

In The Court of Commissioner, Saran Division, Chapra

Supply Revision No. 58/2019

Dwarika Prasad

Vrs.

The State of Bihar & ors.

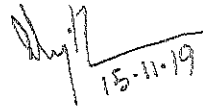
ORDER

The instant revision petition is directed against the impugned order passed by learned District Magistrate, Saran in Supply Appeal case No. 15/2017 on 28.08.2018.

The brief facts of the case are that the present revisionist Dwarika Prasad S/o Late Kaushila Prasad, R/o Mahmada, P.S.-Garkha, Dist-Saran was a PDS dealer. Further case is that on 09.02.2017, the PDS shop of the petitioner was inspected by a team consisting of Sri Anil Kumar Raman, DSO, Saran, Sri Ashwani Kumar Choubey, Circle Officer, Garkha and Sri Pankaj Kumar, officer-in-charge, Parsa. In course of inspection following irregularities were reportedly found like: the shop was closed, notice board and list of consumers were not displayed, supplying of less quantity of grains after taking excess price and distribution of food grains and k.oil at the interval of one month. The inspection report was sent to the licencing authority the SDO, Chapra Sadar who in turn taking cognisance on the said report asked show cause from the petitioner vide memo No. 109 dated 09.02.2017 for the above reported irregularities. In compliance to the said show cause notice, the petitioner filed his detailed show cause reply refuting all the alleged irregularities reported against him. But the learned SDO on finding the said show cause reply to be unsatisfactory, finally vide order contained in memo No. 148 dated 16.02.2017 cancelled the PDS licence of the petitioner. Feeling aggrieved by the said cancellation order of the PDS licence, the petitioner preferred a Supply Appeal case No. 15/2017 before D.M. Saran which was subsequently dismissed by learned D.M. vide order dated 28.08.2018. On being aggrieved by the said order of D.M. Saran, the petitioner approached the Hon'ble High Court by preferring CWJC No. 24299/2018 but the said writ case was later on permitted to be withdrawn vide order dt. 13.05.2019 with a further direction to seek revision of the order dt. 28.08.2018 of D.M. Saran. This led to filing of the instant revision case before this Court.

Heard the learned counsel for the petitioner and learned Spl.P.P. for the state.

The learned counsel appearing on behalf of the petitioner at the very outset of his argument submitted that the impugned order of D.M. Saran is illegal and erroneous, hence the same is fit to be set aside. He further assailed the impugned order of D.M. Saran as well as cancellation order of SDO, Chapra Sadar and argued that the learned Court below did not give any opportunity to the petitioner to cross examine the persons who had reportedly made complaint against the petitioner and, therefore, the evidence considered for cancelling the licence is not admissible. He also argued that no opportunity has been granted to the petitioner over his show cause to cross examine the complainant. He further submitted that the appellate Court did not consider the written argument filed before D.M. and he dismissed the appeal. The learned counsel further raised doubt over the inspection of the PDS shop as no timing has been given in the inspection report as to when the inspection has been done. He also submitted that the action of cancellation of PDS shop of the petitioner is fully politically motivated. He further submitted that closure of PDS shop for a day is not such a kind of violation for which the PDS licence warrants cancellation and in support thereof he also filed a copy of the reported judgment of the Hon'ble High Court passed in CWJC No. 10213/2010 on 22.06.2012. The


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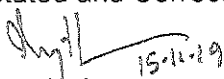
learned counsel also said that several consumers given in writing to the SDO, Chapra Sadar stating therein that it was the son of Dy. Mukhiya who obtained the signature of consumers on paper on the pretext of allotment to them with Indira Awas and later on used the said signature and thumb impression to lodge a false complaint against the dealer and, although, this important aspect of the case was placed before the learned D.M. but he did not consider the same. He also said that not a single consumers attached with the PDS shop of the petitioner have made any complaint regarding any irregularities in distribution of food grains and k.oil. He lastly prayed that as the order passed by learned Courts below are illegal, arbitrary and without considering the factual matrix of the case appropriately the same are fit to be set aside and this revision petition be allowed.


The learned Spl. P.P. on the other hand vehemently opposed the arguments forwarded by the learned counsel for the petitioner and submitted that the impugned order is just, proper and valid. He further said that the petitioner has been found guilty for violating the terms and conditions of PDS licence, the action of cancellation of his licence is justified as such the impugned order are fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties and on perusal of the impugned order of D.M. Saran as well as cancellation order of SDO, Chapra Sadar, it is seen that the petitioner's PDS licence has been cancelled for some allegations of general nature. The petitioner's contention is that the entire exercise of inspection of his PDS shop has been carried out at the instigation of local politicians and he also questioned the validity of the said inspection done on 09.02.2017 as no timing of inspection has been mentioned in the inspection report. I find some substance in the said contention of the learned counsel for the petitioner that copy of show cause notice does not reveal the timing of inspection. Obviously, such kind of discrepancy in the inspection report creates confusion. The other contention of the petitioner is that actually the shop was not closed on the day of inspection rather the same was opened from 8.00 A.M. to 2.00 P.M. and the entire report has been filed on the pressure of local Dy. Mukhiya and it was the son of Dy. Mukhiya and who after motivating some ladies got their thumb impression and used the same for filing a complaint. This contention of the petitioner seems to be acceptable to some extent as several consumers later on given in writing to the SDO about the said act of the son of Mukhiya and also stated that they have no grievance. It seems that these facts were to be considered by the learned SDO, while considering the show cause reply filed by the petitioner before rejecting the same. From close reading of the impugned order of D.M. Saran it appears that some crucial facts of the case have not been considered at all. In fact the learned SDO ought to have considered all aspects of the case properly before cancelling the PDS licence. What is important to be noted that even the learned D.M. also did not deal with the various points raised by the petitioner and even not recorded sufficient reasons for not considering the same. Obviously this is a serious discrepancy in the order of D.M. Saran. I am not constrained to uphold the said orders.

For the abovementioned reasons, the cancellation order passed by SDO, Chapra Sadar vide memo No.148 dated 16.02.2017 and impugned order of D.M. Saran are not sustainable and hence the same are set aside and accordingly, this revision petition is allowed.

Dictated and Corrected by me.


15.11.19
Commissioner
Saran Division, Chapra.


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