

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 40/2014
Balram Pd. Rai.

Vrs.

The state of Bihar

ORDER

16.4.2014

The instant revision application is directed against the impugned order of District Magistrate, Saran passed on 05.12.2013 in Supply Appeal. Case No. 98/2011

The brief facts of the case are that Balram Pd. Rai S/o late Dawan Pd. Rai R/o village- Mangarpal, P.S.- Dariapur, Dist- Saran was a PDS licensee having licence No. 7/86. The said PDS shop of the petitioner was inspected on 25.10.2011 by an inspection team constituted by D.M., Saran. In course of inspection it was found that the PDS shop of the petitioner was closed and accordingly a report was sent to the SDO, Sonpur who vide memo No. 986 dated 11.11.2011 asked show cause from the petitioner. The petitioner filed his show cause reply stating therein that as he had felt chest pain, he went to Hajipur for his treatment and also filed the copy of the doctor's prescription in support of his defence. Thereafter, the SDO, Sonpur sought the opinion of BSO Sonpur the said show cause reply of the petitioner. The BSO, Sonpur reported that the said show cause reply as misleading and unsatisfactory this led to rejection of the said show cause reply by the SDO, Sonpur and subsequently the PDS licence of the petitioner was cancelled vide memo No. 1038/supply dated 19.11.2011

Feeling aggrieved by the said order of SDO, the petitioner filed an appeal vide supply Appeal No. 98/2011 before D.M., Saran. Meanwhile, during the pendency of the appeal, the petitioner also approached the Hon'ble High Court vide CWJC No. 6681/2012 which was disposed of vide order dated 23.01.2013 with a direction to the Collector, Saran to dispose of the appeal expeditiously. Thereafter, the Collector, Saran vide order dated 05.12.2013 dismissed the said appeal of the petitioner.

On being aggrieved by and dissatisfied with the order of D.M., Saran the present revision has been preferred.

Heard the Parties.

The learned counsel appearing on behalf of the petitioner submitted that the impugned order of D.M. is illegal, bad and erroneous and motivated also in view of the facts that he failed to appreciate that the petitioner had not violated the condition of the licence. He further argued that the impugned order is against the observation of the Hon'ble High Court. Patna so far as it has been held that closing of shop for a day should not be such an offence for which the PDS licence be cancelled. He further argued that the petitioner was not served with the copies of enquiry report on which the allegation was based. The learned counsel further assailed the cancellation order of SDO, Sonpur as well as appellate order

of D.M., Saran, by saying that although, he filed in his reply that he went for his treatment after closing the shop after prescribed time and also furnished the doctor's prescription, but these facts were not taken into account and simply saying that the explanation was not acceptable, the licence was cancelled by the SDO. In the same way the D.M., the appellate authority has not dealt the objection taken by the petitioner that the inspection itself was done after the specified working house and even the show cause notice did not mention the time of inspection. The learned counsel lastly prayed that the impugned order be set aside.


The learned spl. p.p. appearing on behalf of D.M., Saran, supported the impugned order and said that the order is just and proper and having no scope of interference so the same be upheld.

Considering the facts and circumstances of the case, materials on record and on going through the impugned order, it is seen that the only major charge against the petitioner is that his shop was found to be closed at the time of inspection. The show cause notice issued by the petitioner also shows this charge but it does not mention the actual time of inspection. The petitioner in his defence says that he went to Hajipur for the treatment of his sudden chest pain after the closing of the shop after prescribed time. This defence should have been considered by the licensing authority, the SDO, as he had no way out to controvert the said defence taken by the petitioner, in absence of any other proof to show that the inspection was carried out during the time prescribed for opening the shop. In my opinion this is certainly a strong defence taken by the petitioner. The appellate authority should have also considered this fact independently so as to arrive at a correct finding. The other defence taken by the petitioner is that mere closing of shop for a day should not be a reason for the cancellation of licence in view of the observation made by the Hon'ble High Court in many decisions. I find some substance in this contention of the petitioner in view of the fact that closure of shop for a day is not a serious charge of irregularities, like other charge of irregularities of non-supply of food grains to the consumers and black marketing of food grains commonly found against the PDS dealers.

Thus, for the aforesaid reasons, the impugned order of D.M., Saran dated 05.12.2013 is not sustainable, hence, the same is set aside and in the result this revision is allowed.

Dictated & Corrected by me.

Commissioner,
Saran Division, Chapra


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