

(2007) 11 DEL CK 0142
In the Delhi High Court
Case No : Writ Petition (C) 6352 of 2006

Suresh Kumar Gupta

APPELLANT

Vs

The Commisisoner of F and S Etc.

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Citation : (2007) 11 DEL CK 0142

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Gauri Shanker Sharma, for the Appellant; Rohit Madan, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner claims to be aggrieved by the orders of the respondents cancelling the fair price shop license issued to him in terms of their policies.

2. The admitted brief facts are that the petitioner was issued the FPS license initially in 1979, for Majlis Park. He continued to operate the license

and was engaged in the sale of controlled commodities, offered through the Public Distribution System till 2000. From 25.7.2000 to 25.1.2001 the

petitioner alleges that he was seriously ill and Therefore unable to operate the license or offer PDS commodities for sale to the public. He was

issued a show cause notice calling him upon to reply as to why he has not deposited the drafts. The drafts, in accordance with the scheme, were to

be paid to the authorities during that period.

3. The petitioner replied on 28.1.2001 claiming that he had been suffering from Typhoid. On 11.3.2003 a show cause notice was issued calling

upon him as to why the license ought not to be cancelled. This was replied to and yet again another show cause notice was issued on 5.1.2005 by

the respondent. This ultimately resulted in the order of the Assistant Commissioner, cancelling the license on 26.5.2005.

3. The petitioner preferred an appeal to the Commissioner, who by his impugned order dated 3.11.2005 rejected it. The Commissioner reasoned

that the petitioner's Explanation for not operating the license for six months" period between 25.7.2000 to 25.1.2001 was unsatisfactory since he

claimed illness for the first time after receipt of show cause notice. More importantly, the Commissioner, after considering the materials and

contentions formed the opinion that the petitioner has not operated the Public Distribution System for more than 5 years, although he had deposited

the enhanced fee, by paying Rs. 4500/-.

4. Learned Counsel for the petitioner contended that the decisions of the Assistant Commissioner as well as the the Commissioner are arbitrary

and unreasonable. The two orders did not duly consider the petitioner's illness and the fact that after he recovered, he deposited the amount in

time but was prevented from lifting the stocks.

5. I have considered the materials on record. The Commissioner's order, made an appeal, inter alias reads as follows:

I have carefully gone through the memorandum of appeal under reference and comments records submitted by the Asstt. Commissioner (North). It

is evident that appellant never informed the department about his illness on his own. The two medical certificates from a private doctor advising

bed rest from 25.7.2000 to 25.10.2000 and 25.10.2000 to 25.1.2001 were submitted before the licensing authority only pursuant to memo dated

23.11.2000 and show cause notice dated 11.3.2003. The contention of the appellant that he had deposited enhanced security amount Rs.4500/-

in time also does not hold ground as by merely depositing the enhanced security, 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.

As per department instructions No. F.28/4/97/F&S/P&S/P&C/1105 dated 15.7.1999, no FPS holder can avail leave on medical ground for a

period exceeding one year, while in the instant case the appellant did not lift

SFAs for about last 5 years prior to cancellation of his FPS causing inconvenience to 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 left SFAs for a period exceeding three months will lead to cancellation of the license.

In the totality of the facts and circumstances of the case, I do not find any merit in the appeal that may warrant any intervention with the order No.

F.AC(N)/F&S/2004-05/2112 dated 26.5.2005 passed by the Asst. Commissioner (North). As a result the appeal rejected.

6. The petitioner no doubt has explained his inability to operate the license for about six months from July, 2000 to January, 2001. The question is

whether this Explanation is sufficient for his grievance that the PDS license revoked by the respondent was unjustified. The object of the Public

Distribution System, as one understands, it is to ensue access to the poorer sections of the society eligible for its benefit, timely and regular supply

of essential foodgrains and other items which are part of the scheme. The license holder is expected to operate the system and ensure such supplies

by the existence of the outlet and periodic lifting of stocks. In this case even if the petitioner's Explanation about illness is accepted, that leaves yet

a large time gap unexplained. Admittedly for a four and a half years period he did not choose to lift the stocks. It was contended by the petitioner

that he was not allowed to lift the stocks but the records speaks otherwise. In his reply to the show cause notice he had inter alias submitted at one

stage that lifting the stocks was unviable because the prices in the PDS had become uneconomic.

7. During the course of hearing learned Counsel for the respondent submitted that according to its policies, absence of FPS licenses up to a period

of three years was condonable. The time of absence in this case the petitioner's case is about five years. If one views this from the larger

perspective of the public interest in ensuring periodic and regular supplies to the consumers, this absence is unacceptable. Surely the petitioner

could not have been aggrieved for that period of time and it can be seen inferred that he found another means of livelihood. Nothing prevented him

from agitating any legitimate grievance about lack of supplies. In any event

having regard to the objective of the scheme, the petitioner's grievance is not well-founded.

8. Having considered the totality of the circumstances and the limited scope of judicial review, which is to examine the legality of the decision or its procedural regularity I find no infirmity with the approach of the respondents. The petition Therefore has to fail. It is accordingly dismissed.