

(2016) 11 DEL CK 0039

DELHI HIGH COURT

Case No: Writ Petition (C) 10433 of 2016 and CM No. 40920 of 2016(stay)

M/s. Janta Store

APPELLANT

Vs

Government of NCT of
Delhi

RESPONDENT

Date of Decision: Nov. 8, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 234 DLT 13

Hon'ble Judges: Mr. Sanjeev Sachdeva, J.

Bench: Single Bench

Advocate: Mr. Siddhartha Shankar Ray, Advocate, for the Respondent; Mr. Pradeep Gupta, Mr. Parinav Gupta and Ms. Mansi Gupta, Advocates, for the Petitioner

Final Decision: Disposed Off

Judgement

Sanjeev Sachdeva, J. (Oral)—The petitioner seeks quashing of suspension order dated 20.10.2016 and a direction to the respondents to supply complete copy of the seized record to enable the petitioner to reply to the show cause notice dated 20.10.2016.

2. The petitioner contends that the petitioner is a holder of a fair price shop licence since 1987 and, till 11.10.2016, there was never any complaint qua the functioning of the petitioner. However, on 11.10.2016, an inspection was carried out by the officials of the respondents and, on certain alleged discrepancies in the records, records were seized and the impugned show cause notice has been issued inter alia suspending the licence of the petitioner.

3. It is contended that since the entire record of the petitioner has been seized, the petitioner would not be in a position to file a response to the show cause notice. It is further contended that since the record is in the custody of the police consequent to registration of an FIR, the record would also not even be available to the respondent

- Commissioner to adjudicate on the show cause notice.

4. In these circumstances, it is prayed that the record be made available to the Competent Authority i.e. the Commissioner for adjudicating the show cause notice and copy of the record be also furnished to the petitioner to enable him to file a response.

5. Learned counsel appearing for the respondents contends that on an inspection, which was carried out on 11.10.2016, there were several discrepancies noted consequent to which an FIR has been registered and since irregularities were severe in nature, the licence of the petitioner has been put under suspension pending inquiry.

6. It is contended that the petitioner had been given an opportunity to appear on 07.11.2016, on which date the petitioner appeared and submitted a reply.

7. Learned counsel appearing for the respondents contends that as per Delhi Specified Articles (Regulation of Distribution) Order, 1981, the Adjudicating Authority has to adjudicate on the suspension notice within a period of three months of the passing of the order. Learned counsel for the respondents, who also appears for the Delhi Police, submits that the record is available and would be made available to the Competent Authority for the purposes of adjudication.

8. Clause 4 of Delhi Specified Articles (Regulation of Distribution) Order, 1981, reads as under:-

"4. Suspension/cancellation of authorization:

(1) The Administrator or the Deputy Commissioner may at any time, whether at the request of the person to whom an authorisation has been issued or on his contravention or attempt to contravene any of the provisions of the said order or directions issued thereunder from time to time in this behalf or any term or condition of the authorisation or any directions issued thereunder after making such enquiry as may be deemed necessary without prejudice to any other action that may be taken against him to amend, suspend or rescind the authorisation issued under this Order.

(2) Without prejudice to any action that may be taken under sub-clause (1) in respect if any contravention of any of the provisions made by or under this order, the Deputy Commissioner may forfeit the whole or a part of the security deposited under sub clause (2) thereupon the authorised wholesaler or fair price shop holder whose security has been forfeited shall forthwith deposit an amount equivalent to the forfeited so as to make the efficiency in the amount of prescribed amount of security.

Provided that before passing any order under sub-clause (1) or sub clause (2), the Deputy Commissioner shall give a reasonable opportunity of being heard to the

party concerned.

Provided further that if the authorisation is under consideration for action and it is necessary to suspend it pending enquiry the provisions contained in the foregoing proviso shall not apply subject to the condition that the period of such suspension shall not exceed three months.

Provided further that a copy of every order made under sub clause (1) or sub clause (2) shall be supplied to the person concerned free of charge."

9. Clause 4 of the said order empowers the Administrator or the Deputy Commissioner to amend, suspend or rescind the authorisation which has been issued. However, prior to passing of such an order, an opportunity of hearing is required to be given. In certain cases, the authority is empowered to suspend such authorisation without giving an opportunity of hearing. In case where the order of suspension is passed without granting a hearing, the authority has to adjudicate and decide the show cause notice within a period of three months. In case the authority is not in a position to dispose of the show cause notice within a period of three months, the suspension automatically lapses and the authorisation revives. However, the authority may continue to dispose of the show cause notice thereafter.

10. Reference may be had to the decision of a Coordinate Bench of this Court dated 02.07.2014 in WP(C) 4010/2014 titled M/s. Shiv Suresh Store v. Government of NCT of Delhi & Anr.

11. In the present case, the authorisation has been suspended by the impugned order on 20th October, 2016. In case a final decision in the matter is taken by the concerned officer within three months from the date on which the authorisation was suspended, further consequences in the matter would follow only in terms of the final order passed by the officer. If, however, a final order is not passed within the period of three months from the date of suspension, order suspending the authorisation shall cease to apply immediately on completion of three months, computed from the date of suspension order.

12. Needless to state that the concerned officer would be empowered to continue with the enquiry even after expiry of three months from the date of suspension and proceed to pass a final order, after giving an opportunity of hearing to the person concerned and the only effect of his not being able to pass a final order within three months, from the date of suspension would be automatic revival of authorization, on expiry of three months from the date of suspension.

13. Since admittedly record has been seized by the Delhi Police and the proceedings have to be concluded within three months, Delhi Police/SHO Police Station Bharat Nagar, Delhi is directed to supply a photocopy of the entire seized record to petitioner and respondent No. 2 simultaneously within a period of one week.

14. The petitioner may file a supplementary reply to the Show Cause Notice within one week thereafter. The Respondent No. 2 shall adjudicate the Show Cause Notice in accordance with law.

15. The writ petition is disposed of in the above terms. If the Petitioner is aggrieved by any order, the petitioner would be at liberty to take such remedies as may be available in law.

16. Dasti under the signature of the Court Master.