

**In The Court of Commissioner, Saran Division, Chapra
Explosive Appeal No. 441/2007**

Mohammad Imam & Ors.

Vrs.

The State of Bihar & Ors.

ORDER

29.09.2015 — The instant appeal application is directed against the impugned order passed by D.M. Siwan, as contained in memo No. 1950/Arms dt. 21.09.2007 whereby and whereunder fire works selling licence No. 23/83, standing in the name of appellant was revoked.

The brief facts of the case are that the appellant Mohd. Imam S/o late Moulvi Hasan, R/o Telhatta Bazar, P.S.-Siwan Town, Dist-Siwan was a holder of Explosive licence No. 23/83 for the possession and sale of the explosive fire works at holding No. 345 of ward No. 9 Telhatta Bazar in the district of Siwan. Further case is that the shop of the appellant was inspected by a team consisting of S.B. Mathur executive Magistrate, Siwan and Circle Officer, Siwan Circle, constituted by D.M. Siwan vide memo No. 2421/c dt. 19.10.2006. In course of inquiry it was found that the said licence NO. 23/83 was renewed only upto 1997-98 besides some other irregularities like the appellant did not produce the stock and sale registers on demand and he also told that his age was of 35 years. The inspective team submitted the inquiry report to the D.M. and this led to issuance of show cause notice to the appellant vide memo No. 3906/Arms dt. 24.12.2006. The appellant filed his show cause reply on 15.01.2007 stating therein that he deposited the renewal fee every year through challan and his age was of 45 years and as he is a retailer he does not keep stock and sell register. But the learned D.M. held that the appellant had obtained the licence by suppressing the facts and carrying out the business illegally, he cancelled the said licence with immediate effect vide memo No. 1950/Arms dt. 21.09.2007.

On being aggrieved by and dissatisfied with the said cancellation of his licence, the appellant has preferred this appeal application before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant at the very beginning of his argument submitted that the licence to the appellant was granted by the licencing authority, the D.M. after making inquiry and the said licence was renewed from time to time as per rules. He further submitted that the appellant was major at the time of granting of licence and now he is of 45 years age. He also submitted that the inspecting team did not find any explosive material in the premises of the appellant and no seizure list was prepared as the appellant was neither selling nor in possession of any explosive material. He also argued that the licence could not be renewed due to negligence of the office while fee for renewal was deposited every year through challan. He further submitted that without finding any irregularities in inspection, the said licence was cancelled after 24 years of granting licence on the allegation that the appellant was minor at the time of granting licence on the baseless ground that the appellant is of 35 years age. The learned counsel further argued that the appellant has never contravened any provision of law and he also not violated any provisions of Explosive licence but his licence was cancelled mainly on the wrong report submitted by the concerned officer who wrongly held the age of the appellant as 35 years whereas his actual age was 45 years and in support of that he also filed a attested copy of the school leaving certificate in which the appellant's date of birth shown to be 02.08.1964. He further argued that the action against the appellant was taken mainly on the false complaint made by his family members with whom he had family dispute relating to partition of ancestral property. The learned counsel lastly submitted that the impugned cancellation order has been passed without properly considering the show cause reply and various documents filed by the appellant so the impugned order is fit to be set aside and as such the same be set aside and this appeal be allowed.

The learned APP appearing on behalf of the D.M., Siwan, submitted that the impugned order is just and proper and having no infirmity warranting any interference so the same is fit to be upheld.

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Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties and on perusal of the impugned order, it is seen that the appellant's licence has been cancelled mainly on the ground that the said licence has been obtained by him by suppressing the material facts with respect to his age at the time of granting licence in the year 1983. The inspecting team alleged to have been found that the appellant stated before them to be of 35 years age on the day of inspection in the year 2006. However, the appellant denied in his show cause reply that he stated so rather he strongly asserts now that he told that his age was 45 years and the inspecting team wrongly assessed his age to be 35 years. In support of his said contention he filed an attested copy of the transfer certificate issued by the Headmaster, D.A.V High School, Siwan in which his D.O.B. is recorded as 02.08.1964. This plea of the appellant seems to be correct in view of the fact that on the date of granting of the said licence, the appellant was certainly of more than 18 years of age which made him entitled for the grant of said licence. The view of the inspecting team that the appellant was minor can not be accepted now simply on the ground that the appellant stated to have been said before the inquiry team that his age was 35 years which can not be correlated from the D.O.B. recorded in the transfer certificate and the date on which the appellant held to be told so. Thus, I find that the assessment of age of the appellant was done only on his alleged oral statement and as such this allegation can not be worth consideration in absence of any corroborative evidence. So far as the other allegations like non-renewal of licence is concerned this allegation also becomes untenable in view of the copies of challan available on record which categorically shows that the appellant used to deposit the renewal fee in the Govt. account and if no endorsement of renewal is made on the licence paper, the appellant can not be held responsible for such laches and obviously he can not be punished for that. The other point needs to be considered relates to non-production of sale and stock register which is not a serious lapse on the part of appellant as he himself admitted before the inquiry officer as well as in his show cause reply that he used to conduct a retail business of fire crackers and for which no registers are required to be maintained. Thus, it appears from the impugned order that the aforementioned facts were not considered appropriately by the learned D.M. while cancelling the licence. This itself makes the impugned order improper and defective which can not be upheld.

For the aforesaid reasons, and discussion made therein, the impugned order of D.M. Siwan is not sustainable, hence the same is set aside and the matter is remitted back to consider the case a fresh in the light of observations made above and in accordance with law. Accordingly, this appeal application is disposed of.

Dictated and Corrected by me.

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