

In The Court of Commissioner, Saran Division, Chapra
Supply Revision No. 79/2017

Radha Singh

Vrs.

The State of Bihar

ORDER

The instant revision petition is directed against the impugned order passed by D.M. Gopalganj in Supply Appeal case No. 03/2017 on 09.05.2017.

The brief facts of the case are that the petitioner Radha Singh S/o Ram Aashish Singh, R/o Vill-Rampur, P.S.-Sidhwaliya, block-Barauli, Dist-Gopalganj was a PDS dealer. Further case is that the PDS shop of the petitioner was jointly inspected on 04.05.2016 at 09.30 A.M. by ADSO, Gopalganj and two BSOs of Thawe and Baikunthpur. In course of inspection certain irregularities were found like; the shop was remained closed without any permission from any competent authority, no cash memos were given to the consumers and several consumers like Shiv Nath Mahto, Krishna Singh, Shipu Devi W/o Sita Ram Singh, Meena Devi W/o Rakesh Mahto, Teeja Devi W/o Radhey Lal Prasad, Muma Prasad, Manun Nesa, Matia Devi and other made allegation about irregular distribution of food grains and k.oil on excess price and in less quantity than the prescribed quantity. The matter was reported to the licencing authority, the SDO, Gopalganj who in turn served a show cause notice to the petitioner to remain present alongwith show cause reply and stock and distribution registers of last six months on 08.06.2016. In compliance to the said show cause notice, the petition submitted his detailed show cause reply wherein he denied all the allegations levelled against him and also submitted copies of the affidavits sworn by the persons who supported the fair distribution of petitioner and also denial of having made any complaint against the petitioner. But the learned SDO, while considering the show cause reply and testifying the persons whose affidavit was submitted, finally concluded that the said show cause reply to be unsatisfactory and ultimately he cancelled the said PDS licence vide order contained in memo No. 120 dt. 04.11.2016. Feeling aggrieved by the said order, the petitioner preferred an appeal vide Supply Appeal No. 03/2017 before D.M. Gopalganj and the learned D.M. dismissed the said appeal vide order dt. 09.05.2017. This led to coming of this case before this Court.

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

The learned counsel appearing on behalf of the petitioner initially submitted that the impugned cancellation order of PDS licence is bad both factually and legally. He further submitted that, although, the petitioner had suitably explained reasons for his alleged absence but the same was not considered by SDO and even the affidavits of altogether 11 consumers attached alongwith the show cause reply was rejected outrightly. He also submitted that about not giving cash memos to the consumers he categorically wrote in his show cause that he used to give the same to the consumers. The learned counsel also argued that the SDO failed to consider that all consumers who have alleged otherwise during inspection but later on appeared before the SDO physically to deny all allegations but the SDO wrongly held that four consumers were absent and as such this evidence can not be taken into consideration. He further pleaded that some consumers Suresh Baitha, Rang Lal Thakur and some other cards were banned by the authority as such their statement should not have been considered. The learned counsel also argued that the petitioner has never violated any terms and conditions of PDS licence and the learned SDO without applying his judicial mind cancelled the licence which is absolutely wrong. He further submitted that even the D.M. failed to consider the merit of the claim of the pleading forwarded before him and moreover, those facts which are crucial to the case has

been completely ignored by D.M. He also strongly argued that once the persons whose statement were taken into consideration by the inspecting team for levelling charges of irregularities in running the PDS shop and when the same persons through affidavit and orally make statement before the SDO, contrary to earlier statement given before the inspecting team then he has no option rather than to discharge the petitioner from the said charges. But neither SDO nor D.M. has considered this important aspect while passing the order. The learned counsel lastly said that as the order passed by both authority are erroneous, illegal and passed without applying judicial mind, the said orders are fit to be set aside and this revision petition be allowed.

The learned Spl. P.P. on the other hand, supported the impugned order and further said that there is no illegality or infirmity in the impugned order as such the same is 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, it appears that the petitioner's licence has been cancelled for the alleged irregularities found in running the PDS shop as well as statements given by certain consumers regarding irregular distribution of food grains and K.oil and charging of excess price. The petitioner's contention is that all the charges levelled against him are not correct and he also stated so in his show cause reply and also filed copies of stock and distribution register besides ensuring the physical presence of the persons who had earlier made complaint before the inspecting team and later on denied the same before SDO, but he was reluctant to give any credence to that. I find some merit in the said claim of the petitioner in view of the fact that once the statement of the persons if becomes the basis of charges of irregularities in running the PDS shop and if the same persons appears physically with sworn affidavit before the authority to deny the allegations, the authority concerned having no option to discard the same. It appears that the learned SDO with a pre-determined view rejected the claim of the petitioner. The other contention of the petitioner is that even the D.M. acting as appellate authority did not consider the entire facts with open mind rather he simply relied upon the findings of SDO which is legally not correct. This plea seems to be true to some extent for the reasons that once a valid plea has been rejected by the first authority, the next authority has to apply his judicial mind before arriving at the correct findings of fact. Thus it appears that the learned D.M. has failed to consider the entire factual matrix of the case appropriately by appreciating the relevant facts of the case. And on this score, the impugned order becomes vitiated and the same can not be upheld.

For the aforementioned reasons, and discussion made therein the cancellation order passed by the SDO, Gopalganj as well as the impugned order of D.M. Gopalganj dt. 09.05.2017 are set aside.

In the result this revision application stands allowed.

Dictated and Corrected by me.


Commissioner 9-10-19
Saran Division, Chapra.


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