

In The Court of Commissioner, Saran Division, Chapra
Supply Rev. No. 78/2016
Kameshwar Pandey
Vrs.
The State of Bihar
ORDER

The instant revision petition is directed against the impugned order passed by D.M. Saran in Supply Appeal No. 104/2011 on 07.01.2016.

The brief facts of the case are that the petitioner Kameshwar Pandey, S/o Late Khemraj Pandey, R/o Vill-Sultanpur, Block-Dariyapur, Dist-Saran was a PDS dealer. Further case is that the petitioner's PDS shop was inspected on 25.10.2011 by an inspecting team pursuant to the direction of D.M. Saran as contained in letter No. 2375 dt. 08.11.2011. In course of inspection, the petitioner's shop was found closed which led to serving of a show cause notice by the SDO, Sonpur. The petitioner filed his show cause reply on which the opinion of BSO, Sonpur was obtained and finally on finding that the action of the petitioner was against the terms and condition of licence and also keeping in view the observation made by the Hon'ble High Court in SLP(Civil) 196/2001 the licence of the petitioner was cancelled vide memo No. 1011/Supply dt. 19-2011. Feeling aggrieved by the said order, the petitioner filed an appeal vide supply Appeal No. 101/2011 which was rejected on 07.01.2016. This led to filing of the instant revision petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order, submitted that the said order is against law and facts. He further submitted that the only allegation against the petitioner is that the shop was found closed at the time of inspection and no other charges were levelled against him. He also submitted that, although, the petitioner filed his show cause reply stating therein that on the day of inspection, the petitioner had gone to market for purchasing some articles on the eve of Diwali and Chhatha after closing his shop at 12.00 noon but this fact was not considered. He further said that the show cause reply filed by the petitioner was not considered by the SDO, Sonpur and even the D.M. did not consider the same as appellate authority. He lastly said that as the only allegation against the petitioner is that the shop was found closed at the time of inspection but this allegation is not sufficient for cancellation of PDS licence as Hon'ble High Court observed in several judgements.

The learned Spl. P.P. on the other hand, submitted that the petitioner's licence has been cancelled on finding the show cause reply to be unsatisfactory and even the D.M. also upheld the same. He further said that there is no merit in the claim of the petitioner and hence his revision application is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, arguments forwarded by the learned counsel for the parties and on perusal of the impugned order, it is seen that the only allegation against the petitioner was that



the shop was found closed on the day of inspection. The petitioner filed his show cause reply for the said allegation stating therein the reason for closing his shop at 12.00 noon but it is seen that the said show cause reply has not been considered appropriately. It is almost settled that closure of shop for a day is not an offence for which the licence can be cancelled. The Hon'ble High Court held this view in several cases and the petitioner also placed utmost reliance on the said observation. I find that the learned D.M. has not considered this plea of the petitioner rather he rejected the appeal on erroneous consideration as apparent from the impugned order.

In that view of the matter, the impugned order is not sustainable and hence the same is set aside. The case is remitted back to D.M. Saran for fresh consideration in the light of above facts and after hearing the parties dispose of the same in accordance with law.

With above observation and direction this revision petition is disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
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