

In The Court of Commissioner, Saran Division, Chapra

Supply Rev. No. 189/2015

Anita Devi

Vrs.

The State of Bihar

ORDER

16.03.2016 - The instant revision petition is directed against the impugned order passed by D.M., Saran in supply Appeal No. 132/2011 on 16.04.2015

The brief facts of the case are that the petitioner Anita Devi W/o Sunil Singh R/o Village- Dudhaila Gachi, Block- Sonpur, Dist- Saran was a PDS dealer. Further case is that the petitioner's PDS shop was inspected by BSO, Sonpur and in course of inspection following irregularities were found like: Notice board and stock and price Chart were not displayed, relevant registers and licence of weights and measurement were not produced, after the end of month of Oct. 2011 food grains and K.Oil were not distributed, food grains and K.Oil went being distributed irregularly and two months coupons were taken at a time and behaviour of petitioner with the consumers was not proper. Thereafter, the enquiry report was submitted to the SDO Sonpur who in turn acting on the said report served a show cause notice with respect to the above-mentioned reported irregularities upon the petitioner vide Memo No. 988/supply dated 17.11.2011. As the petitioner did not file any show cause reply to the above show cause notice, the opinion of BSO, Sonpur was sought for in the matter who further reported that even after completion of month Oct. 2011 food grains, K.Oil meant for the Antodaya and BPL consumers were not distributed and no food grains were found in the stock of the dealer. Thereafter, the learned SDO on finding that non-submission of show cause reply by the petitioner was tantamount to violation of the terms and conditions of PDS (control) order- 2011 and the said action seems to be acceptance of the alleged charges, the said PDS licence of the petitioner was cancelled vide order contained in Memo No. 1098/supply dated 01.12.2011. Feeling aggrieved by the said order, the petitioner filed an appeal vide supply appeal case No. 132/2011 before D.M., Saran and further during the pendency of the said appeal he also approached the Hon'ble High Court by way of filing CWJC No. 9158/2012 but the said writ was disposed of on 28.02.2013 with direction to D.M., Saran to dispose of the same expeditiously. Then the learned D.M., Saran finally disposed of the pending appeal vide order dated 16.04.2015 whereby and whereunder, the said appeal was dismissed. This led to filing of the instant revision petition before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner submitted that the impugned order is illegal and against the fact of the case. He also submitted that the learned D.M. ought to have considered that the show cause notice was not in legal form and was against the real state of affairs as alleged findings of inspection was not mentioned in the show cause notice issued by SDO

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Sonpur which is against the provision of law. He further submitted that the D.M. ought to have considered these facts that the petitioner had filed her show cause reply on 29.11.2011 but the learned SDO without considering the same held that no show cause reply was filed by her and on that ground the said licence was cancelled. The learned counsel further submitted that the learned D.M. ought to have considered that the show cause reply of the petitioner in which it was mentioned that due to sudden illness of the petitioner and her husband no distribution could be made for the month of Oct.- 2011 and later on ration and K.Oil for the month of Oct. and Nov. were distributed to the consumers as such no illegality was committed by the petitioner. The learned counsel also filed a copy of the order of Hon'ble High Court passed in CWJC No. 850/2015 wherein it has been held that for a mere charge of retention of coupons without being supported with any evidence of its misuse and for that extreme penalty of cancellation of licence can not be imposed on petitioner. He lastly prayed that as the impugned order has been passed in haste without considering all the facts, the said order is fit to be set aside and this revision be allowed.

The learned spl. P.P. on the other hand strongly supported the impugned order and submitted that the same is a valid order as such the same be upheld.

Considering the facts and circumstances of the case, material available on records and arguments advanced by the learned counsel for the parties and on perusal of the impugned order, it appears that the petitioner's PDS licence has been cancelled mainly on the ground of irregularities reported by the BSO, Sonpur and subsequently her failure to furnish any show cause reply contradicting the said irregularities there to as it has been specifically held by the SDO-cum-licensing authority in his cancellation order that the petitioner had failed to file her show cause reply. The petitioner contends that although, she had filed her show cause reply on 29.11.2011, the same was not considered by the SDO and even the appellate authority also did not consider this fact. Nothing is available on record to suggest that the petitioner had ever filed any show cause reply before the SDO so as to enable this court to formulate any opinion on the merit of such claim. But the petitioner had stated even before the appellate court that she had filed reply to the show cause before the licensing authority which was not considered. The interest of the justice requires that petitioner should be given a chance to be heard.

For the aforesaid reasons, the impugned order of learned lower courts are set aside and the matter is remitted back to the SDO, Sonpur to reconsider the matter afresh and after affording reasonable opportunity of hearing to the petitioner and then to pass a fresh order in accordance with law.

With the aforesaid observation and direction, this revision petition is disposed of.

Dictated and Corrected by me.

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Commissioner,
Saran Division, Chapra

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