

In The Court of Commissioner, Saran Division, Chapra
Supply Revision. No. 38/2017
Most. Phuljhari Kunwar
Vrs.
The State of Bihar
ORDER

The instant revision petition is directed against the impugned order passed by D.M. Siwan in Supply Appeal case No. 70/2016-17 on 10.02.2017.

The brief facts of the case are that Phuljhari Kunwar, W/o Late Chandrama Thakur, R/o Vill-Salempur, Gram Panchayat Balaha Eraji, P.S.-Bhagwanpur Hat, Dist-Siwan was a PDS dealer. Further case is that the PDS shop of the petitioner was inspected on 31.07.2016 at 11.30 A.M. by BSO Bhagwanpur Hat. In course of the inspection following two irregularities were found like; to keep the shop closed and to come only on call; after lifting the food grains the same was not distributed completely but to keep the same in stock and to distribute only on pressure. Thereafter, the matter was reported to the SDO, Maharajganj who in turn asked show cause from the petitioner for the above lapses on her part. The petitioner filed her show cause reply wherein she stated that as she was in bed rest on the advice of doctor as such she was not present in the shop on the day of inspection. Regarding non distribution of grains she wrote that as she became ill after lifting the grain but later on distributed the same as such she had not committed any irregularities and prayed for accepting her show cause reply. But the SDO, on finding the reply furnished by the petitioner to be untrue, cancelled the petitioner's licence vide order dt. 24.08.2016. Feeling aggrieved by the said order, the petitioner filed an appeal case vide Supply Appeal case No. 70/2016-17 before D.M. Siwan. The learned D.M. Siwan after hearing the case finally vide order dt. 10.02.2017 upheld the cancellation order passed by SDO, Maharajganj and accordingly the appeal case of petitioner was dismissed.

On being aggrieved by and dissatisfied with the aforesaid order, the petitioner has preferred the instant revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order of D.M. Siwan submitted that the same is illegal and arbitrary as the learned D.M. has failed to consider the points raised before him. He further argued that neither the shop of the petitioner was found closed nor the dealer was absent but the inspecting officer has wrongly reported that the petitioner had kept the shop closed and she turn up only on call. But the fact is that the shop was opened and the dealer being a widow and ill was taking rest in adjoining room as per advice of the doctor treating her. Regarding non distribution of food grains dispute being lifting the same, the learned counsel said that the delay caused in distribution mainly due to the illness of the petitioner and there was no other ill motive for not distributing the same. The learned counsel further said that, although, the petitioner filed her show cause reply and also submitted the relevant papers regarding distribution of food grains, but the said reply was not considered by the SDO, and he cancelled the PDS licence on the ground that the petitioner had violated the guidelines framed by Hon'ble Apex Court in Civil Appeal No. 196/2011. He further said that even the learned D.M. failed to consider these points properly and without recording sufficient reasons for not accepting the defence of the petitioner, upheld the impugned cancellation order passed by SDO and dismissed the appeal petition which is

illegal and arbitrary. He further said that actually no irregularities were committed by the petitioner and she never violated any terms and conditions of PDS licence; but the licencing authority the SDO, and the appellate authority, the D.M. without considering the facts and circumstances of the case properly had passed the impugned order. He lastly submitted that as the impugned order suffers from arbitrariness and conspicuously shows the non-application of mind by D.M., the said order is not fit to be upheld.

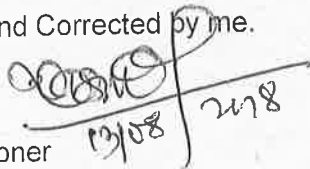
The learned Spl. P.P. appearing behalf of D.M. Siwan on the other hand, supported the impugned order and said that the same is cogent, reasoned and proper having no illegality and fit to be upheld.

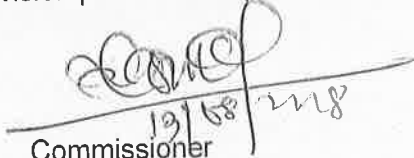
Considering the facts and circumstances of the case, material available on records, submissions forwarded by the learned counsel for the parties and on perusal of the impugned order, it is seen that the petitioner's licence has been cancelled for some non-serious charges. The petitioner's contention is that though her shop was opened and she was taking rest in the adjoining room on the advice of the doctor and also turned up before the inspecting BSO but it has been wrongly reported that she was not present. Regarding other charges she stated that as she was ill some delay occurred in distribution of the grains amongst consumers, but this defence was not considered by the licencing authority. Obviously, the irregularities found during inspection are completely of non serious nature and when the petitioner filed her show cause reply supported by documentary evidence, the action of cancellation of licence of the petitioner at the level of licencing authority was wholly unwarranted. In fact, the licencing authority ought to have considered the defence taken by the petitioner without any prejudice. It is also seen that the learned D.M. has also not applied his mind properly while passing the impugned order which is quite apparent from the impugned order itself wherein some error has been crept in. It appears that the learned D.M. without considering the relevant facts of the case appropriately simply relied on the guidelines issued by the Hon'ble apex Court for cancelling the PDS licence without taking into consideration as to whether the reported alleged irregularities found against the petitioner are really come under the purview of the said guidelines or not. It appears that both the authorities, the licencing authority and appellate authority, have taken a very casual approach in the matter which makes the impugned order arbitrary and unfit to be upheld.

For the reasons, mentioned above, ^{and speaking} the impugned order of D.M. Siwan is not sustainable and hence the same is set aside. The case is remitted back to the D.M. Siwan for reconsideration and to pass a fresh order in accordance with law after hearing the party.

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

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


13/08/2018
Commissioner
Saran Division, Chapra.