

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHAPRA

Supply Revision No. 66/2013

Smt. Leela Devi

Vrs.

The State of Bihar

ORDER

13.06.2015

The instant revision is directed against the impugned order passed by District Magistrate, Saran in supply Appeal Case 04/2012 on 06.01.2013

The brief facts of the case are that Smt. Leela Devi wife of Arvind Kumar Akela, R/O village-chak jalal P.S-Dariyapur, District Saran was a PDS licensee. Further case is that the petitioner's PDS shop was inspected by DCLR Sonapur 21-11-2011 and on finding certain irregularities like, shop was closed, notice board was not displayed and some consumers alleged that petitioner used to keep the ration- kerosene coupons and also distributing only 10 kg rice and wheat. The matter was reported to the SDO, Sonapur who in turn asked show cause from the petitioner vide memo no 1052/supply dated 23-11-2011. The petitioner filed her show cause reply refuting all the alleged charges and also submitted the copies of relevant registers like stock and distribution registers. Then the SDO, Sonapur sought opinion of BSO, Sonapur on the said show cause reply filed by the petitioner and subsequently on receipt of opinion of BSO held the said show cause reply of the petitioner as unsatisfactory finally cancelled the petitioner's licensee vide memo no. 1200/supply dated 17.12.2011. Feeling aggrieved by the said cancellation order the petitioner preferred an appeal before D.M, Saran vide supply appeal case no 04/2012 and during pendency of the appeal he also approached Hon'ble High Court vide C.W.J.C No. 21141/2012. The said writ case was disposed of vide order dated 21.11.2012, with the direction to the D.M, Saran to dispose of the pending appeal within a reasonable time. There after the learned D.M, Saran finally disposed of petitioner appeal vide order dated 06.01.2013 whereby the said appeal was dismissed on being aggrieved by the said order of the D.M, Saran, the petitioner has prepared this revision case before this court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the petitioner submitted that the impugned order of the D.M is illegal, bad and erroneous and also fit to be set aside. He further argued that the impugned order has been passed by the D.M, Saran in mechanical manner without applying judicial mind. The learned counsel while assailing the cancellation order of S.D.O, argued that the said cancellation order relating to petitioner's PDS license was passed by S.D.O without applying his own mind rather he passed the order on the option of the B.S.O a junior officer than the D.C.L.R, Sonapur, the enquiry officer. He also argued that the learned D.M instead of looking into this aspect of the case also reproduced the S.D.O order in his final order. He further pleaded that the impugned order is too harsh, arbitrary and against the observations made by the Hon'ble high court in some cases wherein it has been held by the Hon'ble High court that cancellation of P.D.S licence for the offence like closure of P.D.S shop for one day is too hard and arbitrary. The learned counsel further argued that the non supply of adverse report to the petitioner with the show cause notice has pre-judged the petitioner and the learned court below did not consider the same, which is against the principle of natural justice. He further said that the name of those consumers who were alleged to have got recorded their statement before the enquiry officer that after taking coupons, food grains were not distributed, is totally false as the said consumers had subsequently filed affidavit to the effect that some mischievous persons had actually made complaint using their names and false signature and thumb impression. These

important facts were not considered either by the learned S.D.O, the licensing authority or the learned D.M, the appellate authority. The learned counsel lastly pleaded that the impugned order is fit to be set aside and this revision be allowed.

The learned Spl.PP appearing on behalf of the respondent, on other hand, simply supported the impugned order and submitted that the same is fit to be upheld and this revision petition being devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on record and on perusal of the written statements, it is seen that the irregularities reported to have been found by the inquiry officer is somewhat is of general nature. So far closure of shop and non-displaying of notice board are concerned, the same can no way be taken as a serious allegation and these allegations cannot be a ground for cancellation of P.D.S licence. The only allegation which deserves some attention is relating to not supplying commodities on reasonable price and in prescribed quantity even on taking coupons from the consumers. It is seen that this charge was framed on the basis of statement of some consumers like Urmila Devi, Chinta Devi, Hare Ram Rai, Uda Rai, Siyaram Rai, Rahul Kumar, Rakesh Kumar and Meghnath Rai. But the statement available on the record shows that these consumers never alleged of not getting any food grains or K-oil from dealer rather they alleged to have got the food grains and K-oil in somewhat in less quantity than the prescribed quantity. This itself shows a bit controversy in the findings of inquiry officer vis-à-vis the charges framed in the show cause notice. The petitioner counsel claims that although, he filed affidavits sworn by those consumers to the effect that actually they were not the complainants before the inquiry officer but some mischievous persons impersonating themselves to be consumers got recorded their names. This claim is acceptable to some extent on the basis of copies of affidavits available in the record. On this score alone the above charge of irregularities becomes doubtful and on such doubtful charges action could not have been taken. The other important point which needs consideration is that the petitioner's claim that the cancellation order was passed on the opinion of B.S.O, Sonepur rather on applying his own mind by the licensing authority. This claim seems to be justified in view of the settled law that a statutory authority vested with the power has to exercise such power independently by applying his own mind and not on the behest of other authority. But the cancellation order of the S.D.O itself shows that instead of taking any decision by himself on the show cause reply filed by the petitioner, he sought the opinion of B.S.O, Sonepur and the final decision was also based on the said opinion which is very much discernible from the cancellation order its self. This action of S.D.O seems to be suffering from legal infirmity. The learned counsel is of the view that although these points were raised before the appellate court of D.M, the learned D.M instead of considering the same he simply upheld the impugned order of S.D.O without recording any reasons for non-considerations of these points. The learned counsel also drew the attention towards some of the reported judgements of Hon'ble High court (C.W.J.C no-10213/2010, C.W.J.C no 8131/1989) in support of his contention which have strong bearing in the fact situation of the present case but the same were not considered at all by the appellate court.

For the aforementioned reasons, the impugned order of the District Magistrate Saran dated 06.01.2013 is not sustainable and hence the same is set aside.

Accordingly, this revision petition is allowed.

Dictated and corrected by me.

  
Commissioner,  
Saran Division, Chapra

  
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