

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 53/2017
Nagina Pandit
Vrs.
The State of Bihar
ORDER

The instant revision petition is directed against the impugned order passed by D.M. Siwan in Supply Appeal No. 85/2016-17 on 11.04.2017.

The brief facts of the case are that the petitioner Nagina Pandit S/o Late Binda Pandit R/o Vill-Rampalli, ward-No.13, Maharajganj, Dist-Siwan was a PDS dealer. Further case is that the PDS shop of the petitioner was inspected by a team consisting of BSO, Maharajganj and ADSO, Maharajganj pursuant to a complaint petition submitted by some consumers before D.M. Siwan. The said inspection was done on 05.08.2016 and in course of inspection following irregularities were found as per the statement made by the consumers during inspection. The irregularities found like: the shop was found closed for two days during the stipulated time not displaying of notice and price list board in front of the shop and also not mentioned the upto date stock position, not giving of cash memos to the consumers and non-production of distribution and stock registers for verification. Thereafter, the said irregularities were reported to the SDO, Maharajganj who in turn vide memo No. 418/Supply dt. 06.08.2016 served a show cause notice to the petitioner. The petitioner filed his show cause reply stating therein that due to his illness and for treatment he went to Maharajganj Hospital but his son was present at the shop and in support thereof he also filed the copy of medical prescription. However, the licencing authority the SDO holding the petitioner to be guilty for not distributing the food grains to the consumers as per Roaster, he finally rejected the said show cause reply of the petitioner and cancelled the PDS licence vide order dt. 24.08.2016. Feeling aggrieved by the said order, the petitioner preferred an appeal case vide Supply Appeal case No. 85/2016-17 before D.M. Siwan which was later on dismissed vide order dt. 11.04.2017.

On being aggrieved by and dissatisfied with the said cancellation order, the petitioner has preferred the instant revision petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order submitted that the same is bad in law and facts besides cryptic also. He further argued that the learned D.M. should have considered that the SDO has cancelled the licence of the petitioner which is not passed on reliable evidence rather the same is simply based on the report of the inspecting officer. He also argued that the learned D.M. has not considered that the report of the inspecting officer was contradictory and even the fact that not a single consumers came forward with any complaint against the petitioner during inspection. He also pointed out that no time has been mentioned as to when the inspecting team inspected the petitioner's shop which makes the entire allegations based on surmises and conjectures. The learned counsel also submitted that the learned D.M. ought to have considered the fact that the petitioner was suffering from jaundice and for which he had gone for treatment on 05.08.2016 and for that a certificate was also attached with the show cause reply. He lastly said that the learned D.M. has wrongly held that the irregularities found in inspection come under the purview of the



observations made by Hon'ble apex Court with regard to running of PDS shop therefore, the impugned order is legally incorrect and such order can not be upheld.

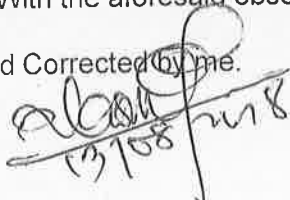
The learned Spl. P.P. on the other hand opposed the submissions made by the learned counsel for the petitioner and submitted that the petitioner's shop was found closed for two days and this is a serious lapse on the part of petitioner as per the observation made by Hon'ble apex Court. He also said that the impugned order is valid and proper having no infirmity as such the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, arguments advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that the petitioner's PDS licence has been cancelled mainly on the charges that his shop was found closed and he had not distributed the food grains lifted by him for the month of July-2016 as per the distribution roaster framed by the deptt. It is also seen that the petitioner filed his show cause reply with regard to closure of shop due to his illness and distribution of food grains was also delayed due to his illness and not coming of the consumers to lift the same, but these points have neither been taken seriously by the licencing authority nor by the appellate authority, the D.M. In fact it appears that these two charges are not of serious nature in view of the fact that the petitioner was suffering from jaundice and it was due to that reason he was not present at the time of inspection because he went for his treatment. As the petitioner had filed medical certificate for his such claim it was necessary for the licencing authority that the same should have been considered without any prejudice. The other charges of non-distribution of food grains in the same month, as per roaster schedule, has also been replied properly by the petitioner as such in that situation the same should have been considered. The main contention of the petitioner's counsel is that the irregularities reported against the petitioner was in no way covered by the observations of the Hon'ble apex Court but the licencing authority and appellate authority both placed heavy reliance on that. I find some element of truth in the said plea for the reason that non of the consumers alleged anything wrong against the petitioner with regard to non-distribution of food grains at the time of inspection. Thus, it appears that the appellate Court has not considered the case of the petitioner appropriately. In fact the petitioner's case needs reconsideration in view of the material available on record.

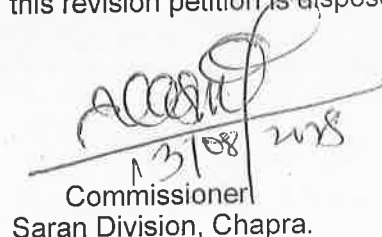
For the aforementioned reasons, the impugned order of D.M. Siwan is set aside and the case is remitted back for reconsideration and to pass a fresh order in accordance with law after giving opportunity of hearing to the petitioner.

With the aforesaid observations and directions, this revision petition is disposed of.

Dictated and Corrected by me.


13/08/18

Commissioner
Saran Division, Chapra.


13/08/18
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Saran Division, Chapra.