

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 215/2012

Ashok Kumar

Vrs.

The state of Bihar

ORDER

08.3.2014

The instant revision is directed against the impugned order passed by District Magistrate, Saran in Supply Appeal. Case No. 65/2006 on 31.05.2012

The brief facts of the case are that the petitioner Ashok Kumar S/o Ram Janam Sah R/o Village- Dumarshan Bangra, Block- Mashrakh, Dist- Saran was a PDS licensee having licence No. 33/97. The shop of the petitioner was inspected by BDO, Mashrakh on 11.08.2006 and in course of inspection certain irregularities like charging of excess price for K.oil and poor keeping of records relating to stock and distribution were found. On the basis of said enquiry report, SDO, Mashrakh, vide memo No. 1766 dated 25.08.2006 asked show cause and also directed to produce stock and distribution registers and cash memos of the last six months. The petitioner filed his show cause reply on 02.09.2006 and the SDO, Mahraura on finding the same to be unsatisfactory, suspended the PDS licence vide memo No. 49 dated 18.09.2006 and also directed to submit second show cause notice as to why not his licence be cancelled for the reported alleged irregularities. In compliance to said second show cause notice, the petitioner filed his reply denying all the charges. But the learned SDO, Marhaurah considering the alleged irregularities to be of grave in nature, cancelled the licence vide memo No. 302 dated 28.11.2006. Feeling aggrieved by the said cancellation order passed by SDO, the licensing authority, the petitioner filed an appeal bearing supply appeal No. 65/2006 before D.M., Saran but the said appeal was dismissed on 31.05.2012.

On being aggrieved by the dissatisfied with the aforesaid order passed in appeal, the petitioner preferred the instant revision before this court.

Heard the parties.

The learned counsel for the petitioner submitted that the impugned order of D.M., Saran is not based on analysis of facts and laws from consistent judicial angle. He further submitted that the petitioner convincingly canvassed his point through the show cause submitted by him along with the photocopies of relevant registers before the SDO, Marhaurah but the same was not taken into consideration. Although, he denied all the allegations levelled against him but he same was not considered at all. He further argued that his shop was closed on the day of inspection mainly due to the fact that he went to Mashrakh for the treatment of his son as such the closure was under compulsion and not intentional. Regarding other allegation of non-verification of documents, the petitioner counsel stated that it is an obligation casts on the supply authorities to verify the registers at regular interval and the PDS dealer is no way responsible for this nor there is any



responsibility on the PDS dealer as per PDS (Control) order 2001. For non-issuance of cash memos, the learned counsel submitted that no such provision was existed that time. The learned counsel also relied upon a reported decisions of Hon'ble Patna High Court, PLJR 1991(1) page 635 wherein it has been held that closure of shop and non-production of registers for verification do not amount to violation of the terms and conditions of licence. The learned counsel further assailed the impugned order of D.M. by saying that he failed to consider the facts and circumstances of the case in appeal.

The learned spl.p.p appearing for the state while supporting the impugned order submitted that the order of D.M. is reasoned and having no scope of any interference hence this revision is fit to be dismissed.

Considering the facts and circumstances of the case and material facts available on records , it appears that during inspection of the petitioner's PDS shop, some irregularities were found and for which the petitioner was directed by the Licencing Authority to file show cause reply and also to produce the stock and distribution registers for the last six months. It is seen from the cancellation order of SDO that the petitioner filed his show cause reply supported by the relevant documents to press his claim of his denial that the allegations were not correct and that the charges levelled against him relating to irregularities in distribution of food grains and K.oil and also of charging excess price than the prescribed rate were any way wrong and false. But the learned S.D.O while not considering the same, he firstly suspended and then cancelled the licence. The appellate order of D.M. , Saran is also not proper and reasoned as he failed to consider the facts and documentary evidences placed before him .He also did not discussed the reasons for not considering the same. It is also important to mention here that the two important points raised by the learned counsel for the petitioner certainly deserve consideration in view of the fact that these two points like closure of shop for a day is not such kind of offence or misconduct which entail cancellation of licence and second one of non supply of the copy of adverse report to the the person concerned. These two issues have already been settled by Honble High Court. So these points should have been considered by the appellate Court. Thus, non consideration of these two points itself makes appellate order defective.

For the reasons mentioned above, the impugned order of D.M., Saran is not fit to be upheld. Thus, the same is set aside.

In the result , this revision is Allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, chapra

8/3/14


Commissioner,
Saran/Division, Chapra-

8/3/14