**(2010) 12 DEL CK 0402**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 4543 of 2010 and CM Application 9012 of 2010

Late Brij Kishore through Vishnu Saxena — APPELLANT

Vs

Assistant Commissioner (South), Department of Food and Supply and Another — RESPONDENT

**Date of Decision :** 14-12-2010

**Acts Referred:**
Essential Commodities Act, 1955 — Section 3

**Citation :** (2011) 1 AD 123 : (2011) 176 DLT 652

**Hon'ble Judges :** Dr. S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** V. Shrivastav, for the Appellant; Aruna Tiku, A.S.C., for the Respondent

**Final Decision :** Allowed

# Judgement

S. Muralidhar, J.

1 The Petitioner is aggrieved by the orders dated 18th March 2009 and 28th April 2010 passed by the first Appellate Authority in Appeal No. 36/AS/2008 and Review Petition No. JS(S)-17/2009 (FPS) respectively.

2 The Petitioner is a holder of a fair price shop (''FPS'') licence No. 6523 which was issued in the name of his father late Shri Brij Kishore. It is stated that on the demise of his father the licence was transferred in the Petitioner''s name. The FPS is located in Circle No. 33 (Saket). The Petitioner claims to be maintaining records, stocks and sales registers as per the provisions of the Delhi Specified Articles (Regulation of Distribution) Order, 1891 (hereinafter ''the DSA Order'') as well as Public Distribution System (Control) Order, 2001 (hereinafter ''the PDS Order''). On 21st July 2008 an order was issued by the Assistant Commissioner (South), Department of Food and Supply (''DFS''), Government of NCT of Delhi (''GNCTD'') stating that 78 Antyodaya Anna Yojana (''AAY'') card holders attached to the Petitioner''s FPS were found not residing at the given addresses.

 

Consequently by an order dated 21st July 2008 the supply of specified food articles (''SF As'') in respect of the said 78 cards was directed to be stopped with immediate effect. Admittedly, the Petitioner immediately complied with this direction.

3. On 31st July 2008 a suspension-cum-show cause notice was issued by Respondent No. 1 to the Petitioner alleging that the Petitioner was not running his FPS as per the DSA Order and had violated relevant provisions of the DSA Order and the PDS Order.

4. Against the said suspension-cum-show cause notice dated 31st July 2008, the Petitioner filed an appeal which was dismissed by the Additional Commissioner by an order dated 18th March 2009. The Additional Commissioner held that the bogus cards identified by the DFS had confirmed that the individuals in whose names those cards were issued never existed at the given addresses. It was observed that the FPS licencees should wash off their hands on the ground that they had bonafide issued SF As to the said card holders. As regards the present case, it was observed as under by the Additional Commissioner:

whether any ghost ration card was recovered by the investigating agencies from the premises of Appellant or not is not in the knowledge of the Department, but the fact remains that Appellant has shown issue of SF As against these ghost cards, and since these ghost card holders do not exist, the Appellant has diverted highly subsidized food-grains to open market and has thus benefitted unlawfully. Therefore, he cannot be allowed to go scot-free in the matter.

5. The Petitioner then filed a review petition which was dismissed by the Joint Commissioner on 28th April 2010. This time it was noticed that the Anti Corruption Branch (''ACB'') and the Central Bureau of Investigation (''CBI'') had recovered bogus cards from the possession of some of the FPS outlets and that a chargesheet had been filed by the CBI against the then Inspector, Circle No. 33, DFS as well as the Petitioner herein in the Court of Special Judge, Patiala House Courts, New Delhi on 24th December 2009. The order dated 28th April 2010 recorded as under:

This is a case of conversion of BPL to AAY cards in collusion and submission of fake/forged documents in order to get the existing BPL cards converted into AAY ration cards so as to get the ration at concessional rate and misutilize the same dishonestly by selling open market at much higher rates. In view of such complicity of the licensee, the appellate authority has considered all the evidence available to him. There is no ground for review of the appellate order.

6. The Petitioner has placed on record the entire copy of the chargesheet filed by the CBI in RC-DAI-2008-A-0039 dated 30th September 2008. It was submitted by the learned Counsel for the Petitioner that there is no evidence to link the Petitioner with the issuance of the 78 AAY cards where the card holders were not found at the given addresses. No such bogus card was recovered from the Petitioner''s premises. There was nothing to show that the Petitioner had signed

 

any of the application forms on the strength of which such cards were issued. It was submitted that the show cause notice was based on surmises and that the impugned order had been passed without there being any evidence whatsoever. It was submitted that even in the chargesheet apart from the bare allegation that the Petitioner had prior knowledge of the fact that nine card holders did not exist, there was no evidence to link the Petitioner with the issuance of such cards.

7. Counsel for the Respondent produced records of the case. She submitted that apart from the chargesheet filed by the CBI the only ground on which the suspension-cum-show cause notice was issued to the Petitioner and his FPS licence was cancelled was that he had issued SF As against 78 cards which were found to be bogus. She fairly stated that there was nothing on the record, apart from the chargesheet of the CBI itself, to show that the Petitioner had acted in connivance with the Circle Inspector who was one of the accused in the criminal case or that the Petitioner was involved in the preparation of any of the 78 cards.

8. The above submissions have been considered.

9. This Court finds that the chargesheet was filed by the CBI on 30th September 2008 whereas the suspension-cum-show cause notice was issued by the DFS to the Petitioner on 31st July 2008. This led to the cancellation order dated 15th October 2008. There is no reference in the said order to the chargesheet filed by the CBI. The only allegation against the Petitioner in the cancellation order dated 15th October 2008 is that SF As have been issued in respect of 72 bogus AAY cards attached to the Petitioner''s FPS. Although it was alleged therein that the Petitioner had violated the provisions of the DSA Order, no specific provisions thereunder were mentioned. A reference was made to Clause 7 the PDS Order and para 5 of the Annexure to the PDS Order. A perusal of Clause 7 shows that it deals with the entitlement of ration card holders to essential commodities. It state that the FPS owners should not retain ration cards after the supply of essential commodities. Para 5 of the Annexure to the PDS Order sets out the responsibilities and duties of FPS owners. Those include sale of essential commodities as per entitlement of the ration card holders, display of information on a notice board at a prominent place including list of BPL and AAY card holders, maintenance of the stock register, issue of sale register and maintenance of records etc. There is no specific responsibility on the FPS licence holder to actually verify the genuineness of the AAY cards produced for availing of the ration. As regards the cancellation of the licence, Clause 7 of the DSA Order talks of cancellation upon conviction of the FPS holder u/s 3 of the Essential Commodities Act, 1955.

10. A perusal of the Appellate Authority''s order dated 18th March 2009 shows that it proceeded purely on surmises. The said order acknowledges that whether any of the bogus ration cards were recovered from the premises of the Petitioner or not was not in the knowledge of the DFS. The presumption was that since those card holders did not exist, the Petitioner must have diverted the subsidized food-grains issued against those cards to the open market and must have

benefited unlawfully. However, there is no material on record to substantiate such a conclusion.

11. This Court finds that there was no material on the basis of which the Petitioner''s FPS licence could have been cancelled. The role of the Petitioner in issuance of any of the cards where the card holders have been found not residing on the addresses given has not been established at all. Also, none of the cards were recovered from the Petitioner''s premises.

12. The chargesheet filed by the CBI cannot obviously be relied upon by the DFS for the cancellation of the licence as that was a subsequent development. In any event, this Court cannot examine whether the CBI''s chargesheet in fact makes out a case against the Petitioner or not. That obviously will be decided in separate proceedings. It is clarified that nothing said in this order is intended to influence the proceedings arising from the filing of the chargesheet by the CBI. A decision thereon will be taken by the criminal court independent of the present order. It is further clarified that in the event the Petitioner is convicted in the criminal case, it will be open to the DFS to invoke Clause 7 of the DSA Order to cancel the licence of the Petitioner.

13. For the aforementioned reasons, this Court finds that the suspension-cum-show cause notice dated 31st July 2008, the consequential order dated 15th October 2008, the appellate order dated 18th March 2009 and the impugned order dated 28th April 2010 dismissing the Petitioner''s review petition are all unsustainable in law and they are set aside as such.

14. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs. The pending application is also disposed of.

 