

In The Court of Commissioner, Saran Division, Chapra

Supply Revision No. 316/2014

Deo Narayan Manjhi

Vrs.

The State of Bihar

ORDER

28.05.2014 The instant revision petition is directed against the impugned order passed by D.M. Siwan in Supply Appeal case No. 61/2013-14 on 10.10.14.

The brief facts of the case are that the petitioner Deo Narayan Manjhi S/o Kisni Manjhi R/o Vill-Satjora, Block-Daraundha, Dist-Siwan was a PDS dealer. Further case is that the PDS shop of the petitioner was inspected jointly on 09.06.2013 by Executive Magistrate, Maharajganj and BSO, Daraundha and in course of inspection following irregularities were found like: shop was found closed and son and brother of the petitioner told that the dealer had gone to Siwan for which no information was mentioned on the notice board, notice board cum-stock showing board was not maintained properly, although, food grains meant for Antodaya and BPL scheme were lifted on 06.06.2013 but the same was not brought in the stock as found in presence of witnesses, certain consumers stated that no food grains had been distributed for last two to three months, food grains were not distributed by using weights and charging of excess price of Rs. 130 for 10 kg of weate and 10 kg. of Rice under the BPL scheme. Thereafter, the SDO, Maharajganj issued a show cause notice to the petitioner vide memo No. 352/Supply dt. 10.06.2013 for the above mentioned irregularities and in compliance to the said show cause notice, the petitioner furnished his show cause reply refuting all the charges and also filed certain documentary evidences in support of his denial. But the learned SDO, while acting on the said show cause reply found the same to be unacceptable and subsequently rejected the same resulting in the cancellation of the PDS Licence vide order dt. 26.06.2013. Feeling aggrieved by the said order, the petitioner preferred an appeal vide Supply Appeal No. 61/2013-14 before D.M. Siwan but the said appeal was also dismissed vide order dt. 10.10.2014. This led to filing of this revision case 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 same is illegal, wrong and against the factual aspects of the matter and furthermore, the impugned order is not based on the proper appreciation of the facts and circumstances of the case and in accordance with law. He further submitted that it was wrongly presumed by the inspecting team that the food grains lifted by the petitioner on 06.06.2013 was sold in black market as the same was not brought in shop/godwn but the fact is that the said food grains were brought in the godwn situated in the verandah of his house but due to dispute raised by his brother, the food grains were stored in another room nearby for safety and it was due to enmity his brother wrongly stated before the inspecting team that the food grains were not brought after lifting. He further argued that although, the petitioner had stated the fact in his show cause reply before SDO, but the SDO, instead of verifying the same wrongly believed that the said food grains have been sold in block market. The learned counsel further argued that the inspecting team did not record any statement of any consumers attached with the PDS shop of the petitioner rather they relied upon the statement of his brother with whom he had no good terms. Regarding other alleged irregularities, the learned counsel said that the petitioner had explained in his show cause reply that on the day of inspection, the petitioner had gone to Siwan to see one of his relative/who had medical emergency and as he was in hurry and he could not mention the same on notice board. The learned counsel further stated that the learned SDO did not consider the factual aspects of the case properly and cancelled the petitioner's licence without affording him any opportunity of personal hearing. He also



submitted that even the learned D.M. also did not consider the relevant facts and various evidences as well as relevant reported judgments of Hon'ble High Court and simply upheld the findings of SDO, to be just and proper without recording his own findings. The learned counsel further stated that the entire action against the petitioner has been taken only on the basis of allegations without making any independent inquiry into the whole matter after, the submission of the show cause reply by the petitioner and even on non-application of judicial mind. The learned counsel also strongly submitted that even the copy of the inquiry report as well as the name of the persons and statement made by them were not supplied to the petitioner alongwith the show cause notice which prejudiced to the petitioner. The learned counsel lastly prayed that as the appellate authority failed to consider the facts and law involved in the present case as such the said impugned order can be termed arbitrary and illegal so the said order is fit to be set aside.

The learned Spl. P.P. on the other hand submitted that the impugned order is just proper and valid hearing no infirmity so the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that the petitioner's PDS licence has been cancelled for certain irregularities allegedly found during the inspection of his PDS shop. The claim of the petitioner is that, although, he had explained in details about the alleged charges of irregularities supported by documentary evidences, but the same was not considered at all by the licencing authority. This claim of petitioner has some merit in view of the fact that the inspecting team on not finding the lifted grains in the godown of the petitioner, presumed that the same has been black marketed by the petitioner. The petitioner stated in his show cause that the said grains were stored in a nearby room in the same premises for safety and security and the same was necessitated as his brother objected from storing the same in verandah of the house owned jointly by them and it was he who wrongly stated before the inspecting team, in absence of the petitioner, that the same has been black marketed with malafide intention. Obviously, this is a crucial point, atleast, which should have been verified by the licencing authority before cancelling the licence on the allegation of black marketing. It is also seen that, although, these points were raised before the appellate, authority, alongwith same relevant rulings of the Hon'ble High Court, but the same has not been considered nor appreciated. Thus, it appears that the petitioner's licence has been cancelled on some vague allegation of black marketing of grains alone. In fact, the learned D.M. ought to have looked into all aspects of the case independently before arrieving at the final findings of facts and by not doing so, the impugned order becomes arbitrary. The other important point raised by the petitioner that even the copy of inquiry report and persons alleged to have got recorded their statements regarding unfair distribution and charging of excess price from consumers were not made available to him. It has also been claimed the petitioner that non-supply of the enquiry report of the inspecting team which is the foundation for issuance of show cause notice as well as non-supply of names of consumers who had complained against the petitioner regarding irregular distribution of food grains during inspection has prejudiced the petitioner and this important fact has not been considered by the learned D:M. In fact this important facts should have been looked into by the appellate authority, the D.M. Siwan so as to arrive at the correct findings of fact.

Thus, for the aforesaid reasons, the impugned order of D.M. Siwan is not sustainable and hence the same is set aside.

In the result this revision petition is allowed.

Dictated and Corrected by me.

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28.5.16

Commissioner,
Saran Division, Chapra

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18.5.16

Commissioner
Saran Division, Chapra