

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 36/2014

Punam Gupta

Vrs.

The State of Bihar

ORDER

This revision is directed against the impugned order passed by District Magistrate, Saran on 19.10.2013 in Supply Appeal Case No. 40/2012(Punam Gupta Vrs SDO, Marhaura)

The brief fact of the case is that the petitioner Punam Gupta W/o Rama Shankar Prasad R/o Village- Nipania, P.S.- Issuapur, Dist- Saran was a "Thela vendor" Licencee. The further case is that the said licence of the petitioner was cancelled by the SDO, Marhaura vide memo No. 130 dated 11.03.2007. Thereafter, the petitioner filed an appeal case before D.M. vide supply appeal case No. 25/2007 but the said appeal was dismissed vide order dated 14.09.2007 upholding the cancellation order of SDO, Marhaura. This led to filing of a revision case before this court vide supply Revision case No. 450/2007 and this court had remitted the case back to SDO, Marhaura with a speaking order and directed the SDO, Marhaura to hear afresh the matter in the light of deptt's circular, vide order dated 13.02.2008. However, during pendency of the case before SDO, Marhaura, the petitioner approached the Hon'ble High Court vide CWJC No. 7870/2011 and the said writ was disposed of on 04.05.2011 wherein a specific direction was given to the SDO, Marhaura to pass order in view of the direction given in the remand order of this court. This led to an order passed by the SDO, Marhaura on 02.03.2012 rejecting the plea raised by the petitioner. Feeling aggrieved by the said order the petitioner again filed an appeal before D.M., Saran vide Supply Appeal Case No. 40/2012 which was dismissed on 19.10.2013.

On being aggrieved by an dissatisfied with the aforesaid order, the petitioner has preferred this revision case before this court.

Heard the Parties.

The learned counsel appearing on behalf of the petitioner submitted that the impugned order of D.M., Saran has been passed in violation to the order passed by the Commissioner as well as the Hon'ble High Court and the said order is itself contrary to the order passed by the D.M. himself in his earlier appellate order. The learned counsel further submitted that the order passed by SDO on 02.03.2007 is based on conjectures and in violation to the Govt. instruction without any complaint from any corner and the upholding the same order by Collector is arbitrary, mala fide and bad in law. He further, stated that there is no valid ground or precedence in any district including Saran to



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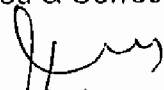
cancel the licence under any statutory provision as it is the statutory obligation of the respondents to obey the orders, circulars issued by the Govt. He further argued that the licensing authority, the SDO, Marhaura not only violated the provision contained in the Govt. circular, relating to Thela vendor licensee but also disobeyed the order and direction of the revisional authority, the Divisional Commissioner, when the case was remanded back to the SDO, for fresh consideration in the light of Govt. circular. The learned D.M. also did not consider the factual aspect of the case and relevant provision contained in Govt. circular and rejected the appeal which is illegal. The learned counsel lastly prayed that the impugned order of D.M., as well as of SDO, Marhaura are fit to be set aside as the same are illegal and this revision be allowed.

The learned Spl. P.P. appearing on behalf of the state simply supported the impugned order and opined that this revision is fit to be dismissed.

Considering the facts and circumstances of the case, and on going through the series of orders passed by SDO, D.M. and by this court as well as the present impugned order, it is seen that SDO in his order dated 02.03.2012 himself observed that barring Marharua sub division, in other subdivision, K.Oil is being distributed by Thela vendors even in rural areas viz. Manjhi, Jalalpur, Nagra, Garkha, Maker and there are allotted their quotas of K.Oil on monthly basis. The copy of licence available in the file shows that Punam Gupta's name was substituted in place of Sunil Kumar having licence No. 06/92, thus clearly showing that the petitioner was a valid licensee. Now the question remains for consideration as to whether two sets of rules can prevail in one district or the SDO, can himself makes rule to his satisfaction in his sub-division of control. The learned SDO, himself observed that operation of Thela vendors are continuing in other two sub-division, in the Saran district then how can the same may not be operational in the Marhaura sub-division. Thus, it is quite obvious that SDO, is not competent to regulate the distribution of K.Oil at his own satisfaction until and unless, the Govt. instruct to do so. The D.M. as appellate authority did not consider this important aspect of the case while passing the order.

For the reasons aforesaid, the impugned order of D.M., Saran dated 19.10.2013 and fresh order passed by SDO, Marhura on remand from this court are not sustainable. Hence the same are set aside and in the result this revision is allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra
3/6/14


Commissioner,
Saran Division, Chapra
3/6/14