

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 149/2016
Neyamul Khan
Vrs.
The State of Bihar
ORDER

The instant revision petition is directed against the impugned order passed by D.M. Gopalganj in Supply Appeal case No. 07/2016 on 03.06.2016.

The brief facts of the case are that the petitioner Neyamul Khan, S/o Late Khalil Khan, R/o Vill-Bairiya, P.S.-Uchakagaon, Dist-Gopalganj was a PDS licensee having licence No. 24/2007. Further case is that a case against the petitioner was lodged u/s 7 of E.C. Act relating to the lifting of fertilizers. Thereafter one sudhansu Kumar Tiway filed a complaint to cancel the PDS shop and since no action was taken by the SDO, Hathua and the D.M. Gopalganj, he filed a CWJC No. 4540/2014 before Hon'ble High Court but later on the said case was withdrawn with a liberty granted to the writ petitioner to file representation before proper forum. Thereafter, the SDO, Hathua sought show cause reply from the petitioner vide memo No. 1476 dt. 03.12.2015 and when the petitioner failed to file any show cause reply, the SDO Hathua taking this conduct of the petitioner against the provision of Public Distribution System (Control) order, cancelled the said PDS licence vide memo No. 1563/conf. dt. 26.12.2015. Feeling aggrieved by the said order the petitioner preferred an appeal before D.M. Gopalganj vide Supply Appeal No. 07/2016 and the learned D.M. after hearing the parties finally vide order dt. 03.06.2016 dismissed the said appeal.

On being aggrieved by and dissatisfied with the order of D.M. Gopalganj, the petitioner has preferred the instant revision case before this Court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the petitioner while assailing the impugned order submitted that the same is illegal, bad and erroneous. He further strongly submitted that the learned SDO wrongly appreciated the law by considering the pending case of 7-E.C. Act. against the petitioner which was not related to commitment of any irregularities in distribution of food grains or K.oil under the PDS and if there was such case, the licence can not be cancelled. The learned counsel, further discussing whole cause of events leading to cancellation of the PDS licence of the petitioner, submitted that actually a case u/s 7 E.C. Act against the petitioner for lifting of fertilizer alongwith one another person was registered and when no action was taken by the authorities against them, one Sudhansu Kumar Tiwari filed a writ before Hon'ble High Court. He further said that then the said writ was withdrawn and thereafter, he filed petition before SDO and D.M. and then the petitioner's PDS licence was cancelled which is no way legal and valid. The learned counsel also argued that there was no allegation against the petitioner regarding any kind of irregularities relating to food grains or K.oil, inspite of that his said PDS, licence has been cancelled on the alleged ground of non filing of show cause reply to the show cause notice served upon him regarding case of 7 E.C. Act. He also argued that the learned D.M. as appellate authority, also did not bother to go into details of the case while passing the impugned order. He lastly said that as the



impugned order is arbitrary, illegal and contrary to the provisions of PDS (Control) order-2011, the said order is fit to be set aside and this revision petition be allowed.

The learned Spl. P.P. appearing on behalf of the state, submitted that the petitioner's PDS licence has been cancelled for his failure to submit the show cause reply to the licencing authority and this conduct has been taken seriously by the SDO for which the extreme action has been taken.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case, the licence of the petitioner has been cancelled for his failure to submit show cause reply for the offence which comes under the purview of fertilizer control order and not in PDS (control) order. The learned counsel for the petitioner is of the strong view that petitioner's PDS licence could not have been cancelled on the ground of 7. E.C. Act case lodged in connection with fertilizer lifting and for its alleged black marketing. Obviously, I find some merit in the said claim. However, from perusal of the cancellation order passed by SDO, Hathua as well as from the appellate order of D.M. Gopalganj, it is quite apparent that the sole ground mentioned therein is the failure of the petitioner to comply with the show cause notice, which has been taken as fact violation of the terms and conditions of the PDS (control) order. On this ground alone the petitioner's claim fails. Whatever may be the facts, the petitioner as a PDS licensee was bound to comply with the order of licencing authority and by not complying with the same, he himself is responsible for inviting the punishment of cancellation of licence. Any way, at least when all these facts were raised before, the appellate authority, it was he who had to look into factual aspects with open mind to arrive at a correct findings of fact. It is also on record that the petitioner tried to misled the appellate Court by categorically saying that he had never been served with any show cause notice but the learned D.M. On the other hand, the learned D.M. held that there is sufficient material on record to believe that the show cause notice was served to the petitioner and he did not file any reply. However, I find that there was no complaint of any nature against the petitioner regarding his PDS shop, inspite of that his PDS licence has been cancelled simply on the ground that he failed to comply with the show cause notice issued by the licencing authority. Undoubtedly, this action about the petitioner can not be justified, but at the same time it can also be safely held that this can not be a sufficient ground for cancelling the PDS licence. It is seen that the learned D.M. has not considered this point appropriately before passing the impugned order what he ought to have considered independently.

For the aforementioned reasons, I am not constraint to uphold the impugned order of D.M. Saran as such the same is set aside and the matter is remitted back to the D.M. Saran to pass afresh order in accordance with law after hearing the parties.

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

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.