

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHHAPRA

Supply Revision No. 331/2012

Uttam Kumar Singh Petitioner

Vs

The State of Bihar Respondent

ORDER

08.3.2013

The instant revision petition is directed against the impugned order passed by District Magistrate, Siwan on 16.10.2012 in Supply Appeal Case No.127/2012-13.

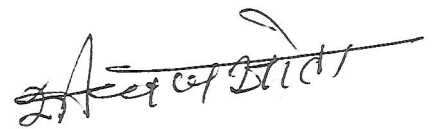
2, The relevant facts of the case in brief are that Uttam Kumar Singh s/o Deo Sagar Singh r/o Vill Rukundipur, PS Daraundha, District Siwan was a PDS Licensee, having License No.1/2012 which was granted to him in the name of Rukundipur PACCS. The BSO, Daraundha conducted inspection of the shop on 19.7.2012 .In course of inspection certain irregularities like (1)Closure of shop (2) Absence OF Shopkeeper (3) Non-display of Notice board Cum-stock position (4) Distribution of only 12 Kg Wheat and 16 Kg Rice instead of 14 Kg Wheat and 21 Kg rice on Antodaya Coupons for the month of April' 12 and taking excess amount of Rs.90 than the correct price (5) Non-issue of Cash Memos and (6) Indecent behavior with the Consumers. The BSO, Daraundha forwarded the inspection / enquiry report vide letter No. 13/camp dated 19.7.2012 to the SDO, Maharajganj annexing thereto the statements of altogether 17 consumers, recorded by him in writing. Thereafter taking cognizance on the said enquiry report the SDO, initiated a proceeding against the Shopkeeper vide case No.40/2012 and accordingly issued notice to him vide Memo No. 426/c dated 20.7.2012 to submit show cause reply. The Shopkeeper did not file any show cause reply which led to issuance of second show cause notice vide Memo No. 440 dated 28.7.2012. Shopkeeper again did not submit any reply and lastly the SDO passed final order of cancellation of licence vide order dated 21-8-2012. On being aggrieved by the aforesaid cancellation order, the petitioner preferred an appeal case before DM, Siwan vide supply appeal case No. 127/2012-13 which was also dismissed by D.M. Siwan vide order dated 16.10.2012. Thus, he filed the present revision petition before this Court.

3. Heard the parties.

4. The learned counsel appearing on behalf of the petitioner submitted that the impugned order of DM, Siwan is bad in law and facts as it is against the settled principal of law regarding PDS(Control) Order 2001. He further contended that the order of SDO, relating to cancellation of license of the petitioner is based on the enquiry report and the statements recorded by him of those persons who were not the consumers of the petitioner and on this point alone the SDO's order is liable to be set aside. The learned counsel further submitted that the learned lower Court ought to have held that the report of BSO is a sketchy report submitted without holding any enquiry and statements of other persons have been recorded and LTI and Signature of other persons have been taken. Even the space where LTI were taken will clearly show that the LTI and Signatures of same fake persons have been taken, out of which some were minor and the same were converted into evidence with ulterior motive. The learned counsel further assailing the impugned order submitted that the same is not based on proper appreciation of the facts and circumstances of the case in as much as it has been passed ex-part without giving any opportunity of hearing to the petitioner which is against the principal of natural Justice. The learned counsel also submitted that the whole action is taken in such a haste that it clearly shows that the same was a planned one and also to settle score with the petitioner. The learned counsel in order to term the enquiry report as baseless and manipulated, also filed copies of affidavits of consumers, voter list, news paper clippings and certificate issued by panchayat functionaries. The learned counsel lastly prayed that the impugned order of DM be set aside.

5. The learned Spl. PP appearing on behalf of Respondent DM, Siwan while supporting the impugned order submitted that the licence was cancelled by the SDO, Maharajganj for failure of the petitioner to submit any show cause replies to the two notices issued to him for the irregularities found during enquiry. The appeal filed before DM, Siwan was also dismissed wherein the order of SDO was upheld and the said order is a detailed and speaking one, fit to be upheld.

6. It has been observed that the charges against the PDS dealer and the grounds for cancellation of his license are many. Although the learned lawyer argued that the impugned order is bad in law and facts and against the PDS (Control) Order, 2001, yet he did not cite any of the provisions of the Order which has been violated. This argument can not be taken on its face value. Regarding allegation of impropriety in collecting evidence from complainants, some of whom are not consumers or are minors, this can not be taken into consideration at the revisional stage after the same issue has been examined by the licensing authority and the appellate court. Fresh evidence can not be taken and the correctness or otherwise of the allegations and counter allegations can not be verified now. The revisional court should confine itself on the procedural aspects and the principle of natural justice. On the allegation of violation of the principle of natural justice, it is clear that show cause notice was issued to the dealer twice but he failed to respond them. The learned lawyer of the petitioner protests that he (the PDS Dealer) was not heard before passing the impugned order. This may be true, but there is no claim or evidence that he asked to be heard or be given an opportunity of being heard. Even when show cause notice was not replied, and he did not ask to be heard, the allegation of violation of the principle of natural justice for not being heard stands hollow. I do find any illegality in the impugned orders that renders them liable to be quashed. Hence the revision petition is hereby dismissed.



(C. Lalsawta)
Commissioner, Saran Division, Chapra

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