
(2007) 10 DEL CK 0084
In the Delhi High Court
Case No : Writ Petition (C) 879 of 2007

Bansal Traders

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Citation : (2007) 10 DEL CK 0084

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Raghuinder Verma, for the Appellant; Sunil Bagai, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Issue Rule. Mr. Sunil Bagai, learned Counsel waives notice of Rule. With consent of counsel, the matter was heard finally.

2. The petitioner seeks quashing of orders dated 12.9.2005 and 10.6.2005 whereby the respondents declined his Explanation to show cause notice issued in respect of a license for Public Distribution Outlet.

3. The brief facts of the case are that on 5.1.1989, the petitioner was granted authorization/license to operate a Fair Price Shop in Shahpur Jat Village, New Delhi under the Delhi Specified Food Articles (Regulation and Distribution) Order 1981. It is claimed that the Fair Price Shop functioned to the petitioner's satisfaction till 2002. Sugar, one of the specified food articles, was withdrawn sometime in 2001. It could not be sold in the public distribution system by reason of a Government order. It is also claimed that around the same time, the sale of wheat and rice became un-remunerative because the price of these commodities was lower than what was offered in Fair Price Shops.

4. The petitioner apparently did not operate his outlet/license for more than two years. In this background, he was issued a show cause notice why the permission/license ought not to be cancelled, on 4.3.2005. The petitioner in his

reply dated 12.4.2005 stated as follows:

To

Assistant Commissioner(Delhi)

Food Supply Department

New Delhi

Sir,

With reference to you Memo dated 06.04.2005 I have to state that I am not able to bring the draft due to domestic problem and also I was not well. But now I may be permitted to bring the draft. It is for your information.

With thanks,

5. On 10.6.2006, the Assistant Commissioner, Food and Civil Supplies Department confirmed the show cause notice thus resulting in cancellation of the license. The order reads as follows:

OFFICE OF THE ASSISTANT COMMISSIONER(SOUTH) FOOD and SUPPLIES
DEPARTMENT, GOVT. OF NCT OF DELHI, ASSIAN MARKET, PUSHP VIHAR,
SECTOR III, M.B. ROAD, NDEHI

In the matter of:

O R D E R

This order shall dispose off the proceedings initiated vide show cause notice(s) No. AC(S)FandS/2005/2423 dated 4.3.2005 against M/s. Bansal Traders FPS No. 2853 situated at _____ under circle No. 08 vide this notice the FPS holder was show caused why the authorisation of FPS should not be cancelled with immediate effect and the security amount may be forfeited. Following discrepancies were mentioned in Show Cause Notice dated 4.3.2005 and thereafter Memorandum dated 6.4.2005.

1. Non depositing of draft of SFAs for a long time.

The licensee had submitted the reply against the show cause notice. The reply was considered but not found satisfactory Therefore the same is rejected by the Competent Authority.

Now, Therefore, I, C.M. Dhingra, Assistant Commissioner, (South), Food and Supplies Department, in exercise of power conferred upon me under Delhi Specified Articles (Regulation of distribution) order, 1981 do hereby cancel the authorisation of M/s. Bansal Traders FPS No. 7853 with immediate effect and also forfeit entire amount of security to state.

6. The petitioner represented to the authorities on 27.6.2005 again reiterating that the license was cancelled as his domestic position was not good for the last

few years due to which he was unable to deposit money for lifting the stock. He preferred an appeal to the Commissioner, Food and Civil Supplies. That appeal was disposed off by the second impugned order dated 12.9.2006. The Appellate Authority considered the same ground i.e. inability to deposit money and lift the specified food articles as the petitioner's family condition was not good and that there were no demands of articles among the consumers. After considering the materials, the appeal was rejected in the following terms:

As per the record made available by the Asstt. Commissioner (South), it is apparent that the appellant did not apply for grant of any leave during the period his FPS remained non-functional. As per departmental instructions F.28/4/97/FandS/PandC/1105 dated 15.07.1999, no FPS holder can avail leave on medical ground for a period exceeding one year, while in this case the appellant had not been lifting SFAs since long prior to cancellation of his FPS. The contention of appellant that he kept his FPS opened during the intervening period does not hold ground as by merely keeping the shop opened without taking active part in the distribution of SFAs to the eligible ration card holders does not absolve him of his responsibility towards the consumers. It was also clarified by the department to all the PDS outlet holders vide Order No. F.15(44)/CFS/D/2004/498 dated 11.11.2004 that non-depositing of the draft by an FPS holder to lift SFAs for a period exceeding three months will lead to cancellation of the license.

In the totality of facts and circumstances of the case, I do not find any merit in the appeal that may warrant any interference with the order of the Asstt. Commissioner (South). I, Therefore, reject the appeal filed by Shri Ram Kumar, Proprietor of M/s. Bansal Traders, FPS No. 7853 (Circle-8) and uphold the order of the Asstt. Commissioner (South) No. F.AC(S) \\FandS/2005/515-20 dated 10.6.2005 being just and reasonable. Ordered accordingly. Parties to be informed.

7. Learned Counsel relies upon a circular dated 23rd March, 2004 which inter alias gave a one time opportunity to Fair Price Shops and other outlets which were lying unfunctional for a period longer than three years to apply within three months from the date of issue and for revival of their old license. The relevant extract of the said circular dated 23.3.2004 are as follows:

1. In the case of KODs, the license is to be renewed after a period of three years. In case the license is not renewed, the Licensing Authority should initiate proceedings for cancellation of the same. In the case of FPS, there is no such requirement of renewal.

2. However, in all such cases where licenses of FPS and KODs are lying non-functional for one reason or the other for a period of longer than three years, one time opportunity will be given to such licensees, where the cancellation procedure has not been initiated, to apply within three months from the date of issue of these instructions to the Zonal Asstt. Commissioner for revival of their old licenses, giving sufficient reasons for non-initiation during the intervening period.

8. Learned Counsel contended that petitioner's case is squarely covered by the above circular, that the respondent ought to have given effect to it revived the license, and accepted his request. He also relied upon a judgment of this Court in *Kala Ram v. Administrator/Lt. Governor and Ors.* in W.P.(C) 23833/2005 decided on 19th March, 2007. Learned Counsel relied on two other orders issued by the Commissioner reviving cancelled licenses on an application of circular dated 10.3.2005.

9. Learned Counsel for the respondent opposed the proceedings. It was contended by learned Counsel that reliance on the General circular dated 23.3.2005 is not appropriate because para 2 indicates that where proceedings were initiated, the benefit would not ensure to the license holder. It was contended that the petitioner faced the show cause notice and was unable to show any compelling necessity why he could not function. In these circumstances, he could not claim benefit of a general circular which clearly excepted from its purview the Fair Price Shops that were facing proceedings for cancellation. It was contended that the judgment in *Kala Ram* was rendered on different facts where the cancellation proceedings were not initiated. Learned Counsel also sought to distinguish other Fair Price Shops whose licenses were restored by the Commissioner by stating that the Explanations were actually accepted. It was submitted that there can be no general rule that those who for their own reason did not choose to operate the licenses, had necessarily be given the renewal as claimed.

10. The above factual matrix would show that that the petitioner admittedly did not operate the Fair Price Shops/outlets despite reviving a license for more than two years. When issued with the show cause notice, he gave an excuse without outlining with any facts or particulars as to what was the compelling necessity which impeded from carrying on business. While it is true that the general order of 23rd March, 2004 relieved the existing condition that licenses of outlets lying closed for a certain period ought to be renewed license as one time measure, yet what cannot be lost sight of is that the circular does not ipso facto clothe the petitioner with an inherent right for renewal of license. The license has to be seen in the larger perspective i.e. for ultimate benefit of the general public who have to be supplied specified food articles at a controlled rate, in sufficient quantities, and most crucially, with dependable regularity. If the petitioner chose to keep himself away and did not do business because it was not economically feasible, the respondents" exercised their general and larger power to cancel the license. This larger right, in my opinion, was expressly reserved on a fair reading of Clause 2 of the circular dated 23.3.2004 Therefore, I reject the petitioner's contention that he had right to renewal of his license in terms of said circular.

11. Likewise, reliance on *Kala Ram*'s judgment is not apposite because the factual narrative in that judgment does not indicate that the petitioner was facing any cancellation proceedings. As regards the other instances, the Commissioner restored the licenses on being satisfied that the license holders were prevented,

for sufficient cause, from operating the FPS. Lastly, here the petitioner has chosen to approach this Court after a considerable period of time; the second impugned order is dated 12.9.2005 and these proceedings were filed in 2007.

12. In view of the above findings, I am of the opinion that this petition is unmerited; it is accordingly dismissed.