

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 135/2013

Dinesh Rai

Vrs.

The state of Bihar

ORDER

15.4.2014

The instant revision petition is directed against the impugned order passed by District Magistrate, Saran in Supply Appeal. Case No. 10/2010 on 19.03.2013

The brief facts of the case are that the petitioner Dinesh Rai S/o Late Ram Ayodhya Rai, Gram Panchyat Koreya, P.S.- Bheldi, Block- Amnour, Dist- Saran was a PDS licensee having licence No. 18/2007. The PDS shop of the petitioner was inspected on 27.01.2010 at 11.05 A.M. by a District Level inspecting team formed by D.M., Saran. The said enquiry report sent to the SDO, Mahraura by D.M., Saran vide letter No. 06/--- dated 30.01.2010 for action to be taken in accordance with law. Thereafter, the SDO, Mahraura vide memo No. 451 dated 06.02.2010 served a show cause notice on the petitioner to file reply for the alleged irregularities found by the inspecting team. In the said show cause notice following irregularities were alleged to have been found. (1) The PDS shop was found closed (2) Notice board was not displayed properly (3) The consumers submitted written complaint that food grains and K.Oil were not distributed regularly and not in prescribed quantity. In response to the said show cause notice, the petitioner filed his show cause reply refuting all the charges of irregularities and also submitted the distribution register, stock register and coupons. However, the SDO, on finding that although, the petitioner claimed that the food grains meant for Anpoorna and Antodaya scheme for the month of August 09 and November '09 respectively had not been distributed but in the sale register, the column meant for consumers signature had only thumb impression which was made fraudulently. Thus, the SDO on holding that the sale register has been prepared with false signature and thumb impression by the dealer with a view to save himself, he rejected the show cause reply and put the licence under suspension vide memo No. 603 dated 18.02.2010 and also directed to call for a second show cause reply. The petitioner again filed his show cause reply and thereafter, the SDO, concluded that the petitioner was responsible for black marketing of grains and finally cancelled the PDS licence vide memo No. 1192 dated 23.03.2010.

Feeling aggrieved by the said order of SDO, the petitioner preferred an appeal case before D.M., Saran and the said appeal was dismissed on 19.03.2013 which led to filing of this revision case before this Court.

Heard the Parties.

The learned counsel appearing on behalf of the petitioner submitted that altogether four irregularities were found by the inspecting team but the petitioner was asked to file his show cause reply within 24

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hours and when the petitioner filed his reply in details in respect of all the charges, instead of considering the same by the SDO, he suspended the licence which is not a healthy practice. He further argued that the direction to file reply within 24 hours is wholly arbitrary as observed by the Hon'ble High Court in CWJC No. 7139 of 2006. The learned counsel further argued that although, the petitioner had submitted an application on 21.01.2010 before the SDO, for granting leave for three months for his treatment and his said leave was sanctioned on 02.02.2010 but the petitioner was in the impression that his said application of leave was effective from the date of its submission before the authority and he kept his shop closed. So the charge that the shop was closed on the day of inspection i.e 27.01.2010 is not proved. The learned counsel also argued that the cancellation order of the licence passed in complete violation of the provisions of PDS (control) order, 2001 which clearly stipulates that after suspension of licence, the records are to be sent to the District Level Selection Committee, but in the instant case instead of sending records, the SDO cancelled the licence, thus making the order arbitrary. He also filed a copy of the letter of the deptt. dated 20.01.2012 in support of his contention. He further pleaded that the petitioner was not afforded any opportunity of hearing thereby denying him natural Justice and in support of this contention he filed a copy of the order of the Hon'ble High Court passed in CWJC No. 10187/2010. Regarding charge against the petitioner of compiling forged sale register, he stated that this charge was not mentioned in the first show cause notice and more over this was not based on any evidence. He also stated that commodities are being supplied on the basis of coupons after obtaining the signature of the recipients and are deposited to Block Supply Officer in prescribed format in every month and if there was any fault on the part of the concerned dealer then why not this was noted earlier by the concerned BSO and SDO. The learned counsel lastly prayed that the impugned order of D.M., Saran is not proper and just as he failed to consider the points raised before him hence the impugned order be set aside and accordingly this revision be allowed.

The learned Spl. p.p. for the state submitted that the impugned order of the D.M. is just and proper and this revision is devoid of merit fit to be dismissed.


Considering the facts and circumstances of the case, material on records and going through the pleadings advanced by the learned counsel for the parties it appears that the petitioner had applied for three month's leave to the SDO, Marhaura on dated 21.01.2010 on the medical ground and the leave was sanctioned on 02.02.2010 by the SDO. It is also seen that meanwhile, the petitioner's shop was inspected by a team on 27.01.2010 when the shop was closed. The petitioner claims that he closed the shop from the day i.e. 21.01.2010 when he submitted his application for leave. This obviously shows that the allegation relating to closure of shop becomes untenable. The other charge of non-distribution of Anapoorna and Antodya grains to the beneficiaries and of obtaining forged signature and thumb impression in the sale register seems to be


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somewhat serious charge and for which the petitioner certainly does not --- deserve any leniency. But for the reason that serious procedural lapse has been committed by the licensing authority , the SDO, by not sending the record of the case to the District Level Selection Committee, which was mandatory to do so as per the provision of PDS Control (order) 2001, certainly goes in favour of the petitioner. It is well settled principle of law that the authority vested with power has to exercise the power as per the provision of the statute. In this case it is apparent that the SDO has passed the cancellation order of PDS licence ignoring the relevant provision of the PDS (control) order. Even the learned Collector, has not taken any step to correct the order of SDO, while acting as the appellate authority.

Thus , for the aforesaid reasons, I am constrained to uphold the impugned order of D.M., Saran dated 19.03.2013. Accordingly, the same is set aside and this revision is allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra 15/4/2014