

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 262/2008

**Appeal under clause 8(6) of
the Delhi Kerosene Oil
(Export & Price) Control
Order, 1962**

In the matter of :-

**Shri Dev Sharma
S/o Shri Sahab Ram Sharma
Kerosene Oil Depot
Licence No. 1566/75
B-483/484, J.J. Colony Tigri
New Delhi-110062.**

...Appellant

**(Represented by Shri
Visheshwar Shrivastav,
Counsel for the Appellant)**

VERSUS

**Assistant Commissioner (South)
Deptt. Of Food & Supply,
Govt. of NCT of Delhi
Asian Market, Pushp Vihar,
Sector-3, M.B. Road,
New Delhi**

...Respondent

**(Represented by Shri Neeraj
Agarwal, Counsel for the
Respondent)**

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Order dated 01st March, 2016

1. This order shall dispose of the Appeal under clause 8(6) of the Delhi Kerosene Oil (Export & rice) Control Order, 1962 filed the appellant against the impugned order dated 24.11.2008/25.11.2008 passed by Additional Commissioner, Food & Supply.

2. Brief facts of the case are that:

i) The appellant had been running this KOD and on 28/07/08 appellant received an order issued by Asstt.

Commissioner (South) directing the Appellant to stop supplies to some specified AAY Card holders as they had not been found residing at the given addresses.

ii) That on 08.08.08 Asstt. Commissioner (South) issued a Suspension-cum-show cause to the Appellant mentioning therein that as per report of FSO Circle-33, 59 AAY card holders registered with appellant i.e. M/s Dev Sharma KOD (Lic. No. 1566/75), had not found residing at the given addresses and appellant has issued Kerosene oil to them in the month of June 2008.

iii) Appellant filed appeal before the Addl. Commissioner (Food & Supplies), who revoked the said show cause notice dated 8.8.2008, vide his order No.PA/AS/F&S/Appeal/No.6 /KOD(S)/2008/409-415 dated 05.09.08.

iv) Asstt. Commissioner (South) filed Review Petition before Addl. Commissioner (Food & Supplies), who reviewed his order dated 5.9.2008 and allowed the review application dated 17.10.2008. Addl. Commissioner (Food & Supplies), vide his impugned order dated 24.11.2008/25.11.2008 upheld the Suspension-cum-Show Cause Notice dated 8.8.2008 issued by Asstt. Commissioner (South), thereby allowing Asstt. Commissioner to proceed further in the matter and take necessary action after issuing additional Show Cause Notice alongwith all the relevant facts and documents to the appellant, so that appellant is given proper and adequate opportunity to defend his case.

v) Aggrieved by the impugned order dated 24.11.2008/25.11.2008, the Appellant filed present appeal before this court.

3. The appellant has submitted the following:

a) Appellant has submitted that no copy of the said letter No. F. 10(2489)/F&S/Vig./S/2007/2989 dated 15.07.2008 of Asstt. Commissioner (Vig.), or No. AC(S)/F&S/2008/40 dated 02.08.08 and No. FSO, C-33/525 dated 07.08.08 upon which the suspension-cum-show cause notice was based has been given along with the said notice.

b) Appellant has further submitted that it is not the case that the Appellant has despite the receipt of the order of the Assistant Commissioner dated 28.07.08 given oil to the said AAY Card holders whose details has been provided in the said letter.

c) That the appellant does not have any power/authority direct or indirect or other wise to verify the Residential details/particulars of any card holder. Further, Addl. Commissioner in his own order had stated that there is no responsibility on the part of the KOD Oil Dealer to go and check and verify/deny the issue of KOD to a person holding a card issued by the Department.

d) There has not been any violation of either the Public Distribution System Control Order 2001 or Delhi Kerosene Oil (Export & Price Control) Order, 1962 and hence was revoked and set aside by the First Appellate Authority on 05.09.08 as the Appellants had in the month of August, 2008 preferred an Appeal before the Additional Commissioner, Department of Food and Supplies which was registered as Appeal No. 06/KOD(S)/2008.

e) The Department filed Review Petition after expiry of the period of Limitation prescribed under Delhi Kerosene Oil (Export & Price Control) Order, 1962.

f) That in Review Application the Assistant Commissioner took pleas which did not find mention in his notice dated

08.08.08 which was impugned in the Appeal No. 06/KOD(S)/2008 filed by the Appellant. Further, there cannot be two show cause notices for the same cause of action.

g) Because the term 'ghost cards' and the beneficiaries does not find its place in the show cause notice dated 08.08.08.

h) Counsel for the Appellant has stated that M/s Dev Sharma KOD has replied to the facts mentioned in the Show Cause Notice issued by AC (South) vide his letter dated 08.08.2008 and, therefore, AC (South) cannot bring any additional facts in his reply to the appeal and review filed before the undersigned. He further argued that AC (South) cannot also be allowed to bring additional facts and documents while seeking review of the order of the Appellate Authority, which have not been stated in his Show Cause Notice. It is a well settled law that new facts cannot be brought before the Appellate Authority while seeking review of the order passed by it.

4. **The Respondents submit** as follows:

i) The appellant/fair price shop owner was the retailer of respondent/Assistant Commissioner (South) for supply of kerosene oil. The appellant had issued kerosene oil to the ghost ration card holder. Ghost ration card holder means those persons neither existed in Delhi nor ever existed at the address mentioned in the consumer cards. The respondent issued Suspension cum show cause notice dated 08.08.08 to the appellant. The appellant has filed an appeal against the said show cause notice and the Additional Commissioner vide order dated 05.09.2008 had stayed the said show cause notice. The respondent had filed a review petition against the order dated 05.09.2008 and the said order was reviewed

vide Final order dated 24.11.2008/25.11.2008 whereby the suspension cum show cause notice dated 08.08.08 attained its finality. The said order dated 24.11.2008/25.11.2008 was challenged before this court by way of appeal whereby the said order was stayed and the appellant is still getting the kerosene oil as retailer to deliver it to the registered consumers.

ii) The appellant is the actual beneficiary of ghost cards, who were willing intentionally and for his own undue benefit issuing kerosene oil against the cards which were not in existence. The appellant has misappropriated the subsidized kerosene oil for his own undue benefit and thus has violated the terms and conditions of the license.

iii) In Delhi Specified Articles Regulation of Distribution Order, 1981 (a) As per clause 2(14) Specified Article Kerosene Oil is defined as essential commodity.

iv) (b) As per clause (9) No fair supply shop holder shall sell or agree to sell or supply or agree to supply or cause to sell or supply specified articles to any person except against the consumer cards registered with him or against special consumer cards issued by the Food and supplies officer and except at such prices as may be specified by the central government or by the administrator in this behalf and except under and in accordance with the provisions made by or under this order.

v) As per clause 19(5)(a) a fair price shop holder shall supply articles only against the consumer cards registered with him or against any special consumer card issued by the food and supplies officer.

5. In Delhi Kerosene Oil (Export and Price) Control Order, 1962.

a) As per clause 2(d) consumer card means a house-hold food card issued under the provisions of the Delhi specified Food Articles Regulation of Distribution order, 1968.

b) As per Clause 2(j) Retailer means a dealer who Holder a retailer's license issued under this order.

c) As per clause 3A(4) Restriction on sale of kerosene oil:- No retailer or hawker shall sell kerosene oil to a person other than a **bonafide** consumer.

d) As per clause 3D(2) The commissioner may regulate distribution of kerosene oil through consumer card, quota card and special permits and may issue or cause to be issued quota card and special permits in this behalf.

e) As per clause 6(1) if any license or his agent or servant of any other person acting on his behalf contravenes any of the terms and condition or directions or any provision of this order then without prejudice to any other action that may be taken against license according to law, his license can be suspended by order in writing by the commissioner.

6. In Public distribution system (control) order, 2011

1) As per clause 2(k) fair price shop owner means a person and includes a cooperative society or a corporation or a company of a state government or a Gram Panchayat or any other body in whose name a shop has been licensed to distribute essential commodities under the public distribution system. Consumer card means a house-hold food card issued under the provisions of the Delhi Specified Food Articles Regulation of Distribution order, 1968.

2) As per clause 2(l) Public distribution system means the system for distribution of essential, commodities to the ration card holders through the fair price shops, such as rice,

wheat, sugar, edible oils, kerosene and such other commodities as are notified by the Central Government under clause (a) of section 2 of the Act.

7. In Annexe to Public Distribution system (control) order, 2011

a) As per clause 2(2) The ration card holder shall be entitled to draw essential commodities from a fair price shop on weekly basis.

b) As per clause 2(8) Elimination of bogus ration cards as well as bogus units in the ration cards shall be a continuous exercise by the State governments to check diversion of essential commodities.

8. The appeal, reply, impugned order and written submissions were perused and read over during the hearing.

9. In view of the above, I am convinced that the Order of the Addl. Commissioner (F&S) dated 5.09.2008 needs to be reviewed and AC (South) may be given opportunity to proceed further with his Suspension-cum-Show Cause Notice issued on 08.08.2008. AC (South) is also further allowed to issue additional Show Cause Notice making therein available all the facts and documents on which he intends to rely in this case, so that the Appellant i.e. M/s Dev Sharma KOD is given proper and adequate opportunity of placing his defence in the matter.

10. Thus, while the additional show cause notice is allowed, the said show cause notice shall specifically point out the specific role, liability and complicity, if any, of the KOD in the issue and detection of bogus ration cards or bogus members, and the specific number of bogus cards recovered because the order of the Addl. Commissioner dated 05.09.2008 is not specific but rather general. *".....As regards the present case, whether any ghost ration card was recovered by the investigating agencies from the premises of M/s Dev Sharma KOD or not is not in the knowledge*

of the Department, but the fact remains that M/s Dev Sharma KOD has issued Kerosene Oil against those ghost cards and, therefore, the KOD holder cannot be allowed to go scot-free in the matter....”

11. Appeal allowed to that extent.

12. Announce in open court on 01st March, 2016.

(JITENDRA NARAIN)
FINANCIAL COMMISSIONER, DELHI
01st March, 2016