

In The Court of Commissioner, Saran Division, Chapra

1. Supply Rev. No. 164/2008 – Satendra Kumar
2. Supply Rev. No. 165/2008 – Mahesh chandra Mishra
3. Supply Rev. No. 166/2008 – Fulla Devi

Vrs.

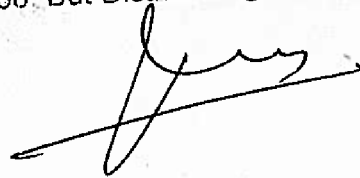
The State of Bihar -----Respondent.

ORDER

Since the facts and issues involved in all these aforementioned cases are identical, they are disposed of by this common order.

All these aforementioned revision applications are directed against the impugned order of SDO, Sonapur whereby the PDS licences for the petitioners have been cancelled.

The short fact of the case is that all the petitioners namely Satendra Kumar, S/o Awadh Kishore Singh R/o Village Saidpur Nagar Panchyat 2. Mahesh Chandra Mishra, S/o Dharmnath Mishra R/o Village- Dighwara Nagar Panchyat 3. Fulla Devi W/o Basudeo Rai, R/o Village – Hematpur, Nagar Panchyat, Dighwara, all of Dighwara block P.S.- Dighwara of Saran district were PDS licencee. An enquiry was conducted in the Nagar Panchyat Dighwara regarding lifting and distribution of food grains of Anpurna and Antodya schemes for the year April 2000 to Nov. 2004 on the direction of cabinet (Vigilance) Deptt. The report of the said enquiry was sent to the Food & consumers protection department vide memo No. 547 dated 31.07.2006. There after the department asked the District Magistrate, Saran vide letter No. 584 dated 09.11.2006 to identify the officers posted at district to block level during the aforesaid period of enquiry i.e April 2000 to Nov. 2004 and send their names to department and also to take legal action against the erring PDS dealers. Then the D.M., Saran vide letter No. 582 dated 09.05.2007 directed the SDO, Sonapur to take action accordingly on which the SDO Sonapur asked show cause from the concerned PDS dealers and later on suspended their licences and again asked second show cause as to why not there licence be cancelled. At this stage all the petitioner's filed their show cause reply refuting the allegations against them which was again enquired by BSO Dighwara who submitted his report to SDO Sonapur and there after, the SDO Sonapur agreeing with the show cause reply and found the same to be satisfactory accordingly recommended for revocation of licences of the petitioners on 13.01.2008. But District Magistrate, Saran again



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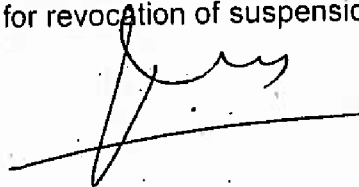
vide letter No. 549 dated 31.04.2008 directed the SDO Sonepur to cancel the PDS licences of the petitioner's and in compliance to that direction, the licences of the petitioner's were cancelled.

On being aggrieved by and dissatisfied with the aforesaid order of cancellation of licences, the petitioner have preferred these revision applications.

Heard the Parties.

The learned counsel for the petitioner's submitted that the cancellation order have been passed on the direction of the Collector, Saran although, he was not empowered to give such direction under the provision of PDS Control Order 2007. He further submitted that the said cancellation orders are against the provisions as the petitioner's have been denied of reasonable opportunity to place their case against the proposed cancellation order. The learned counsel also submitted that it is a well settled principle of law that the power can be exercised only by an officer, who has been vested with the power to exercise such powers. The licensing authority i.e. SDO is supposed to issue show cause notice and after consideration of show cause can pass the order for cancellation of licences. He also submitted that the Collector of a district has got no independent right, power or duty to exercise power of suspension/cancellation or direct the SDO to cancel a licence of a PDS dealer because, he is a District Magistrate, whereas in the present case, the cancellation order has been passed by SDO only on the direction of D.M. which is on record. The learned counsel also submitted that the enquiry report itself is legally not tenable as the enquiry has been held in the back of the petitioner's and such enquiry has not been considered a valid enquiry by Hon'ble High Court. In support of his contention, the learned counsel also filed a copy of the order passed by Hon'ble High Court in CWJC No. 10187/2004 Sheojee Choudhary Vrs State of Bihar & Ors. The learned counsel further submitted that the petitioners refuted the allegations levelled against them and also submitted the copies of affidavit shorn by the consumers and on the basis of the satisfactory report of BSO Dighwara the SDO Sonepur recommended the revocation of suspension to D.M., Saran but it is surprising that the later on the licences has been cancelled on the direction of D.M., Saran, so the impugned order are fit to be set aside for sake justice. The learned counsel also drew attention towards the earlier order of this court passed in similar nature of case on 17.01.2012.

The learned Spl. PP. appearing on behalf of the state submitted that the instant revision have been filed by the petitioners against the impugned order of SDO, Sonepur as the impugned order have been passed by the SDO on the direction of D.M., Saran contained in letter No. 549 dated 21.04.2008 in which the earlier recommendation of SDO, Sonepur for revocation of suspension order

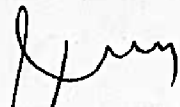


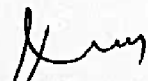
has also been rejected. He also submitted that the order of SDO, Sonapur is cogent and reasoned and there is no infirmity hence these revision applications are fit to be dismissed.

Considering the facts and circumstances of the case, the material available on records, pleadings made by the parties and on perusal of the impugned order of cancellation as contained in memo No. 123/ Conf. dated 06.05.2008 of SDO, Sonapur it is quite obvious that this order has been passed by SDO, Sonapur on the direction received vide letter No. 549 dated 21.04.2008 of District Magistrate, Saran. This kind of order passed by the licensing authority on direction of superior officers has not been held legally valid by Hon'ble High Court in many cases. What is important to see here is that under the provision of PDS control orders, it is the licensing authority who has been exclusively vested with the power of suspension and cancellation of PDS licences. However, in the instant case the impugned order has been passed by SDO, the licensing authority on the direction of D.M, rather than on his own discretion or on applying his own mind. So such orders can not be upheld.

In view of the discussion and observation made above, the impugned order as contained in memo No. 123/Conf. dated 06.05.2008 of SDO, Sonapur is not sustainable hence, it is set aside and the instant revision applications of all the petitioners, named above, are allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra
21/4/14


Commissioner,
Saran Division, Chapra
21/4/14