

In The Court of Commissioner, Saran Division, Chapra

Supply Revision No. 145/2014

Raj Kumar Prasad

Vrs.

The State of Bihar.

ORDER

13.06.2015 This revision petition has been filed pursuant to the direction contained in the order dated 07.03.2014, passed by Hon'ble High Court in CWJC No. 16859/2012.

The brief facts of the case are that Raj Kumar Prasad S/o Late Raghuwar Ram R/o Village- Lakshman Dumari, P.S.- Raghunath Pur, Dist- Siwan was a PDS Licencee. Further case is that on receipt of a telephonic complaint from the villagers by the SDO, Siwan, he ordered for a joint inquiry of the petitioner's PDS shop to be conducted by Circle Officer-cum-BSO, Raghunathpur and BSO, Darauli. These two Officers conducted enquiry on 06.07.2011 and subsequently submitted their report to the SDO, Siwan. Thereafter, the SDO, in his show cause notice vide Memo No. 729/c dated 09.07.2011 explaining the details of irregularities reported to have been found in enquiry like, shop was opened but PDS dealer was absent, stock of K.Oil was shownnil but 52.250 litre of K.Oil was found and stock register for K.Oil was found to be maintained up to 21.06.2011, less numbers of coupons were found besides some other irregularities such as irregular distribution of K.Oil and food grains meant for Antodaya and BPL Schemes and charging of excess price of K.Oil. The petitioner filed his show cause reply refuting all the charges and also filed the photo copies of the various registers. But SDO on finding the said show cause reply to be unsatisfactory, directed the petitioner to file the second show cause reply vide Memo No. 765/c dated 16.07.2011. In compliance to the second show cause notice, the petitioner filed his reply but the SDO, on finding the said show cause reply as unsatisfactory and inadequate, cancelled the petitioner's PDS licence vide Memo No. 82 dated 07.08.2011. Feeling aggrieved by the said order, the petitioner, approached the D.M., Siwan by way of filing supply Appeal Case No. 39/11-12 but the said appeal was dismissed vide order dated 17.07.2012. Thereafter, the petitioner filed CWJC No. 16859/2012 in Hon'ble High Court, Patna which was disposed of on 07.03.2014 with a direction to avail the statutory remedy of revision before a competent forum. Thus this revision case has been preferred before this court.

Heard the parties.

The learned counsel appearing on behalf of the petitioner, submitted in details about the allegations alleged to have been found during inquiry, the reply filed by the petitioner through show cause reply in respect of those allegations, and subsequently about the remarks made by the SDO in his cancellation order. He further submitted that the first allegation is that the shop was opened at 10.30 A.M. but the petitioner was absent, to this the petitioner replied that, although, he started distribution work, he suddenly felt stomach pain and due to that he went to see a doctor, but the reply was not accepted despite supported with the medical certificate. Regarding second allegation of K.Oil shownnil on the notice board, he replied that this happened mainly to avoid cutting or overwriting in the stock register as the distribution was started. For other allegations, the learned counsel said that although, the petitioner filed his

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reply supported by documentary evidence, but the same were not considered at all by the licensing authority and when the petitioner filed second show cause reply along with an application addressed to SDO, in respect of fair distribution having signature and thumb impression of some consumers, the said show cause reply was also rejected without disclosing reasons for such rejection. The learned counsel further argued that the SDO acted on ex-parte inquiry report in which name of complaints were not mentioned so that report is baseless in the eyes of law and even the cancellation order was non-speaking. He also argued that the D.M., Siwan has not passed a reasoned order in appeal so this order is liable to be set aside. The learned counsel lastly prayed that the impugned order of D.M. be set aside and this revision be allowed.

The learned Spl. P.P. appearing on behalf of the D.M., Siwan submitted that the impugned order is cogent, reasoned and proper. So the same may be upheld.

Considering the facts and circumstances of the case, material available on the record and arguments advanced during hearing of the case by the learned counsel for the parties and on perusal of the written statements, it is seen that for the alleged charges of reported irregularities against the petitioner, he was served with two show cause notices. Although, the petitioner filed his show cause reply on both occasions wherein he refuted the allegations supported by documentary evidence. But from the cancellation order of SDO, it is found that although, he discussed about the allegations and the reply submitted by the petitioner in respect of those allegations, but in the remarks column against each charges he simply wrote unsatisfactory. The learned counsel for the petitioner, argued that how he derived this conclusion that the said show cause reply as to be unsatisfactory without discussing about any evidence or the reasons for the same. As no reasons were discussed or disclosed about the said conclusion of the licensing authority and on that basis the cancellation order becomes contrary to the law and prescribed rules. This contention of petitioner's counsel seems to be true in view of the fact that the cancellation order passed by SDO, certainly lacks reason for the finding arrived at by him as no reasons have been discussed for such findings. Besides this the learned counsel is also strongly submitted that the second show cause reply along with an application addressed to the SDO, with regard to fair distribution having signature and thumb impression of some consumers, the said show cause reply was also rejected by the SDO without disclosing reasons for such rejection. I find that this should have been considered by the learned SDO. The other important point raised by the learned counsel for the petitioner is that even the learned D.M. also did not consider this important point in appeal although, the same was raised before him strongly. This plea also seems to be true and acceptable because of the fact that the appellate court did not consider this fact properly and without assigning sufficient reasons for non consideration of the said plea of the learned counsel, impugned order has been passed.

For the aforesaid reasons and discussions made therein I am not constrained to uphold the impugned order of the D.M., Siwan dated 07.03.2014 and hence the same is set aside.

In the result, this revision petition is allowed.

Dictated and corrected by me.

b/13.6.15

Commissioner,
Saran Division, Chapra

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Saran Division, Chapra