

**In The Court of Commissioner, Saran Division, Chapra
Supply Revision case No. 232/2014**

Vijay Kumar

Vrs.

The State of Bihar & ors.

ORDER

23.09.2015 - The instant revision petition is directed against the impugned order passed by D.M. Saran in Supply Appeal No. 125/2012 on 10.07.2014.

The brief facts of the case are that Vijay Kumar S/o Late Dharichhan Manjhi, R/o Vill-Salempur, P.S. Isuwapur, Dist-Saran was a PDS licensee having licence No. 93/07. Further case is that the PDS shop of the petitioner was inspected by inspecting team No. 23 constituted by D.M. Saran on 10.01.2012 as per the direction of D.M., Saran contained in letter No. 309/c dt. 07.02.2012. In course of enquiry/inspection following irregularities were found like; list of beneficiaries was not displayed, joint sample were not displayed, registers were kept in the subdivisional office, non maintenance of inspection and complaint register, non issuance of cash memos and distribution of K-oil @ 17 rupees per litter. Thereafter, two show cause notices with respect to aforementioned irregularities were served upon the petitioner by the S.D.O. Marhaurah vide memo No. 609/c dt. 22.03.2012 and 2443 dt. 08.08.2012. The petitioner filed his show cause reply and also remained present before the SDO along with his advocate and denied all the charges relating to the reported irregularities found during inspection. However, the licencing authority, the S.D.O. came to the conclusion that the reasons furnished by the petitioner in respect of all allegations does not help in contradicting the charges of irregularities and he even failed to provide any solid evidence in his defence. He held the petitioner responsible for violating the terms and conditions of PDS licence, departmental instructions, Ration-kerosene Rules-2006 and public distribution system (control) order-2001 and accordingly cancelled the said PDS licence vide memo No. 2868 dt. 10.09.2012. Feeling aggrieved by the said cancellation of the licence, the petitioner preferred an appeal case vide Supply Appeal No. 125/2012 before D.M. Saran. But during the pendency of the said appeal case, the petitioner also approached the Hon'ble High Court by way of filing CWJC No. 118/2014 which was disposed of vide order dt.06.03.2014 with a direction to the appellate authority to dispose of the same within six week from the date of receipt/production of the copy of the order. Pursuant to that and in compliance to the direction contained in the order of Hon'ble High Court, the learned D.M. after hearing the matter finally vide order dt. 10.07.2014 upheld the cancellation order passed by S.D.O. Marhaurah and dismissed the said appeal case.

On being aggrieved by and dissatisfied with the aforesaid order passed in appeal by D.M. Saran, the petitioner has preferred this revision case before this Court.

This revision case was taken up on 26.06.15 for final hearing. After some argument by the learned counsel for the petitioner, a learned lawyer intervened and stated that he should be permitted to intervene in the matter and as such conceding the prayer made for, this Court granted one week time to the concerned Advocate to file a petition for becoming intervener. Again on 14.08.15 when the case to be heard, the learned counsel for the petitioner submitted that he was not served with the copy of petition for intervenership and a direction may be given to serve a copy of the same to him. This Court was pleased to direct the concerned lawyer to serve a copy of the petition filed by him to the petitioner's counsel and 17.08.15 was fixed for argument on the said petitioner.

On 17.08.15, the learned counsel for the petitioner, learned counsel of the intervenor Santosh Kumar and learned Spl.p.p. were heard at length about the locus standi of the intervenor in the instant case and the said intervenorship petition was subsequently rejected on 17.08.15 and the case was posted for final hearing on merit on 14.09.15.

The learned counsel appearing on behalf of the petitioner submitted that the order of cancellation of the PDS licence passed by the learned SDO, Marhaurah as well as appellate order of D.M. Saran are based on misappreciation of facts and law and the same are liable to be set aside. He further argued that the petitioner had filed proper show cause reply for the alleged charges of irregularities but the learned lower Court has completely failed to understand the fact that none of the consumers of this petitioner have ever made any complaint against this petitioner and the petitioner used to conduct his business properly as per the norms of PDS licence. He also submitted that the learned Court below did not consider the important fact that the local Mukhiya and several consumers attached with the PDS shop of the petitioner have given in writing to the authority about the fair distribution of the petitioner. He further submitted that the impugned order of the learned lower Court is based upon conjectures and surmises than on reasoning and the said order is illegal and fit to be set aside.

The learned Spl. P.P. appearing on behalf of the state, opposed the argument advanced by the learned counsel for the petitioner and submitted that the irregularities found against the petitioner were of serious nature, as he used to charge Rs. 17 per litre for k-oil, much more than the prescribed rate and even not issued any cash memo to the consumers. He further argued that as the petitioner failed to contradict the alleged charges of irregularities found, his said licence has been cancelled. The learned D.M. has upheld the said cancellation order of SDO, through his reasoned order and the said impugned order seems to be legal having no infirmity as such the same may be upheld by the revisional Court also. He also argued that this revision petition being devoid of any merit is fit to be rejected.

Considering the facts and circumstances of the case, material available on records and on going through the arguments advanced by the learned counsel for the petitioner and on perusal of the impugned order, it is quite evident that some serious charges of irregularities in running the PDS Shop were found against the petitioner during inspection of which the distribution of K-oil at excess price than the prescribed price appears to be a serious irregularity. The petitioner in his show cause reply stated that he used to sale the k-oil on the prescribed price and in support of that he filed the signed statements of several consumers. However the material available on record shows that the said defence taken by the petitioner has not been considered by the appellate Court which seems to be necessary for arriving at a correct findings of facts. It is seen that although, the learned D.M. Saran has passed a detailed order but it appears that this important point has not been considered.

For the aforementioned reasons, the impugned order of D.M. Saran dt. 10.07.2014 is set aside and the case is remitted back to him for fresh consideration in the light of observations made as above and to dispose of the same in accordance with law.

Dictated and Corrected by me.

V. A. 15
23.9.15
Commissioner,
Saran Division, Chapra

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