respondent vide order dated 09.02.2016 and 29.11.2016 cancelled the FPS of the Petitioner.
5. There is no allegation of receipt of any complaint by the card holders of not receiving the SFAs.
6. The Authorised Representative stated that the authorization of FPS was issued on 05.10.2015 with the direction to issue SFAs w.e.f. 12.11.2015 and in the meantime within one month the inspection was conducted on 09.12.2015 by the respondent. Being a new one un-experienced licensee the petitioner could not submit the legitimate reply.
7. That in cancellation order dated 09.02.2016, Five (05) card holders in question already submitted affidavits that they have received SFAs whereas the FPS was cancelled on the ground that these 05 card holder were not presented before the respondent. The respondent did not consider the affidavits submitted by the card holders.




8. The Authorised Representative of the Appellant submitted that the Respondent violated the Sec. 100 (4) of the CRPC 1973 and Sec. 25 of Control Order 1981.
9. He stated that the charge of seal tempering was an afterthought of the Department and not mentioned in cancellation order.
10. He referred the judgment of Hon'ble High Court of Calcutta in the matter of W.P.No. 1299 of 2009 titled Arun Agarwal V/s The State of West Bengal & Ors. in his claim.
11. The Authorised Representative ended the argument with the request for grant of opportunity by remanding back the case to the respondent so that the appropriate enquiry may be made in the matter.

The Respondent contended the following:-

That the Inspecting team followed the rules & regulation in conducting the inspection of FPS. The Order dated 09.02.2016 was issued after following due process and provided sufficient opportunity to FPS holder to explain the discrepancies. He explained the reason of issuing two Show Cause Notice on same day that at the time of sealing the FPS the stock was excess and whereas on de-sealing the FPS the stock was found short as the seal was not found intact. He further submitted that two proceedings were running against FPS No. 9170. First was on the basis of inspection dated 09.12.2015 carried out by FSO & FSI of C-02 (Burari) wherein the record of FPS seized and SVS dated 09.12.2015 was prepared. Second, proceeding was on the basis of directions issued vide CFS note dated 14.12.2015 thereby attaching a list of 08 ration card holders who were denied ration for the month of November and December, 2015. While taking action for first proceeding the shop was suspended and while taking action for second proceeding the shop was cancelled. The Respondent objected by stating that the appellant is trying to mix up the matter. A letter dated 23.12.2015 was written to SHO concerned to lodge an FIR against unknown person for tempering of seal. The FPS holder did not preferred to refute the charge mentioned in the SCN dated 16.01.2016 in his reply but untruthful affidavits with the connivance of card holders in question. Sufficient opportunities were given to the petitioner to respond but he failed to submit any concrete reply. He submitted that even the petitioner was called for collecting the documents but he never turned up.

After hearing contentions of both the parties, examining their written/verbal submissions and perusing other relevant records placed before me, it is evident that the FPS was allotted to FPS holder on 05.10.2015 and SFA was allocated to the FPS w.e.f. 12.11.2015 and in this very short spell of time the inspection was conducted on



09.12.2015 by the Department. So it seems that being a new incumbent the allottee was not well versed with the duties & responsibilities of FPS holder. Therefore, the opportunity of being heard and waiting of petitioner's responses thereof may be expected from the Licensing Authority. But it is not understandable why the Licensing Authority issued two show cause notices on the same day i.e. 06.02.2016 declaring the SFAs as short and further as excess. It seems the calculation of SVS was not done in a proper manner. Further, when two SCN No. 1911-13 & 1914-16 dated 06.02.2016 in respect of enquiry were issued on the same date with direction to explain the reason on 15.02.2016 & 22.02.2016 respectively for the stated lapses cancelling the FPS on 09.02.2016 hurriedly without waiting for reply from the petitioner. The contention of the respondent that when the FPS was de-sealed, the stock was found short as the seal was not found intact and at the time of sealing the shop the stock was excess so a FIR was lodged for tempering of seal but on perusal of Cancellation order dated 09.02.2016 the charge of tempering of seal was not incorporated in the order. In view of above, it seems that the enquiry was not done properly without addressing the contentions of the petitioner as well as in a hurried manner without granting ample opportunities of hearing and waiting of petitioner's thereof. The complete disposal lacks due procedural approach on the part of respondent therefore it leaves space for benefit of doubts to the petitioner.

Therefore, keeping in view of principle of natural justice, fair and impartial adjudication, the case is remanded back to Licensing Authority/Assistant Commissioner (North) with the direction to decide the matter afresh on merit after due consideration of complete facts, circumstances of the case, addressing all the contentions of the petitioner.

The appeal is disposed of in the aforesaid terms.

Ordered accordingly. Parties be informed.


24/11/2022

(SUSHIL SINGH)

SPECIAL COMMISSIONER (E&S)/APPELLATE AUTHORITY

NO. SPL.COMM./AA/FPS Appeal/F&S/2022/1124-1128

Dated: 24/11/2022

Copy to:

1. The Assistant Commissioner (North) F&S, GNCT of Delhi.
2. M/s Shiv Store, FPS No. 9170, Circle-02 (Burari), Delhi through Assistant Commissioner (North).
3. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Department website.
4. Shri Satish Kumar, M/s Satish Store, Khasra No. 5/8,9,10.41 Feet Road, Tomar Colony, Kamalpur, Burari, Delhi, Mob: 9212463159.
5. P.S. to Commissioner (F&S), GNCTD.


24/11/2022
(SUSHIL SINGH)

SPECIAL COMMISSIONER (F&S)/APPELLATE AUTHORITY