

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 54/2013
Shatrughna Prasad Singh

Vrs.

The State of Bihar & Ors.

ORDER

07.03.2014

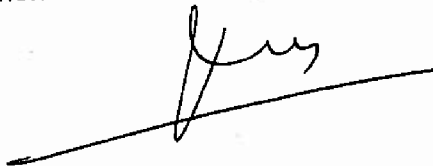
The instant revision petition is directed against the impugned order passed by District Magistrate, Saran in Supply appeal No. 94/2011 on 30.12.2012 whereby and where under the P.D.S. licence of the petitioner. Has been cancelled.

The brief facts of the case are that Shatrughna Prasad Singh R/o Village Sundrapur suwara, P.S. - Avtarnagar, Dist. Saran was a P.D.S. Licencee. The petitioner's PDS shop was inspected on 25.10.2011 by an inspecting team as ordered by District Magistrate, Saran vide memo No. 2375 dated 08.11.2011. In course of inspection, the inspecting team found certain irregularities among which, the main charge was that the PDS shop of the petitioner was closed on the day of inspection. Thereafter, the SDO, Sonpur, cum- Licensing Authority asked show cause from the petitioner vide memo No. 960 dated 11.11.2011. The petitioner furnished his show cause reply starting therein the reason for the closure of the shop, supported by documentary evidence. Then the SDO again sought the opinion of BSO, Dariapur on the said show cause reply of the petitioner. The BSO, Dariapur vide his letter dated 19.11.2011 recommended for the cancellation of the PDS License of the petitioner. Thereafter, the SDO, vide memo No. 1043/Supply dated 22.11.2011 cancelled, the petitioner's licence. The petitioner filed an appeal case before D.M. Saran vide Supply Appeal case No. 94/2011. The appeal was dismissed vide order dated 30.12.2012..

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

Heard the Parties.

The Learned Counsel appearing on behalf of the petitioner submitted in the beginning that the learned SDO Sonpur, by his order dated 22.11.2011 cancelled the License of the PDS shop of the petitioner on the ground of closure of his shop on the date of inspection and the learned D.M. Saran, illegally without giving any cogent reason dismissed the appeal as such the appellate order of D.M. is illegal, bad and erroneous. The learned counsel further argued that the D.M. also ignored the observation of Hon'ble High Court in which it has been observed that on mere closure of the shop for a day, the order of cancellation of the PDS License is arbitrary and too hard. He further submitted that the impugned order dated 30.12.2012 is otherwise motivated and prejudiced so far the D.M. has not taken the observation of the Hon'ble High Court seriously that non- supply of the adverse report along with the show cause notice is prejudiced. The learned Counsel further submitted that the learned D.M. should have considered that when there was no stock for distribution and



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the petitioner had gone to Patna for the treatment of her ailing wife , who is a heart patient, the consumers attached to him have never been put to any extreme harassment. While further assailing the impugned order the learned counsel submitted that the D.M. erred in not applying his judicial mind and even did not bother to consider the facts placed before him in appeal, while passing the order and the petitioner has not been afforded any opportunity of hearing even by the SDO, the licencing authority, also so that he could have explained the real facts and unforeseen circumstances which compelled him to close his shop suddenly. The learned counsel lastly prayed that the impugned order of D.M. ,Saran dated 30.12.2012, passed in supply Appeal No. 94/11, be set aside and petitioner's PDS Licence be restored.

The learned SPL P.P. appearing on behalf of the state argued that the impugned order is proper and reasoned having no scope of any interference.

Considering the facts and circumstances of the case, material available on records and arguments advanced by the learned counsels for the parties, it appears that the petitioner's licence has been cancelled merely on the charge that his P.D.S shop was closed on the day of inspection. Even the show cause notice issued also mentioned so. Obviously this is not a grave charge of misconduct at the level of a P.D.S dealer attracting cancellation of licence, as observed by Hon'ble High Court in several cases. The learned counsel also centred his argument on this alleged single charge of closing of shop and relied heavily on a reported decision of Honble high Court in this regard and also filed a copy of an order passed by Division bench of Hon'ble High Court in CWJC No. 10213/2010, in support of his claim wherein it has been observed that keeping the shop close on one particular day was in breach of the terms and conditions of the licence and may not be justified, was not such grave violation that would entail cancellation of licence. The learned S.D.O Sonpur as well as D.M Saran should have considered this important point while passing the orders. The petitioners claim that he went to Patna for the treatment of his wife after closing his shop as he had no other alternative also find that this important facts should have been looked into by the appellate authority while passing the order because the reason for compulsive absence as explained by the petitioner has some merit. It is also important to note here that how can a person keep his P.D.S shop open when he comes to know that his wife had suffered a massive heart attack. In fact I find strong merit in this claim.

In view of the discussions made above, the impugned order of D.M. , Saran dated 30.12.2012 is not sustainable, hence the same is set aside and this revision petition is allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra 21/4


Commissioner,
Saran Division, Chapra 3/14