

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 1195 OF 2019

Laxman s/o. Shankarao Pawale,
Age 73 years, Occu. Nil,
R/o. Chikhili, Tq. Kandhar,
Dist. Nanded.

....Petitioner

Versus

1. The State of Maharashtra
Through, the Secretary,
Food, Civil Supply & Consumer Protection
Department, Maharashtra State,
Mantralaya, Mumbai-32.
2. The Deputy Commissioner (Supply)
Aurangabad Division, Aurangabad.
3. The District Supply Officer,
Nanded, Dist. Nanded.
4. Satish Digambar Pawale,
Age Major, Occu. Agri.,
5. Madhavrao s/o. Rajaram Pawale,
Age Major, Occu. Agri.,
6. Piraji s/o. Rama Gaikwad,
Age Major, Occu. Agri.,
7. Sambhaji s/o. Rajaram Gaikwad,
Age Major, Occu. Agri.,
Res. No. 4 to 7 is R/o. Chikhili,
Tq. Kandhar, Dist. Nanded.

....Respondents

Mr. Nilkanth R. Pawade, Advocate for petitioner.

Mr. G.O. Wattamwar, AGP for respondent Nos. 1 to 3.

Mr. Anil M. Gaikwad, Advocate for respondent Nos. 4 to 7.

CORAM	: ARUN R. PEDNEKER, J.
CLOSED ON	: 07/12/2022
DELIVERED ON	: 06/01/2023

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. With the consent of parties,

heard finally.

2) By the present writ petition, the petitioner is challenging the order dated 2.12.2018 passed by the respondent No. 1 – The Secretary, Food, Civil Supply and Consumer Protection Department, Maharashtra in Revision Petition No. Vai.A.M.-1116/Case No. 74/NAPU – 21 and the order dated 22.12.2015 passed by the respondent No. 3 - District Supply Officer, Nanded in file No. 2015/Supply Department/ Prasha/04/Te-6/CR, thereby cancelling the fair price shop licence of the petitioner situated at village Chikhali, Tq. Kandhar, Dist. Nanded.

3) It is the case of the petitioner that on 28.10.2015 on influence of the local MLA, a complaint was made against the fair price shop of the petitioner as the son of the petitioner had contested the elections of Village Panchayat against the daughter in law of the said MLA. In pursuance of the said complaint, the Supply Inspector conducted enquiry on 7.12.2015. The District Supply Officer issued show cause notice dated 7.12.2015 by which six simple and minor charges were framed against the petitioner, which are as under :-

- i) Not putting the rate board in front of the fair prices shop.
- ii) Not showing the stock board.
- iii) Sample are not available.
- iv) Not maintained the Complaint Book.
- v) Not maintained Receipt Book.
- vi) At the time of enquiry no record is available.

4) The contention of the petitioner is that the charges framed against the petitioner are simple and minor. The petitioner relied upon the Government Resolution dated 12.11.1991, wherein at para 11, types of

categories are mentioned (i) simple charges, (ii) medium charges and (iii) serious charges. It is the case of the petitioners that charges falls under the category of simple nature. It is further the case of the petitioner that no enquiry was conducted at the site i.e. at the shop of the petitioner, but the villagers were called at the office of Panchayat and statements were taken from them and based on the said statements, notice was issued. It is also the case of the petitioner that when the hearing was conducted notice of hearing before the Supply Officer was just served three days prior to the hearing and on the son of the petitioner of which he had no notice to explain the case put against the petitioner.

5) The Supply Officer by order dated 22.12.2015 found above six faults at the instance of the petitioner running the fair price shop. It also noticed that the petitioner has not responded to the show cause notice dated 7.12.2015 and on the basis of above, the Supply Officer held that the faults were medium and severe in nature and directed to cancellation of the licence and to close down the fair price shop of the petitioner.

6) The petitioner thereafter filed revision petition before the Deputy Commissioner (Supply)/revisional authority. The Deputy Commissioner exercised the powers under section 24 of the Maharashtra Schedule Commodities (Regulation and Distribution) Order, 1975 and after considering the material and arguments on record passed order on 29.4.2016, wherein it was held that :-

"मी या प्रकरणातील वादीच्या वकीलांनी केलेला तोंडी युक्तीवाद, कनिष्ठ कार्यालयाची संचिका इत्यादी पाहता अर्जदाराविरूद्ध पिराजी रामा गायकवाड व इतर ५ यांनी जिल्हा पुरवठा अधिकारी नांदेड यांचेकडे दि. २८.१०.२०१५ रोजी तक्रार दिली. तक्रारीच्या अनुषंगाने रास्त भाव दुकानाची तपासणी करण्यात आली असून तसा अहवाल जिल्हा पुरवठा

निरीक्षक अधिकारी यांनी सरळ जिल्हा पुरवठा अधिकारी यांचेकडे सादर केल्याचे संचिकेवरून दिसून येते. तपासणीमध्ये आढळून आलेल्या दोषाची वर्गवारी आव्हानीत आदेशात केल्याचे दिसून येत नाही. तद्दतच चौकशीची प्रक्रिया प्रत्यक्ष रास्त भाव दुकानास भेट न देता ग्राम पंचायत कार्यालय येथे केल्याचे दिसून येते. चौकशीवेळी चौकशी अधिकारी यांनी तपासणी फॉर्म भरला असून त्यामधील मुद्दा क्रं. ४, ६, ७, ८, ९ व १० हे महत्वाचे रकाने रिकामे सोडल्याचे दिसून येतात. त्यामुळे चौकशीची प्रक्रीया पुर्ण झाल्याचे म्हणता येणार नाही. चौकशीचेवेळी ४३ जबाब नोंदविण्यात आलेले आहेत. त्यातील बहुतांश शोरे अर्जदाराच्या बाजूने नोंदवलेले आहेत. चौकशी अधिकारी यांनी त्यांचे अहवालात दप्तर तपासणीमध्ये व प्राप्त तक्रारीच्या अनुषंगाने चौकशी केली असता दोष आढळून आले असून नमूद केलेले आहे. परंतु जर चौकशी अधिकारी यांनी रास्त भाव दुकानास प्रत्यक्ष भेटच दिली नाही तर असे म्हणणे योग्य होणार नाही. मुळ तक्रार अर्जात पिराजी रामा गायकवाड व इतर ५ व्यक्तींची नावे नमूद असून संबंधीत व्यक्तींनी सुनावणीच्यावेळी या न्यायालयात अर्ज दिला असून त्यामध्ये गावातील काही व्यक्तींनी आमची नावे टाकून तक्रार केलेली आहे व तक्रार अर्जातील स्वाक्ष—या ह्या बनावट आहेत असे नमूद केलेले आहे. शासन निर्णय १२.११.१९९१ मधील तरतूदीनुसार चौकशी अधिकारी यांनी चौकशीची प्रक्रिया रास्त भाव दुकानास प्रत्यक्ष भेट न देता व मुळ अभिलेखाची तपासणी न करताच केल्याचे दिसून येते. अर्जदारास चौकशी अहवालाची एक प्रत देवून नैसर्गिक न्यायतत्त्वान्वये वैयक्तीक सुनावणीची संधी देणे क्रमप्राप्त होते. परंतु तसे केल्याचे दिसून येत नाही. उपरोक्त विवेचनान्वये शासन निर्णयातील तरतुदीनुसार आदेश पारित केलेले नसल्यामुळे सदरील आदेशास सहमत होणे योग्य व उचित वाटत नाही. त्यामुळे शासन आदेश क्र. जीवका—१०९५/१४६८/प्र.क्र.६४२४/ना.पु. २३ दिनांक ११ जानेवारी १९९६ अन्वये, तसेच महाराष्ट्र अनुसूचित वस्तू वितरणाचे विनियमन आदेश १९७५ चे खंड २४ अन्वये मला प्रदान केलेल्या अधिकाराचा वापर करून खालीलप्रमाणे आदेश पारित करित आहे."

English translation of the above paragraph is as under :-

"Upon considering the oral arguments made by the advocate for the Complainant in the case and perusing the record of the subordinate office it appears that Piraji Rama Gaikwad and 5 others had made a complaint with the District Supply Officer, Nanded, on 28-10-2015. From the perusal of the record it appears that, pursuant to the complaint such made, the inspection of the Fair Price Shop has been made and the report to that effect has been made directly to the

Dist. Supply Officer by the [District] Supply Inspector. The lapse found during the inspection has not been classified in the impugned order. Likewise, it seems that the inquiry was carried out in the office of the Village Panchayat and not by visiting the fair price shop directly. The inquiry form has been filled-up by the inquiry officer during the inquiry and the important column numbers 4,6,7,8,9 and 10 are left blank. Therefore, the inquiry process cannot be said to have been completed. In all 43 statements have been recorded during the inquiry. Most of the remarks have been made in favour of the complainant. The inquiry officer submitted in his report that while making inspection of the record and during the inquiry lapses has been found. However, if the inquiry officer has not at all visited the Fair Price Shop in person, then making statement to that effect would not be proper. The original complaint has a mention of Piraji Rama Gaikwad and 5 others as complainants and these persons have made an application during the hearing and submitted that some persons from the village have made the complaint in the names of the complainants and the signatures in the complaint are fake. As per the provisions made in the Government Resolution dated 12-11-1991, it appears that the inquiry officer has carried out the inquiry without making direct visit to the Fair Price Shop and without inspecting the original record. It was required to provide an opportunity of personal hearing to the Complainant by applying the principles of natural justice, but nothing has been found on the record to that effect. In the light of above discussion, it would not be just and proper to concur with the impugned order as same has not been passed in accordance with the provisions of the government resolution. Therefore, by exercising the powers vested in me by Government Order No.: Essential Commodities Act-1095/1468/Case No.: 6424/Civil Supplies-23 dated January 11, 1996 and Clause 24 of the Maharashtra Scheduled Commodities [Regulation of Distribution] Order, 1975, I pass the following order..”

- 7) The revisional authority set aside the order passed by the District Supply Officer and restored the licence of the fair price of the petitioner. Against the order of the revisional authority, the respondent Nos. 4 to 7 have filed revision petition before the Hon’ble Minister. On hearing the

parties, the Hon'ble Minister held that the order passed by the District Supply Officer is lawful and there is no defence evidence in favour of the petitioner and further held that giving opportunity again to run the fair price shop to the petitioner, the possibility of misusing of the fair price shop by the petitioner cannot be ignored and held that the order passed by the Deputy Commissioner/revisonal authority is bad in law and restored the order passed by the District Supply Officer.

8) Mr. Nilkanth R. Pawade, learned counsel for the petitioner submits that :-

- (i) Violation pointed out were minor in nature.
- (ii) There was no inspection of the shop, but the enquiry was conducted at the office of Village Panchayat.
- (iii) The action of District Supply Officer was politically motivated.
- (iv) The Deputy Commissioner (Supply) rightly set aside the order passed by the District Supply Officer and restored the fair price shop licence of the petitioner.
- (v) In any event, the order passed by the Minister holding that the complainants/petitioners before the minister were not heard by the Deputy Commissioner and merely inferring that granting of licence to the petitioner, there is possibility of misuse of the fair price shop by the petitioner and set aside the order passed by the Deputy Commissioner, is erronous in law.

9) Per contra, Mr. Anil M. Gaikwal, learned counsel for respondent Nos. 4 to 7 submitted that the allegations proved are not minor in nature, but of medium and severe in nature. The petitioner has himself given statement

that his records were taken away/robbed by some persons and therefore, he was not able to produce the record. Thus, the complainants and that the Minister is right having looked into the grievance of the villagers, has set aside the order of Deputy Commissioner and cancelled the licence of the petitioner.

10) Having considered the rival submissions, it is to be noted that the show cause notice was issued to the petitioner only three days prior to the date of hearing and there was no effective reply of the petitioner before the District Supply Officer. So also, the order passed by the Minister, setting aside the order of the Deputy Commissioner (Supply)/revisional authority under section 24 of the Order of 1974 on the ground that there is no defence evidence in favour of the petitioner and the possibility of further misuse of fair price shop at the instance of the petitioner cannot be ignored, cannot be sustained as the petitioner did not get opportunity to defend his case before the District Supply Officer.

11) I am of the view that since the District Supply Officer gave a very short notice and served the same on the son of the petitioner, there was no proper opportunity for the petitioner to plead his case before the District Supply Officer. The contention of the petitioner that he has not signed the panchanama and that the record was stolen can be explained by the petitioner if he is given an opportunity to do so before the Supply Officer. Non granting of sufficient opportunity before the Supply Officer has ultimately led to denial of natural justice and thus, the impugned orders are quashed and set aside and the matter is remanded back to the District Supply Officer to hear and decide the same on it's own merits after giving opportunity to the petitioner to defend the case. In view of the delay caused

in the matter, the District Supply Officer is directed to decide the same within a period of six months from the date of receipt of the order. During interregnum, the statusquo as on today be maintained.

12) The petition is allowed accordingly.

Rule is made absolute in aforesaid terms.

[ARUN R. PEDNEKER J.]

SSC/