

**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 / 1293-95

Dated: 26/9/2024

**Appeal No.25/2023**

In the matter of:

M/s Bhagwati Store,

FPS No. 7988, Circle-60 (Krishna Nagar)

C-8, Hazara Park, Krishna Nagar, New Delhi-11051-----Appellant

**Versus**

The Assistant Commissioner (East)

Deptt. of Food Supplies & Consumer Affairs, Delhi -----Respondent

**ORDER**

1. This order shall dispose of the Appeal dated 06.11.2023 filed by Sh. Mehkar Singh, Proprietor M/s Bhagwati Store, FPS No. 7988, C-60 (Krishna Nagar), C-8, Hazara Park, Krishna Nagar, New Delhi-110051 against Cancellation Order dated 04-10-2023 passed by the Assistant Commissioner (East), against which the petitioner had filed an 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. On 05.09.2023, a surprise inspection was conducted by Food and Supply Officer and Food and Supply Inspector of Circle-60 (Krishna Nagar) at FPS No. 7988, M/s Bhagwati Store in Circle-60 (Krishna Nagar).
  - ii. During the course of inspection a variation in Wheat 487.98 (Excess) kg and Rice 304.04 Kg. (Short) was reported by the inspection team with some other discrepancies/irregularities.
  - iii. Consequently, the FPS was cancelled by the Assistant Commissioner (East) vide cancellation order dated 04-10-2023 along with forfeiting the entire security amount.

528/SSA/24  
27/09/2024

Tarun  
Ravi P1. upload.

Kujaw  
03/10/2024

- iv. Aggrieved by this decision of AC (East), the appellant filed an appeal No.WP(C)13592/2023 before the Hon'ble Delhi High Court and Hon'ble Delhi High court vide order dated 13.10.2023 directed the respondents to furnish the documents sought by the Petitioner within seven working days from the receipt of the said letter and further directed that the appeal be preferred within two weeks of the receipt of the information before the Appellate Authority and the same shall be decided by the Appellate Authority within eight weeks from that date. Subsequently, as per the directions of Hon'ble Delhi High Court, the appellant filed the present appeal against the mentioned cancellation order dated 04-10-2023 issued by Assistant Commissioner (East)/Licensing Authority.

3. The submission of the Appellant in his representation are summarized as under:

- i. That as per the direction of Hon'ble High Court vide order dated 13.10.2023 read as "*The respondent are directed to furnish the documents sought for by the petitioner within seven working days from the receipt of the said letter*" but due to non-supplying of the documents by Circle Office, the present appeal is being filed after waiting for 07 days for setting aside the impugned cancellation order dated 04.10.2023 passed by the respondent- Assistant Commissioner (East).
- ii. That the impugned order of cancellation dated 04.10.2023 is illegal unjustified because the main basis of passing the impugned cancellation order is variation of SFA but neither the Suspension order or the cancellation order explains as to how the said variation was calculated.
- iii. That the said variation is premised on the basis of recording/data in E-POS machine which the official of the respondent seized during the inspection but despite representation the respondent failed to provide a copy of the same and proceeded to cancel the license of the Petitioner's Fair Price Shop.
- iv. That a proper opportunity be afforded to the petitioner to explain the said variation, if any, and door to door survey is carried out of ration card holders to know the truth in allegation. If every ration card holder has received ration and there is no variation, how the cancellation of license of the petitioner be justified.




- v. That the respondent after giving suspension cum show cause notice to the petitioner immediately transferred the Specified Food Articles (Ration) to some other third party i.e M/s Kumar & Company FPS No. 7990 and to FPS No. 5660 and the whole operation was done to give undue benefit to the said two shops.
- vi. That the Inspecting Team has also not counted the bags lying in the shop by taking them outside the shop and without segregating all the bags of wheat and rice which were kept on the other side and it is just by way of doing in a haphazard manner the bags have literally been recorded which is not as per the record and totally false allegations have been made against the petitioner.
- vii. That Assistant Commissioner (East) admitted that subsequent to the Inspection conducted on 05.09.2023, not only the FPS. was allowed to continue but was also supplied/issued specified food articles for distribution to the Card holders in the month of September, 2023 which itself fortified lapse on the part of respondent/Department as the said action is in violation of the Policy/Guidelines as per which it is incumbent upon the Department to immediately suspend the FPS license in case of variation of more than 100 Kgs. The said inaction on the part of department/respondents itself fortified that there was no actual variation in the stock of the FPS shop but has been artificially created.
- viii. That artificial variation has been created by the officials as on the one hand 487.98 kgs wheat has been shown in excess and 304.04 Kgs Rice has been shown as short which can also be on account of wrong counting of the physical stock available in the FPS because instead of counting wheat bags, the respondents counted Rice bags which was shown short and wheat quantity was shown in excess.
- ix. That the Hon'ble Supreme court of India in the case of Rajendra Prasad vs State of U.P &Ors. Reported as (2009) 17 SCC 790 set aside cancellation order of license of Fair Price shop for not affording opportunity of hearing to the licensee.
- x. That the issue sought to be raised is squarely covered by the judgement dated 16.12.2021 of Hon'ble High Court in the case of M/s Arora Provision Store vs Govt. of NCT of Delhi &Ors. wherein Hon'ble court set aside the order of cancellation due to non-supply of relevant data.

9/11/23

4. The submission of the Respondent and arguments are as under:-

- i. That the allegation raised by the Appellant regarding non supplying of documents in compliance of Hon'ble Delhi High Court order dated 13.10.2023 is not true as no request for providing of documents was received from Appellant.
- ii. That the stock variation statement was prepared after the inspection was done and the stock position showing in the E-POS machine was got signed by Sh. Harish (Salesman) and a copy of the same was also given to him at the time of inspection. Further, the physical stock found at the time of inspection was duly provided to Sh. Harish Salesman and the same was also signed by him.
- iii. That the stock variation found after preparation of stock variation statement was duly sent to the Appellant in Suspension-cum-show cause notice dated 14.09.2023.
- iv. That proper opportunities were provided to the Appellant vide Suspension-cum-show cause notice dated 14.09.2023 and vide letter dated 21.09.2023. Mr. Harish, Salesman vide his reply dated 21.09.2023 apologized and requested to give another chance and assured that in future such lapses will never occur. Since, this reply was filed without any authorization from the licensee, the licensee was directed to appear before the AC (East) on 27.09.2023 and to submit reply in person or through authorized person.
- v. That in response to aforesaid direction, Licensee of FPS No. 7988, M/s Bhagwati Store vide letter dated 27.09.2023 replied due to salesman being new, he could not display board. Mr. Mehkar Singh, Proprietor requested for pardon for shortcoming found in the shop and submitted that in future, such a mistake would not be repeated. Considering the facts that the E-pos data and physical stock position was given to Mr. Harish (Salesman) at the time of inspection and considering the explanation/ reply filed by Appellant unsatisfactorily, the cancellation order was issued.
- vi. That the stock was transfer after issuance of Suspension-cum-show cause notice dated 14.09.2023 on 15.09.2023, as required, to nearby FPSs, for the convenience of the beneficiaries.

*Handwritten signature*

- vii. That the bags were counted properly in the presence of Mr. Harish (Salesman) which were consented and duly signed by him in his statement.
  - viii. That the inspection was carried out on 05.09.2023 and E-POS machine was not seized at that time. The FPS holder continuously distributed SFA till 15.09.2023. Available stock position was mentioned in Inspection Book and E-POS machine stock reading was given physically to Mr. Harish (Salesman).
5. After hearing contentions of the parties, examining their written submissions and perusing other relevant records placed in the case file, it is noted that:-
- i. In response to the submission made by the appellant regarding non-supplying of recording/data in E-POS machine which the officials seized during the inspection and on the basis of which the said variation occurs, nothing plausible has been commented upon by the respondent.
  - ii. The submission made by the Appellant regarding providing the relevant documents prior to cancellation of FPS so that proper justification/submissions could have been provided by the appellant before the Licensing Authority is tenable and deserves relief.
  - iii. In the light of the aforesaid the impugned cancellation order is accordingly set aside and the matter is remanded back to AC (East)/Respondent with a direction to conduct a fresh enquiry against the Appellant 7988, M/s Bhagwati Store under the circle-60, Krishna Nagar and pass fresh order after complying with the principle of natural justice. However, the functioning of the FPS will remain suspended till further decision of Licensing Authority. The respondent will furnish copies of all documents to the Appellant as requested by him within 04 weeks, where after the Appellant will have 04 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.
- 

- iv. 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 deficiencies 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 /1293-95

Dated: 26/7/2024

Copy to:-

1. The Asstt. Commissioner (East), F&S Department, GNCT of Delhi.
2. Sh. Mehkar Singh, Prop. of M/s Bhagwati store, FPS No. 7988, Circle 60, (Krishna Nagar), C-8, Hazara Park, Krishna Nagar, Delhi-110051, through Assistant Commissioner (East).
- ✓ 3. 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