

In The Court of Commissioner, Saran Division, Chapra

Supply Rev. No. 132/2016

Achayabar Manjhi

Vrs.

The State of Bihar & ors.

ORDER

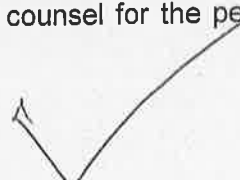
The instant revision petition is directed against the impugned order passed by D.M. Gopalganj in Supply Appeal case No. 07/12 on 15.03.2016.

The brief facts of the case are that the petitioner Achayabar Manjhi, S/o Babulal Manjhi, R/o Vill-Siharwan, P.S.-Thawe, Dist-Gopalganj was a PDS dealer. The PDS shop of the petitioner was inspected by SDO, Gopalganj on 08.09.2011 and in course of inspection the shop was found closed besides some other lapses and ultimately for the said irregularities the licence of the petitioner was cancelled. Against that cancellation order, the petitioner filed an appeal before D.M. Gopalganj bearing Supply Appeal No. 07/12 and the said case was dismissed in default. The said order dt. 06.08.2012 was challenged before this Court in Supply Rev. No. 129/14 which was remanded back to D.M. Gopalganj vide order dt. 26.10.15 by setting aside the order dt. 06.08.12. Pursuant to the order of this Court, the petitioner's case was again taken up by D.M. Gopalganj and after hearing the parties the case was finally dismissed vide order dt. 15.03.2016. Feeling aggrieved by the said order, the petitioner has preferred the instant revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order, submitted that the said order has been passed without appreciating the facts and circumstances of the case. He further submitted that no inquiry report was served on the petitioner and without giving opportunity of hearing, the impugned order has been passed. He further said that the only charge against the petitioner was that he did not distribute the rice lifted by him under "Chawal Utsav" Scheme during the Scheduled period and this was caused mainly due to fact that the petitioner went to Bokaro to see his ailing daughter. But after return from there he distributed the rice in supervision of BDO, Thawe. He accordingly also submitted the same in his show cause reply but the learned SDO without considering the same ordered for cancellation of his licence. He further argued that all these facts were raised before the D.M. Gopalganj, but he did not consider the same and relying upon the report of BDO, Thawe rejected the appeal. The learned counsel further submitted that the learned D.M. mentioned in his order that although, the petitioner admitted that soon after return of the petitioner he submitted his show cause reply and relevant papers, but he failed to furnish any evidence in this regard and this has been the reason for rejection of appeal petition. He also submitted that atleast this fact should have been inquired into by the D.M. before arriving at the final findings of fact for the reason that this is the crux of the whole allegation against the petitioner and this is sufficient to show that substantial justice has not been done to the petitioner. He also said that the petitioner belongs to S.C. category as such his PDS licence should not have been cancelled as per the instructions contained in Govt. letter issued in the year-1996. He lastly submitted that as the impugned order is arbitrary, illegal and unsustainable, the same is fit to be set aside.

The learned Spl. P.P. appearing on behalf of the state, on the other hand opposed the arguments advanced by the learned counsel for the petitioner and strongly said



that the impugned order is reasoned, just and proper having no illegality as such the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties and on perusal of the impugned order, it is seen that the petitioner's PDS licence has been cancelled mainly on the ground of non-distribution of rice lifted by him under the "Chawal Utsav" Scheme as per scheduled programme and found absent during the said period. This may be fault on the part of the petitioner who has to give priority in distribution of food grains to the consumers. However, this lapse on the part of the petitioner is not so serious to entail cancellation of his PDS licence. The petitioner's plea is that due to sudden serious illness of her daughter, he went to Bokaro to meet his family obligation but soon after return from there he distributed the rice in presence of BDO, Thawe. Thus, it appears that the petitioner had no intention to deliberately not to distribute the rice amongst consumers and in order to fulfil his above ill motive, he left the place. The plea made by petitioner in his defence for his alleged lapse seems to be tenable. The licencing authority, the SDO, ought to have considered this fact without any pre-judice. It is also seen from the impugned order of D.M. that as the petitioner failed to file any evidence in support of his above, defence, the petitioner has been held guilty. Obviously, I do not find any force in such idea. In fact, the petitioner should not have been meted with the punishment of cancellation of his PDS licence for such minor fault of not distributing the food grains during the stipulated period. The crux of the matter lies in the question that the petitioner has not distributed the rice whereas the petitioner submitted in his show cause reply that he distributed the rice in presence of of B.D.O. Thawe. This facts need to be verified first by the licencing authority before passing the cancelation order. Similarly, the learned D.M. should have also considered this point in appeal. It is important to be noted that without ascertaining the real facts regarding the contradictory claim, substantial justice would not be done to the petitioner.

For the reasons discussed above, the impugned order is not sustainable and hence the same is set aside. The case is remitted back to D.M. Gopalganj for fresh consideration and passing a fresh order in accordance with law after hearing the petitioner.

With the above observations and directions, this revision petition is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

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