

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHHAPRA

Supply Revision No. 183/2011

Yogendra Prasad Petitioner

Vs

The State of Bihar..... Respondent

ORDER

20.02.2013

The instant revision application is directed against the impugned order of SDO, Maharajganj as contained in Memo No. 213/supply dated 22.8.2009 whereby and whereunder the petitioner's PDS Licence was cancelled.

2. The brief fact of the case is that the petitioner Yogendra Prasad s/o Late Ram Awtar Sah r/o Vill. Shankerpur, PS Bhagwanpur District Siwan was a holder of PDS Licence No. BH-26/07. The petitioner's PDS shops were inspected by BSO Bhagwanpur on the direction of Licensing Authority, the SDO about complaint filed by the consumers. The BSO, Bhagwanpur sent his inquiry report vide letter No.16 dated 6.1.2009 to the SDO with a specific observation that as the licensee was absent despite being informed twice about the inspection, so the allegations were primarily supposed to be true. Then show cause was asked from the petitioner and on finding the show cause reply to be unsatisfactory, the license of the petitioner was suspended on 22.1.2009 and was further directed to file second show cause. Thereafter, the petitioner filed his second show cause reply refuting all the charges leveled against him and then the SDO, sent recommendation for revocation of license to the District Level Selection Committee. But the District Level Selection Committee in its meeting dated 17.7.2009 decided to cancel the license of the petitioner. Thereafter, the licensing authority, the SDO, Maharajganj accordingly cancelled the petitioner's license and sent information to the petitioner vide Memo No.213/supply dated 22-8-2009. On being aggrieved by and dissatisfied with the said cancellation order relating to PDS License, the petitioner preferred this revision application before this Court.

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4. Heard the parties.

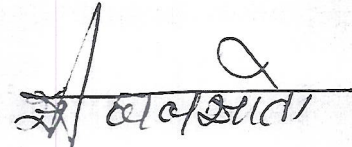
5. The learned counsel for the petitioner submitted that the order of SDO, Maharajganj, as per direction of the learned collector, Siwan is based on misconception of law and facts. He further submitted that the petitioner convincingly canvassed his points and controverted the allegations through show cause submitted along with relevant registers and certificate of fair distribution before SDO but But the SDO suspended the license without making any objective consideration. The learned counsel further argued that the suspension of licence would be only for 90 days and not beyond that and after expiry of the said period licence becomes automatically valid but the petitioner's shop was suspended on 22-1-2009 and subsequently cancelled on 18-8-2009 after seven months. He also pointed out that although SDO recommended for restoration of licence in District Level Selection Committee, but the same has been ignored and Collector, Siwan directed the SDO, to cancel the licence which is unreasonable and not maintainable either in law or on facts. The learned counsel lastly prayed that the impugned order be set aside.

6. The learned Spl. P.P appearing on behalf of the respondent submitted that the petitioner's license has been cancelled as per the direction of District Level Selection Committee headed by Collector, Siwan.

7. It is a commonly accepted principle now that a statutory power has to be exercised by that statutory authority only and not by any other superior authority. In this case, the statutory Licensing Authority (the SDO) ex facie passed order on the direction of the superior authority- the District Level Selection Committee headed by the District Magistrate cum Appellate Authority. As such it would have been infructuous to file an appeal before the Appellate Authority who had already become a party to the decision to cancel the license, hence this direct revision petition. At one point of time, some body in the department took a decision to constitute a District Level Selection Committee, perhaps with good intention, but without taking into account the legal implication. As the Hon'ble Court time and again quashed the orders of cancellation of licenses emanating from the decisions of the committee, the government realized the mistake and rectified it.

There is no longer a District Level Selection Committee to decide cancellation of licenses. This incident took place before rectification. Therefore the impugned order can not be upheld legally.

8. However, there is a pertinent issue regarding the conduct of the PDS dealer. The BSO sent adverse report against him, defiance of his order in thwarting inspection of the shop on specific dates. As the PDS dealer denies this, the Licensing Authority should reexamine the case independently without relying on the direction of superior authorities such as the District Level Selection Committee. Hence I remand the case to the SDO cum Licensing Authority, Maharajganj for a fresh decision.



(C. Lalsawta)

Commissioner, Saran Division, Chhapra