

Government of Jammu and Kashmir
Department of Food, Civil Supplies and Consumer Affairs
Civil Secretariat, J&K, Jammu/Srinagar

Subject: WP (C) 2571/2021 titled Iqra Gulzar V/s UT of J&K & Ors.-Consideration order thereof.

Ref.: Order dated: 11.05.2022 passed by the Hon'ble High Court of J & K in the above titled WP (c).

**Government Order No:57-JK(FCS&CA) of 2022
Dated:14.06.2022**

WHEREAS, in year 2017, administrative approval for issuance of fair price shop licence in favour of various candidates for different identified locations was conveyed to Director, Department of Food, Civil Supplies & Consumer Affairs (FCS&CA), Kashmir vide No.FCS&CA/FPS/123/2017 dated 22.09.2017 including for the location of Yatoo Mohalla, Midoora, Awantipora District Pulwama in favour of Iqra Gulzar W/o Mohammad Amin Naikoo R/o Midoora Awantipora subject to the production and verification of necessary/qualifying documents/declarations;

WHEREAS, soon thereafter one Bashir Ahmad Yatoo s/o Gh. Hassan Yatoo R/o Midoora Awantipora District Pulwama approached the Hon'ble High Court of J & K at Srinagar by filing OWP No. 1573/2017 titled Bashir Ahmad Yatoo vs. State of J & K challenging the approval in favour of above said Iqra Gulzar on various grounds and inter-alia averred that she has neither got any resolution in her favour nor has submitted any document to this effect and therefore prayed for the quashment of the same;

WHEREAS, the Hon'ble High Court was pleased to pass interim orders in the matter vide order dated: 12.10.2017, inter-alia holding as under:

"In the meantime, subject to the objections of the other side and till the next date of listing before the Bench, status quo as on date is directed to be maintained with regard to the establishment of Fair Price Shop."

WHEREAS, the Hon'ble High Court disposed of the above titled writ petition 1573/2017 vide order dated 21-09-2020 in the following manner (verbatim):



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With the Consent of learned counsel for the parties, this petition is taken up for final disposal at this stage and is disposed of with a direction to the respondents No.1 to 3 to treat the writ petition of the petitioner along-with its annexures as a representation and pass a speaking order therein within a period of one month from the date copy of this order is made available to them. While considering the representation of the petitioner, the official respondents shall also take into account all the pleas raised by the petitioner in the instant writ petition including the one pertaining to the recommendation of respondent No. 3. Till such time consideration order is passed by the official respondents, status quo with regard to establishment of Fair Price Shop at Yatoo Mohalla Midoora, Awantipora, District Pulwama shall be maintained”;

WHEREAS, in pursuance to the Orders of the Hon’ble High Court, Director, FCS&CA, Kashmir vide his letter No. DFCS&CADK/Adm/Law-2065-66 dated 10.11.2020 referred the matter to the Administrative Department with the request to pass appropriate orders in the matter;

WHEREAS, accordingly the matter was analyzed in light of the records and it came to fore that the application form submitted by Iqra Gulzar was not supported by resolution of the residents of the village in terms of policy/rules invogue at the relevant time and accordingly vide letter No.FCS&CA/legal/39/2019 dated: 16.02.2021, Director, FCS&CA, Kashmir was requested to cancel the license issued in favour of petitioner by passing an order;

WHEREAS, however immediately thereafter said Iqra Gulzar filed a representation on 26.02.2021 seeking that F P Shop license in her favour be made functional in pursuance to the order dated 21.09.2020 passed in OWP No.1573/2017 in view of the fact that she is having a recommendation of the Chairman of the Mohalla Masjid Committee;

WHEREAS, the Administrative Department (FCS&CA) vide letter No.FCS&CA/FPS/2021 dated 16.08.2021 forwarded the representation of the petitioner to Director, FCS&CA, Kashmir for furnishing of factual details in the matter;

WHEREAS, the Director, FCS&CA, Kashmir again submitted a factual report vide No. FCS&CADK/Adm/Law-3012 dated 27.11.2021



but stated nothing new/substantial which would have made any change in the case position of the petitioner;

WHEREAS, also in the meanwhile said Iqra Gulzar filed writ petition WP (C) 2571/2021 titled Iqra Gulzar V/s UT of J&K & Ors before the Hon'ble High court with the following prayer:

- i. *Allowing the petition by issuance of a writ of mandamus directing the respondents to restore the supply and allow the petitioner to operate/run the fair price shop at Yatoo Mohalla Midoora Tral for which approval for license has been issued by the administrative Department vide order No.FCS&CA/FPS/123/2017 dated 22.09.2017 and formal license issued vide order No.FCS&CA/Pul/17/6301 dated 06.10.2017.*
- ii. *Any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case be also issued in favour of the petitioner and against the respondents.*

WHEREAS the Hon'ble High Court was pleased to dispose of the said writ petition vide order dated 11.05.2022 in the following manner:

*"..... This petition is accordingly disposed of with a direction to the respondent no. 1 to consider the matter and take a final decision in the light of the representation made by the petitioner which is supported by the resolution of **"no objection"** by the villagers, as also having regard to the detailed **factual report** submitted by the Director FCS&CA vide his no. FCS&CADK/Adm/Law-3012 dated 27.11.2021. Let the final decision in the matter be taken by respondent no. 1 within a period of four weeks from the date copy of this order/judgment is served upon the respondents. It is made clear that in case no final decision is taken within the stipulated period, the supplies to the petitioner shall be restored in terms of fair price license already issued in her favour."*

WHEREAS, in compliance to the orders of the Hon'ble High Court dated:11.05.2022, received in the Department on 19.05.2022, the matter was examined in light of the records/rules governing the field, while also keeping in view report dated: 27.11.2021 submitted by Director, FCS&CA, Kashmir;



WHEREAS, clause (B) sub clause (viii) of Government Order No.127-FCS&CA of 2016 dated 04.08.2016, provides that for selection of salesman for running F P Shop, the residents of the village should pass a resolution in favour of F P Shop applicant and all such relevant documents as envisaged in the policy shall be attached by the applicant with the application form.

WHEREAS, the petitioner neither at the time of submission of application form nor thereafter has been able to produce the requisite resolution in terms of policy in vogue and has herself averred in her representation as well as in WP (c) 2571/2021 that she only possessed a resolution/NOC issued by the Mohalla Masjid Committee Midoora on 12.12.2016 at the time of submission of the application for grant of FPS License;

WHEREAS, at the time of conveying administrative approval to the Directorate on 22.09.2017, it was specifically emphasized that issuance of license shall be subject to production, verification of all documents/certificates/declaration as provided under Government Order No.127-FCS&CA of 2016 dated 04.08.2016 read with order No.137-FCS&CA of 2016 dated 02.09.2016 & order No.147-FCS&CA of 2016 dated 26.09.2016;

WHEREAS, as already conveyed vide communication dated:16.02.2021, the approval with condition in favour of said Iqra Gulzar was issued in violation of policy guidelines of the department and there is no document to suggest otherwise and thus an illegality committed cannot be regularized and is required to be disregarded under law;

WHEREAS, the department also came across an advisory of the State Crime Branch, J&K conveyed vide communication No. CHQ/Clt/K-732-17-6150 dated 22.05.2019 stating that an enquiry was conducted on the allegations pertaining to issuance of FPS licenses in District Budgam and it has been stated that the allegations have not been substantiated. However, it has come to light that transparent procedure of inviting applications, giving vide publicity to the process of issuance of FP Shop Licenses is not in vogue. Moreso, the norms laid down for issuance of such licenses also needs to be followed in letter and spirit, which as per report is not being done. The department has been advised to streamline the procedures and have the transparent method



for issuance of FP licenses put in place so that discretion being exercised injudiciously is curtailed;

WHEREAS, recently the department has received a communication No. ACB-FIR-JM-15/2020-9437 dated 28.12.2021 from Anti Corruption Bureau (ACB), Kashmir wherein it has been stated that the case FIR No. 15/2020/PS ACB Srinagar is under probe with the Bureau that pertains to the issuance of FPS licenses in District Budgam for the year 2017 in violation of norms. ACB vide subsequent communications have also sought all the original files lying with Administrative Department alongwith the nominal role/designations and recent places of posting of all those employees who remained associated with the approval process for issuance of FPS license for district Budgam during the year 2017 and onwards;

WHEREAS, in another matter concerning issuance of FPS licenses the Hon'ble High Court of Jammu & Kashmir in OWP No. 860/2018 vide order dated 30.11.2018 has made some important observations as under:-

"Once a license holder shows inability to run a Fair Price Shop, authorities are under obligation to put such license for running Fair Price Shop to public by giving wide publicity in the electronic/print media, so that competent unemployed youth come forward with their desire to run Fair Price Shop. Running of Fair Price Shop is not a private affair but a public affair and interest. Fair Price Shop License, thus, cannot be, on asking of an individual, given or assigned to a particular person, without following the mandate of law. Any practice or action bestowing any public largesse upon any citizen, de hors guidelines, norms, rules and regulations, tantamount to arbitrariness and falls fall of Article 14. Given the above discourse, the J&K State Government is expected to come up with sturdy guidelines, norms and regulations for grant of Fair Price Shops Licenses in consonance with and complaint with mandate of Article 14 of the constitution of India, so as to checkmate and arrest the practice and actions, de hors Constitutional mandate."

WHEREAS, in view of the concerns raised by the Investigation Agencies, ACB/Crime Branch and above orders of the Hon'ble Court on the subject, the department has adopted an



approach to not to consider any case that does not strictly confirms to policy norms and comply the above order of the Hon'ble Court;

WHEREAS, in order to streamline the issuance of FPS licenses and to remove the loop holes in the existing FPS policy, the department with the prior concurrence of Finance Department & Law Department has devised a comprehensive Control Order which shall be placed before the Competent Authority very shortly. All FPS licenses shall be regulated by the said control order, once notified.

Now, therefore, in light of the above the matter having been considered in compliance of the orders of the Hon'ble High Court after taking into the consideration the records and rules governing the field and the representation of the petitioner, the same is found to be devoid of merit as resolution of Masjid Committee is neither prescribed under the policy norms nor can be equated with resolution of the residents of the village and accordingly rejected and thus the question of issuance of F P Shop License and supply for location of Yadoo Mohalla, Midoora, Awantipora District Pulwama does not arise. However, the petitioner is free to apply for FPS license, if and when the same is advertised by the department in accordance with the policy norms in vogue at the relevant time.

By order of the Government of Jammu & Kashmir


(Rajinder Kumar)

Under Secretary to the Government

Dated: 14-06-2022

No: FCSCA/Legal/7844/20

Copy to the: -

1. Principal Secretary to the Government, General Administration Department.
2. Joint Secretary (JKL), MHA, Government of India, New Delhi.
3. Director, Archives Archaeology and Museum, J&K.
4. Director, Department of Food, Civil Supplies & Consumer Affairs, Kashmir for information and necessary action.
5. Mr. Sheikh Feroze Ahmad, Deputy Advocate General, J&K, High Court for information and necessary action.
6. Pvt. Secretary to Chief Secretary for information of the Chief Secretary.
7. Assistant Director Pulwama for information and necessary action.
8. Pvt Secretary to Commissioner/Secretary to Government, Department of Food, Civil Supplies & Consumer Affairs for information of Commissioner/Secretary.
9. Concerned for information.
10. I/c website/Stock file (W.2.S.C).