(2013) 07 DEL CK 0351

In the Delhi High Court

Case No : Writ Petition (C) No. 4126 of 2013

M/S. Ramesh Kumar Ravinder Kumar APPELLANT

Vs

Assistant Commissioner (EAST) RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 4 JCC 2798 : (2014) 1 RCR(Criminal) 897

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Yogesh Kumar, for the Appellant; Norrpa for counsel for Ms. Sujata Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.

CM No. 9691/2013 (Exemption)

Exemption is allowed, subject to all just exceptions.

Application is disposed of.

WP(C) No. 4126/2013 & CM No. 9690/2013 (stay)

1. The petitioner before this Court was granted license for running a Fair Price Shop No. 4757 in Circle No. 05(now Circle No. 59) by the respondent/ Department of Food and Supplies, Govt. of NCT of Delhi. The business premises of the petitioner were inspected by the officials of the Department on 11th May, 2013 and a number of discrepancies were found. A Notice dated 17th May, 2013 was then issued to the petitioner referring to the said inspection and a physical verification of the stock which was carried out during the said inspection in the presence of Shri Durga Prasad, Salesman of the petitioner. In addition to shortage of wheat weighing 8.6 quintals, the following irregularities were noticed during inspection and mentioned in the show cause notice:-

1. Stock Register has not been filled up after 04/05/2013.

2. Date of sale was not mentioned in the Sales Register.

3. Relationship with ration card holder has not been filled up at the time of obtaining signature in the sale register.

4. The FPS holder has issued 1532 cash memos but taken signature of 1392 card holders in the sales register.

5. No sales were made to B PL card holders.

6. Date on cash memos was not mentioned.

7. Names & Address of Ration card holders was not mentioned on the cash memos.

8. Signature of Ration card holders were not obtained on the cash memos.

The petitioner was accordingly required to show cause to explain why license should not be cancelled with forfeiture of the entire security amount deposited by him. The petitioner submitted a reply dated 10th June, 2013 responding to the said notice.

As per directions of the concerned Assistant Commissioner, a door-to-door verification was also carried out. During the said verification, copies of the ration cards were also obtained from the card holders along with their statements on the copies of the ration card. Thereafter, the petitioner submitted additional clarification, vide his letter dated 24th June, 2013. On the same date, the impugned order was passed by the Assistant Commissioner, Food and Supplies Department, cancelling the authorization of the petitioner. He also directed forfeiture of the security amount deposited by him.

The cancellation order has been assailed by the learned counsel for the petitioner primarily on the ground that during the verification carried out by the officials of the Department, the ration card holders had admitted having received ration for the month of May, 2013 and, therefore, the cash memos subject-matter of the verification cannot be said to be false. A perusal of the impugned order and the Suspension-cum-Show Cause Notice would show that besides shortage of wheat measuring 8.6 quintals, a number of other discrepancies were also found during the course of inspection. The Assistant Commissioner, after considering the reply and the documents, came to the following conclusion with respect to the deficiencies pointed out in the show cause notice:-

1. In reply to point no. 1 of deficiencies the FPS holders stated in his reply that as he was not feeling well. The maintaining the stock register on day to day basis is mandatory as per the norms of the Department and term and condition of the authorization. The FPS holder excuses for not maintaining the stock register on day to day basis is turned down and not accepted.

2. In reply to point no. 2 of the deficiencies the FPS holder stated in his written

reply that due to inadvertently the date was not mentioned in the sales register is also not accepted on the ground that it is mandatory for all the FPS holder to maintain proper books of accounts on day to day basis.

3. In reply to point no. 3 of deficiencies the FPS holders reply is also not accepted as he is giving the excuses to hide out his mistakes in maintaining the proper record.

4. The reply to point no. 4 of deficiencies the FPS holders reply is also not found fully satisfactory as the licensee is abide by the terms and condition of the authorization and the directions issued by the Department from time to time for maintaining the proper maintaining of books of accounts.

5. The reply to point no. 5 & 6 of deficiencies mentioned in suspension cum show cause notice is partly accepted.

6. The reply to point no. 7 of deficiencies the FPS holders reply is also not found fully satisfactory as the licensee is abide by the terms and condition of the authorization and the directions issued by the Department from time to time for maintaining the proper maintain of books of accounts and entry in each and every column there in is mandatory.

7. The reply to point no. 8 of deficiencies mentioned in suspension cum show cause notice stating that the community of the card holder is poor and illiterate that''s why the signature of the card holders was not obtained on the cash memos is also not accepted on the ground that if the person coming to collect the ration is illiterate and not know how to sign, it is the responsibility of the FPS holder to make entry in the ration card. Issue cash memo and maintain Sales register and obtain their thumb impression on the cash memo and sales register at the time of issuance of ration.

8. The cash memos submitted at the later stage which got verified door to door by the inspectorate staff got cross check from the sale register recovered from the FPS holder by the visiting team at the time of inspection, it is found that sales reported through cash memo to this card no. 43030408 at S. No. 1, 43030041 at S. No. 2, 43031419 at S. No. 3 and 43030642 at S. No. 11, 43031339 at S. No. 15, 43030739 at S. No. 19, 43030978 at S. No. 20 43031682 at S. No. 22, 43031653 at S. No. 23 and 43031482 at S. No. 30 are found entered on the earlier dates in the sales register, shows that the FPS holder prepare the additional cash memo with making fake entries therein to hide out the shortage of 8.6 quintals of wheat found short at the time of visit of the inspecting team.

2. It would, thus, be seen that there were a number of deficiencies in respect of which the petitioner had no explanation. The Stock Register which was required to be maintained on a day-to-day basis was not maintained. The reason given by the petitioner for not maintaining the Stock Register on a day-to-day basis was not found satisfactory. Since maintenance of Stock Register on a day-to-day

basis was a requirement to be fulfilled by the petitioner, the failure to do so was one of the grounds on which the cancellation order could be passed. It would be further seen that the date was not mentioned on the Sale Register maintained by the petitioner. This was the second deficiency which could not be explained by the petitioner. The petitioner did not note down the relationship of the person drawing the ration, with the ration card holder at the time of obtaining his signature in the said Register. This was the third deficiency found by the Department. It was found that the petitioner had issued 1532 cash memos but had taken signature of only 1392 card holders. Therefore, this was yet another irregularity by the petitioner who was required to obtain signatures of card holders on all the cash memos. It was also found that no dates were mentioned on the cash memos nor was the name and address of the ration card holder mentioned thereon. It was also noticed that the signature of the ration card was not obtained on the cash memos. The explanation given by the petitioner in this regard was not found to be satisfactory. All these irregularities found by the respondent were a valid ground for cancellation of the licence, which was granted to the petitioner.

3. As regards the cash memos which were got verified from the ration card holders, it was found that the sales reported through cash memos to a number of card holders as mentioned at Serial No. 8 in the impugned order had been entered on earlier dates in the Sales Register. The conclusion drawn by the Assistant Commissioner was that the petitioner had prepared additional cash memos by making false entries, so as to conceal the shortage of 8.6 quintals of wheat detected at the time of inspection. No legal infirmity in the impugned order has thus been pointed out. Even if the irregularity mentioned at Serial No. 8 in the impugned order is excluded from consideration on the assumption that the petitioner had actually sold ration to all the ration card holders in respect of which verification was carried out and such sale were not shown on earlier dates, in the Register, there being a number of other irregularities which could not be explained by the petitioner, there was ample justification for cancellation of the FPS license granted to the petitioner. In any case, the factual position, as stated in the impugned order, cannot be disputed in a writ petition. Once it is found that the impugned order has been passed after giving show cause notice and proper opportunity of hearing to the petitioner and no legal infirmity in the order is pointed out, there would be no scope for interference by the Court.

For the reasons stated hereinabove, I find no merit in the petition and the same is, hereby dismissed.

There shall be no order as to costs.

