

In The Court of Commissioner, Saran Division, Chapra  
Supply Rev. No. 41/2014  
Jay Nandan 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. 123/2011.

The brief facts of the case are that the petitioner Jay Nandan Rai S/o Kamta Prasad Rai R/o Village- Alkilpur, P.S.- Dariyapur was a PDS licensee having licence No. 14/07. The PDS shop of the petitioner was inspected on 25.10.2011 asked show cause from the petitioner for the alleged irregularity reported against him. The petitioner submitted his show cause reply stating therein that he went to Registration Officer Sonpur for registration of his land after closing the shop after the prescribed time for closing and in support of that he also annexed the photocopies of the said sale-deed document executed on 25.10.2011 at the office of sub-registrar, Sonpur. Thereafter, the SDO, Sonpur sought the opinion of BSO, Sonpur, on the said show cause reply of the petitioner who in turn reported that the said show cause reply, as misleading and unsatisfactory. This led to rejection of the said show cause reply by the SDO and resulted in the cancellation of the said licence of the petitioner vide memo No. 1029/supply dated 19.11.2011. Feeling aggrieved by the said order of SDO, the petitioner filed an appeal, vide Supply Appeal Case No. 123/2011 before D.M. Saran. However, during the pendency of the appeal, the petitioner also approached the Hon'ble High Court vide CWJC No. 18391/2013 which was disposed of vide order dated 18.11.2013 with a direction to the appellate authority to dispose of the pending appeal within a month. Thereafter, the D.M., Saran vide order dated 05.12.2013 finally dismissed the said appeal case of the petitioner.

On being aggrieved by and dissatisfied with the aforesaid order of D.M., Saran the petitioner has preferred this revision.

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 because of the fact that he failed to appreciate the factual matrix of the case that the petitioner has not violated any terms and conditions of the PDS 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 PDS shop for a day should not be considered as serious offence for which the PDS licence be cancelled. He further argued that the petitioner was also 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 stated in his show cause reply that he went to the registry office, Sonpur for the registration of land offer

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conducting the shop till the prescribed time, but this fact was not taken into account and simply on relying on the opinion of BSO, Sonpur, the licence has been cancelled by the SDO, the licensing authority. In the same way the D.M. while acting as appellate authority has also not dealt with the objection taken by the petitioner that actually no member of the inspection team had gone to his PDS shop during the specified working hours of PDS shop as such the said show cause notice did not mention about the time of inspection. The learned counsel lastly prayed that the impugned order of D.M. be set aside.

The learned spl. p.p. on the other hand while supporting the impugned order of D.M. simply said that this revision having no merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records and on going through the impugned order of D.M., Saran. It is seen that the only single charge against the petitioner alleged to have been reported by the inspecting team is about the closing of shop. The show cause notice issued to the petitioner for his this lapse also shows so but it does not mention about the time as to when the petitioner's shop was inspected by the inspecting team. The petitioner claims that he had opened his shop till the prescribed time and only after that he went to Registry Office Sonpur for his personal work. This is certainly a strong defence in favour of the petitioner as the SDO, the licensing authority has no evidence to controvert this as no timing of inspection is shown in the said show cause notice. The other stand of the petitioner that no member of the inspection team actually reached at his PDS shop also raises doubts about the alleged charge against the petitioner. Thus, it appears that in absence of sufficient evidence, the charges against the petitioner is not proved despite his licence has been cancelled. Since all these facts were also raised before the appellate authority, he ought to have considered these facts independently before passing the impugned order. The other defence taken by the petitioner is that mere closing of a PDS shop for a day should not be a sufficient reason for the cancellation of licence as observed by the Honble High Court in several decisions. I also find some substance in this contention of the learned counsel for the petitioner in view of the fact that closing of shop for a day is not a serious charge as to attract cancellation of licence. However, in this particular case, the charge itself remains unproved beyond all reasonable doubts vis-à-vis the contention made by the petitioner.

Thus, for the above-mentioned reasons, the impugned order of D.M. 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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12/4/14