

In The Court of Commissioner, Saran Division, Chapra

Supply Revision No. 66/2015

Birendra Kumar Singh
Vrs.
The State of Bihar
ORDER

09-03-2016-

The instant revision petition is directed against the impugned order passed by D.M. Saran in Supply Appeal No. 09/2010 on 06.01.2015.

The brief facts of the case are that the petitioner Birendra Kumar Singh S/o Late Dilip Singh R/o Vill-Satasi, P.S. Issuapur, Dist-Saran was a PDS dealer and his license No. was 89/2007. Further case is that the petitioner's PDS shop was inspected by an inspecting team comprising Circle Officer, Parsa circle and B.S.O. Parsa on 27.01.2010 and in course of inspection certain irregularities were found like: shop was closed, notice board was not displayed, some consumers alleged the BPL and Antodaya scheme were lifted for the month of Oct and Dec but the same was not distributed. Thereafter, a show cause notice was issued to the petitioner by SDO, Marhaurah for the above reported irregularities vide memo No. 456/c dt. 06.02.2010. In compliance to the said show cause notice, the petitioner filed his detailed show cause reply supported by documentary evidence but the said reply was treated as unsatisfactory and again a second show cause notice was served. The petitioner again replied the second show cause notice but the SDO on finding the said show cause reply to be unsatisfactory rejected the same and ultimately cancelled the said PDS license vide order dt. 16.03.2010 and accordingly he was informed about the said cancellation order vide memo No. 1119 dt. 18.03.2010 of SDO, Marhaurah. Feeling aggrieved by the said order, petitioner preferred an appeal vide Supply Appeal No. 09/2010 before D.M. Saran which was dismissed on 06.01.2015.

On being aggrieved by and dissatisfied with the aforesaid order, the petitioner has preferred the present revision petition before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order submitted that the said order has been passed without considering all the relevant facts of the case appropriately. He further submitted that, although, the inspecting team claimed to have examined 13 consumers who alleged to have supported the irregularities but the fact is that none of them were the consumers of the petitioner's shop as such the entire allegations of irregular distribution becomes false. He also submitted that although the petitioner had explained in his show cause reply about the reason leading to closer of his shop due to sudden illness and also filed the copy of medical report but the same was not considered at all. He also submitted that closer of PDS shop for a day is not a serious offence for which the PDS license can be cancelled as observed by Hon'ble High Court in several cases. He also submitted that even the learned D.M. did not consider the above facts legally and properly and rejected the appeal of the petitioner. The learned counsel further submitted that the petitioner used to distribute the food grains and k.oil soon after its lifting but some consumers wrongly alleged about the said irregularities due to previous enmity as the younger brother of the petitioner fought the election of Mukhiya. He also submitted that as per the existing system next months allotment is released only after the deposition of previous

months coupons as such it is highly improbable that any irregularities can be committed in distribution of food grains and k.oil on the basis of coupons. The learned counsel lastly submitted that as the shop was found closed during inspection, the other charges of irregularities automatically becomes insignificant and the PDS license can not be cancelled for mere closure of the shop for a day. He lastly prayed that the impugned order is fit to be set aside on this ground alone as such the impugned order be set aside and this revision petition be allowed.


The learned Spl. P.P. appearing on behalf of D.M. Saran strongly opposed the arguments forwarded by the learned counsel for the petitioner and submitted that the impugned order is cogent reasoned and proper as such the same be upheld.

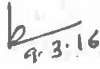
Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and on perusal of the impugned order it appear that the alleged irregularities reported found during the inspection of the PDS shop of the petitioner is not fully proved. So far as the charges relating to closure of the PDS shop for a day is concerned, the same has been explained by the petitioner in his show cause reply and the same appears to be for reasonable cause as such this charge can no way be taken to be of serious in nature. The petitioner counsel is of the view that this charge alone can not be a ground of cancellation of PDS license in absence of any proved charges of black marketing. The plea of petitioner seems to be justified in view of the fact that the Hon'ble High Court also in several cases, observed that the closure of PDS Shop for a day is not a such kind of offence for which the PDS license can be cancelled. Regarding other charges alleged to have been found against the petitioner also seems to be not fully proved. The petitioner categorically states that those 13 persons who were complained before the inspecting team about the alleged irregularities were not the consumers attached with the PDS shop of the petitioner, rather they were the villager who were enemical to him as his younger brother fought the election of Mukhiya. I find that the learned SDO should have looked into the entire aspects of the case so as to arrive at a correct findings of fact. It is seen that the learned D.M. Saran also did not look into the whole material facts of the case properly rather he came to the conclusion on the basis of entry made in the various registers. It is important to note that once the person who got recorded their statement against the petitioner and in case the petitioner question the very credibility of that, then the entire matter itself becomes doubtful. At least the D.M. as an appellate authority should have looked into the matter thoroughly so as to arrive at a correct findings of fact.

Thus for the aforesaid reasons the impugned order of D.M. is not upheld and accordingly the same is set aside.

In the result this revision is allowed.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


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