

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHAPRA

Supply Rev. No. 182/2011

Smt. Champa Devi
Vrs.
The State of Bihar.

ORDER

18-08-2015- The instant revision application is directed against the impugned order of SDO, Mahrajganj as contained in Memo No. 310 dated 30.03.2010 whereby and whereunder, the petitioner's PDS licence was cancelled.

The brief facts of the case are that the petitioner Smt. Champa Devi W/o late Harwan Singh R/o Village- Jhaujhawa, P.S.- Daraunda, Dist- Siwan was a PDS licensee. The further case is that the petitioner's PDS shop was inspected by SDO, Mahrajganj on 23.12.2009 and in course of inspection following irregularities were found like: Non-distribution of BPL wheat, taking of excess price of rice and snatching of wheat coupon forcibly from the consumers. Thereafter, the SDO, the licensing authority asked show cause from the petitioner for the alleged irregularities vide Memo No. 540 dated 26.12.2009 and when the petitioner filed her show cause reply she was again served with second show cause notice vide Memo No. 37 dated 16.01.2010. Meanwhile vide Memo No. 36 dated 16.01.2010 the license of the petitioner was suspended. Thereafter, the case of the petitioner was sent to District level selection committee, headed by D.M., Siwan to take further decision in the matter. The DLSC in its meeting decided to cancel the petitioner's PDS license and the said decision was communicated to the SDO, Mahrajganj vide Memo No. 282 dated 18.03.2010 of DSO, Siwan. Acting on the said decision of DLSC, the SDO-cum-licensing authority cancelled the PDS license vide order contained in Memo No. 310 dated 30.03.2010. Feeling aggrieved by the said order, the petitioner has preferred this revision case before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner submitted that both show cause notice stated to have been served upon the petitioner were not actually served on her and without giving any opportunity of hearing the petitioner's license was firstly suspended and subsequently cancelled on the recommendation of DLSC headed by D.M. He further submitted that the petitioner submitted her show cause reply and controverted the allegations and it was due to that the SDO sent the matter to the DLSC. But the DLSC, headed by D.M., Siwan without making any further enquiry in to the matter and without affording any opportunity of hearing took decision that petitioner's suspended license should not be revoked and decided to cancel the license. He argued that the learned SDO, acting on the said decision of DLSC cancelled the PDS license which is legally not correct. He also argued that as a matter of fact no license can be suspended for more than 90 days and decision should have been taken under 90 days only but the authority concerned violated this mandatory provision of law and passed cancellation order after more than 90 days which is absolutely against the provision of PDS (control) order-2007. He also submitted that several cases of this kind where the PDS license was cancelled by licensing authority, the SDO, on the direction of District Level Selection Committee headed by D.M. has been considered by this court

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in past and were disposed of and remanded back to the SDO for taking fresh decision in light of observations made by the Hon'ble High Court in several cases of similar nature. He also filed the copy of a reported judgment passed in CWJC No. 5418/2009 and in support of his above plea and prayed that the impugned order be set aside and matter may be remanded back to SDO for reconsideration.

The learned Spl. P.P. appearing on behalf of the D.M., Siwan, submitted that several cases of this nature has been remanded back to the concerned SDO, the licensing authority for fresh consideration in view of the observations made by the Hon'ble High Court in many cases.

Considering the facts and circumstances of the case, material on record and on perusal of the impugned order, it is seen that the petitioner's PDS license was canceled by the SDO, the licensing authority not on his independent decision but the same was cancelled pursuant to the direction given to him by the District Level Selection Committee, headed by D.M., Siwan. The learned counsel vehemently expressed the view that the D.M. is not competent to direct the licensing authority, the SDO to cancel the PDS license. This plea of petitioner's counsel certainly have some merit in view of the settled position of law that the authority vested with the power to exercise some power has to exercise the same independently and not on the direction of any superior authority. In the instant case it is an admitted fact that the PDS license has been cancelled by the SDO, on the direction of DLSC whereas the PDS (control) order- 2007 grants no such power to DLSC. Besides this, the PDS license was kept suspended for more than ninety days against the provision of the PDS (control) order- 2007 which is contrary to the provision of the PDS (control) order. It is also seen from the case law cited by the learned counsel for the petitioner that suspension can not be converted in to cancellation as per the observations made by the Hon'ble High Court in several cases and on that ground alone impugned order has been quashed by the Hon'ble High Court.

Thus, for the aforesaid reasons, the impugned order of SDO, Mahrajganj dated 30.03.2010 is not sustainable and hence the same is set aside and the matter is remanded back to the licensing authority, the SDO to reconsider the case afresh and pass fresh order in accordance with law.

Dictated and Corrected by me.

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Commissioner,
Saran Division, Chapra

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Commissioner,
Saran Division, Chapra