

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHHAPRA

Supply Revision No - 289/2008

Sudhanshu Prasad ----- Petitioner

Vs

1. The State of Bihar
2. S.D.O. Chapra Sadar ----- Respondents

ORDER

10.4.2013

The instant revision petition is directed against the impugned order passed by District Magistrate, Saran, Chapra on 27.9.2008.

2. The brief facts of the case are that Sudhanshu Prasad s/o Late Jagdish Prasad r/o Mohalla Imamganj PS-Chapra Town Dist. Saran was a holder of PDS licence No. 112/2007. The SDO, Chapra Sadar inspected the petitioner's shop on 7.6.2008 and found that the PDS shop was closed and some people also made complaint that the shop always remained closed. Then, he sought explanation regarding the above irregularities vide memo No. 936 dt. 7.6.2008. The petitioner filed his show cause reply stating therein the cause of his absence and also submitted the copy of stock register, Distribution register, cash memos etc in support of his denial for the above allegation. Meanwhile SDO Sadar on finding that the entry in the distribution register of this petitioner and some others appeared to be made by same persons, he derived the inference that those PDS shops were run by a single person. And on that basis the licence of this petitioner was cancelled with immediate effect vide Memo No. 1034 dt 18.6.2008. Feeling aggrieved by the said cancellation order passed by SDO, Chapra Sadar, this petitioner preferred an appeal vide supply Appeal No. 26/2008 before District Magistrate, Saran but the same was disallowed by D.M. vide order dt 27.9.2005. Thus on being aggrieved by and dissatisfied with this order, the petitioner preferred the instant revision before this Court.

3. Heard the parties

4. The learned counsel appearing on behalf of the petitioner submitted that the impugned order is not a speaking order and also is against the settled principle of law so far as the learned Court should have held that non-production of documents

and closure of shop at the time of inspection can not be a ground for cancellation of PDS licence. He further submitted that as per provision if a licence is suspended then in the meantime record relating to suspension of licence is required to be sent to the District Level Selection Committee within a fort night from the date of suspension of the licence and the District Level Selection Committee after due enquiry shall recommend for revocation of suspension. But in this case the licence of petitioner was not suspended nor the records of license has been sent to the District Level Selection Committee for its consideration and without suspension and without consent of the District Level Selection Committee, the SDO, Chapra Sadar has passed the cancellation order of the PDS shop of the petitioner which is illegal. In support of his contention, the learned counsel also relied upon the reported Judgments (Rajendra Prasad Vrs State of Bihar 1986 PLJR- No. 71 B.R.L.J 243 (Sic) and Bishundev Sah Vs State of Bihar 1997(2) PLJR-169. The learned counsel while forwarding his contentions relating to charges against the petitioner submitted that several consumers gave in writing to the SDO, about fair distribution of K.oil by the petitioner. The petitioner has got no relation with other dealers, Surendra Prasad, Manoj Kumar and Rambabu and in fact the petitioner maintained his register by himself or by his accountant. He further submitted that the learned DM, Chapra ought to have held that the petitioner is not guilty under the provision of Bihar Trade Article (Licence Unification) Order 1984, and even over looked the well settled principle and decision cited by the petitioner at the time of hearing. So the order of learned lower Court is otherwise erroneous in law as well as on facts. The learned counsel lastly prayed that the impugned order be set aside.

5. The learned Spl.P.P appearing on behalf of respondents submitted that the learned SDO, during inspection found that the distribution register of the petitioner having the same serial nos written for the months of January and March 2005 and too in the same handwriting as of three other PDS dealers. And on finding this as a serious irregularity, the licence of the petitioner was cancelled and the appeal filed before DM, Saran was also dismissed by cogent and reasoned order and there is no infirmity in the said order.

6. The alleged offence of shop closure during inspection is not a very serious one if considered in the backdrop of the punishment of cancellation of licence; but the law does not provide minor punishment; the only substantive punishment

prescribed for minor or major offence is suspension/ cancellation of licence. The punishment meted out is therefore within the purview of law. The allegation of operating more than one PDS shop is in the nature of conjecture, but there are other aspects of it also. It has been argued that the proposal for taking action should have been sent to the District Level Selection Committee for a final decision. But there is a well-known principle of law that "a statutory power (cancellation of licence) should be exercised by that statutory authority (SDO) only who is so empowered and not by any other authority either superior or inferior. Many orders of cancellation of licence have been quashed by this court on the ground that the statutory power was exercised by the statutory authority according to the decision of DLSC but not according to its own inner voice. Hence there is no illegality in this order. The revisional court is not expected to go into the details of claims and objections on facts but is expected to ensure that orders passed are not violative of the principle of natural justice, and I do not fine one here. As such I do not find sufficient grounds to quash the impugned orders, hence the revision is dismissed.



(C.Lalsawta)

Commissioner, Saran Division, Chhapra.