

**OFFICE OF THE COMMISSIONER / APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
GOVT. OF NCT OF DELHI,
ROOM No.101 ,1ST FLOOR, K-BLOCK, VIKAS BHAWAN, I.P.ESTATE,
NEW DELHI-110002.**

No.PA/COMM./AA/FPS Appeal/F&S/2019/ 1578 - 88

Dated: 27.11.2019

In the matter of :

Ms. Sarika Yadav D/o Sh. Shyam Bihari Yadav ----- Appellant
H.No. S-1/5 Budh Vihar, Phase-I
Delhi-110086

V/s

The Commissioner / Appellate Authority
Deptt. of Food Supplies & Consumer Affairs,
Delhi & Ors. ----- Respondent

AND

WP(C) No. 3771/2019 & CM NO. 17278/2019 & 41886/2019In the matter of :

M/s. Ankit Store,
FPS No. 9304, Circle -06 (Rithala) Delhi.
Smt. Madhuri Gupta ----- Appellant

V/s

The Commissioner / Appellate Authority
Deptt. of Food Supplies & Consumer Affairs,
Delhi & Ors. ----- Respondent

AND

WP(C) No. 8446/2019 & CM 34864/2019In the matter of :

M/s Bhagwati Store
Sh. Anoop Kumar Sharma ----- Appellant

V/s

Govt. of NCT of Delhi & Ors. ----- Respondent

ORDER

The order shall dispose off the appeal dated 16.12.2016 filed by Ms. Sarika Yadav D/o Sh. Shyam Bihari Yadav R/o H.No. S-1/5 Budh Vihar, Phase-I, Delhi-110086 in compliance with the order of the Hon'ble High Court dated: 09.10.2019 in Writ Petition (C) 3771/2019 & CM NO. 17278/2019 & 41886/2019 and order in Writ Petition (C) 8446/2019 & CM 34864/2019. Accordingly, notice of hearing on 01.11.2019 was issued to Ms. Sarika Yadav D/o Sh. Shyam Bihari Yadav, Sh. Anoop Kumar Sharma, Proprietor M/s Bhagwati Store and Smt. Madhuri Gupta, Proprietor M/s Ankit Store.

On the day of the hearing, Ms. Sarika Yadav, Ms. Madhuri Gupta, Proprietor of M/s Ankit Store along with her counsel and on behalf of Sh. Anoop Kumar Sharma (M/s Bhagwati Store) his authorised representative Sh. Shailendra were present. All the parties were heard at length.

As per the brief facts of the case:-

- a) The appellant applied for issue of License for Fair Price Shop in response to the advertisement published on 01.03.2016 for allotment of Fair Price Shop (FPS) under General category in the area Budh Vihar, Phase-I, Circle-06, Rithala, Delhi.
- b) The Appellant was called for interview on 06.09.2016 at 10.30 AM by the Selection Committee under the Chairmanship of District Magistrate (North-West), Revenue Department, Kanjhawala, Delhi including the then Assistant Commissioner (North) and Member Secretary-Assistant Commissioner (North-West).

- c) The Selection Committee interviewed the candidates and awarded marks to the Applicants out of 30 on the following criterion i) Educational Qualification- (10 Marks – 10th Pass – 6 Marks, 12th Pass – 8 Marks and Graduate & above - 10 Marks) ii) Knowledge of rules and Government policies- (15 Marks) and iii) whether applicant belongs to preferred category as per Para 6 of Order dated 27.07.2015 - (5 Marks)
- d) On the basis of the interview result, the authorization of the shop was granted to Smt. Madhuri Gupta who scored the highest aggregate marks as per result sheet.

Marks obtained by Smt. Madhuri Gupta, Ms. Sarika Yadav and Sh. Anoop Kumar Sharma are as under:-

S.No.	Name of Candidate	Selection Committee	Educational Qualifications	Knowledge of Rules & Govt. Policies	Whether belongs Preferred Category	Total Marks
1.	Madhuri Gupta	DM (NW)/ Chairman	08	13	-	21
2.		AC (North)/ Member	08	12	-	20
3.		AC (NW)/ Member Secretary	08	10	-	18
			24	35	-	59

S.No.	Name of Candidate	Selection Committee	Educational Qualifications	Knowledge of Rules & Govt. Policies	Whether belongs Preferred Category	Total Marks
1.	Sarika Yadav	DM (NW)/ Chairman	10	02	5	17
2.		AC (North)/ Member	10	03	5	18
3.		AC (NW)/ Member Secretary	10	02	5	17
			30	07	15	52

S.No.	Name of Candidate	Selection Committee	Educational Qualifications	Knowledge of Rules & Govt. Policies	Whether belongs Preferred Category	Total Marks
1.	Anoop Kumar Sharma	DM (NW)/ Chairman	08	03	-	11
2.		AC (North)/ Member	08	03	-	11
3.		AC (NW)/ Member Secretary	08	03	-	11
			24	09	-	33

During the course of hearing, Ms. Sarika Yadav stated that the criteria adopted by the Selection Committee was not fair as the Applicant's shop is located on a road which is 27.02 feet wide and area of the shop is also more. As a daughter of KOD holder she has assisted her father in running a shop and thus has experience of managing a public goods shop. Even though she has higher educational qualifications (M.A.) and more experience when compared to Smt. Madhuri Gupta who is only 12th pass, she had been given much less marks under the head of "Knowledge of Rules & Govt. Policies". She further contended that she was not asked any relevant questions regarding Government rules and regulations. She also stated that being a daughter of the KOD holder as per the Departmental Policy of

2015 she should have been given preference. However, the selection committee did not adopt a fair criteria and discriminated against her.

FSO Circle-06 (Rithala) Sh. Vinod Gupta stated that as per the departmental policy of 2015 regarding allotment of license for Fair Price Shops the provision regarding preference to be given to KOD holders does not extend to their heirs.

The Counsel of Smt. Madhuri Gupta, Proprietor of M/s Ankit Store contended that the Fair Price Shop is the only source of livelihood for the petitioner. She has been running the shop without complaints since the last 03 years. Citing reference to the Order of the Hon'ble High Court dated 02.11.2017 in WP (C) 7672/2017 & CM No. 31726/2017 in the case of M/s Khemwals Store & Ors. Vs. Govt. Of NCT of Delhi & Ors., the Counsel for Smt. Madhuri Gupta contended that since the selection procedure had already been concluded, in accordance with the above order, the Selection Committee must satisfy itself whether the petitioner has the necessary financial capacity and wherewithal to run the Fair Price Shop (FPS) without any comparative evaluation. It would not be necessary to reevaluate the applicants de novo.

Sh. Shailendra, Authorised Representative of Sh. Anoop Kumar Sharma (M/s Bhagwati Store) stated that the Selection Committee did not consider the guiding principles and the criteria enumerated in the Delhi Specified Articles (Regulation of Distribution) Order, 1981 while evaluating the applicant. He argued that the size of the Petitioner's FPS (86.72 cubic meters) is more than that of Smt. Madhuri Gupta (56.77 cubic meters). However, the Selection Committee allotted disproportionate marks regarding knowledge of rules and Government policies in favour of Smt. Madhuri Gupta, creating doubt in the entire selection process.

In view of the contention of both Ms. Sarika Yadav and Sh. Anoop Kumar Sharma regarding unfair allotment of the marks under the head of "Knowledge of Rules and Government Policies", given the fact that Smt. Madhuri Gupta, as claimed has been smoothly running the FPS for last 3 years, was requested to spell out the mandatory registers to be maintained by an FPS licensee which she was unable to answer. The question was repeated twice in Hindi language as well. However, the reply was not forthcoming. She also could not explain what is meant by "Opening of Sale", "Sale Khulna" which is a mandatory monthly exercise to be executed for every FPS.

The oral submissions made by Ms. Sarika Yadav, Shri Shailendra-Authrorised Representative of Shri Anoop Kumar Sharma (M/s. Bhagwati Store), Smt. Madhuri Gupta (M/s. Ankit Store), her Counsel Shri Pradeep Gupta and the district officials were heard. Their written submissions and other relevant records, laid down principles and rule position related to the case were examined.

Inspite of running the Fair Price Shop (FPS) for three years, Smt. Madhuri Gupta was not aware of a single mandatory register to be maintained by an FPS licensee came as a surprise. There appears something amiss in the way the selection procedure has been carried out. It appears that the Selection Committee while considering and recommending Smt. Madhuri Gupta not only excluded the objective criteria of i) Suitability of premises for proper storage and sale of specified articles, (ii) Past record of dealing essential commodities and other businesses and (iii) Financial position of the applicants, but perhaps has erred in subjective evaluation of knowledge of rules & regulations etc. Having scored 35 out of 45 in the parameter of knowledge of general rules and Government policies, it is not clear as to how even basic question regarding running an FPS could not be answered by Smt. Madhuri Gupta, Proprietor, M/s Ankit Store.

Therefore, in the interest of justice and fair play, the recommendations of the Selection Committee for issue of license for FPS in favour of Smt. Madhuri Gupta (M/s Ankit Store) in the notified area of Budh Vihar, Phase - I is set aside and the case is remanded back to the Selection Committee to re-consider the applications in accordance with the laid down principles and criterion for consideration of applications for allotment of Fair Price Shop (FPS) as enumerated in the Delhi Specified Articles (Regulation of Distribution) Order, 1981 and subsequent Departmental Orders.

Parties be informed accordingly.

Ankita Mishra
27/11/19

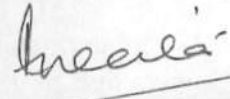
(ANKITA MISHRA BUNDELA)
COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.PA/COMM./AA/FPS Appeal/F&S/2019/1578-88

Dated: 27.11.2019

Copy to :-

1. The Assistant Commissioner (North-West), F&S Deptt., GNCT of Delhi, CSC, CC Block, Shalimar Bagh, Delhi-110088.
2. Ms. Sarika Yadav, through Assistant Commissioner (North West).
3. Ms. Sarika Yadav D/o Sh. Shyam Bihari Yadav, R/o, H. No. S-1/5, Budh Vihar, Ph-I, Delhi-110086.
4. M/s. Ankit Store through Assistant Commissioner (North-West).
5. Smt. Madhuri Gupta, Proprietor-M/s Ankit Store, R/o B-46/3, Block-B, Vijay Vihar, Phases-II, Delhi-110084.
6. Shri Pardeep Gupta, Parinav Gupta, Mansi Gupta & M. Ali, Advocates, 333 New Lawyers Chambers, Supreme Court of India, New Delhi-110001.
7. M/s. Bhagwati Store through Assistant Commissioner (North West).
8. Sh. Anoop Kumar Sharma, M/s Bhagwati Store, U-1/40 Budh Vihar, Ph-I, Delhi-110086.
9. Sh. Anoop Kumar Sharma, M/s Bhagwati Store, E-17 Budh Vihar, Ph-I, Delhi-110086.
10. Sh. Yogesh Kumar (Advocate) Chamber No. 637, Dwarka Court Complex, Sector-10, Dwarka, New Delhi-110075.
11. Mr. Shailendra (AR) R/o 3243, School Street, Pahar Ganj, New Delhi-110055.


27/11/19

(ANKITA MISHRA BUNDELA)

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