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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3291 OF 2015

Birula s/o Karbhari Shelke
Age - 56 years, Occ - Agriculture
R/o Dharur, Taluka - Dharur
District - Beed

PETITIONER

VERSUS

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| 1. The State of Maharashtra
Through its Secretary,
Food, Civil Supplies and Consumer Protection,
Department, Mantralaya, Mumbai | RESPONDENTS |
| 2. The Ld. Minister,
Food, Civil Supplies and Consumer Protection,
Department, Mantralaya, Mumbai | |
| 3. The Deputy Commissioner (Supply)
Aurangabad Division,
Aurangabad | |
| 4. The District Supply Officer, Beed
Collector Office, Beed | |
| 5. The Tahsildar,
Tahsil Office, Dharur
Taluka - Dharur,
District - Beed | |
| 6. Yashwant Uttreshwar Gaike
Age - 41 years, Occ - Agriculture
R/o Dharur, Taluka - Dharur
District - Beed | |

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Mr. V. D. Sapkal h/f Mr. B. R. Sable, Advocate for the petitioner
Mr. S. K. Tambe, AGP for respondent State
Mr. N. B. Khandare, Advocate for respondent No.6

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th AUGUST, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner takes exception to an order passed by the Hon'ble Minister, Food, Civil Supplies and Consumer Protection Department, Maharashtra State, dated 18th February, 2015, in proceedings bearing No. 1115/PK 7/Civil Supply 21.

3. A few facts, leading to present writ petition would be worthwhile to be considered. An order dated 2nd June, 2014 had been passed by respondent No.4 – the District Supply Officer, Beed whereby fair price shop and kerosene licence of the petitioner came to be suspended on the allegations of certain irregularities being committed while running the shop viz., showing fictitious increase in card holders, wrong entries in cash memo, lifting quota and not distributing the same, no regular distribution and selling of commodities at higher rates. Said order refers to that a notice had been issued to shop licence holder - the petitioner and his explanation had been called for, however, the explanation was not satisfactory and there appear

to be breach of Maharashtra Food Grains Licensing Order, 1966 and Maharashtra Scheduled Commodities Retail Dealers' Licensing Order, 1979. The matter was carried in appeal by the petitioner before respondent No.3 - Deputy Commissioner (Supply), Aurangabad, who, after hearing the District Supply Officer and present respondent No.6, considered that the so called inquiry conducted at the initial stage, is deficient and discrepant and as such, suspension of licence is not justifiable. He further referred to Government Resolution dated 12th November, 1991 entailing the compliance of requirements thereunder and the same having not been made and with reference to Government Resolution dated 11th January, 1996 and clause 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, had passed an order partly allowing the appeal and setting aside the order passed by respondent No.2 dated 2nd June, 2014, directing that the supply be resumed and further directing inquiry in respect of allegations be conducted immediately after granting opportunity to the persons concerned.

4. Respondent No.6 had been before the Hon'ble Minister against order dated 16th September, 2014 of Deputy Commissioner (Supply). The Hon'ble Minister, under his order

dated 18th February, 2015, after hearing the parties, has partly allowed the revision filed by present respondent No.6. Under the same, the District Supply Officer is directed to conduct an impartial and transparent inquiry and complete the same within a period of six months, however, resumption of supply be stopped. The Minister, further, under clause 3 of the operative order, purported to confirm the order passed by respondent No.2.

5. I have heard Mr. Sapkal, learned advocate for the petitioner, Mr. Khandare, learned advocate for respondent No.6 and learned AGP. Mr. Sapkal contends that as a matter of fact, revision at the instance of respondent No.6 is not maintainable absolutely. He submits that respondent No.6 is neither a card holder nor has any concern with the fair price shop being run by the petitioner. Learned advocate submits that respondent No.6 has no *locus standi* and revision at his instance could not have been maintained. He further submits that the petitioner had tendered a preliminary explanation in respect of allegations hurled against his shop and the District Supply Officer, in a haste and under pressure had passed the order dated 2nd June, 2014 suspending licence indefinitely without reference to any further proceedings in this respect. He, therefore, submits that the very

order itself had been untenable right from the initial stage. He submits that under the circumstances, the Deputy Commissioner had rightly decided the appeal setting aside order of District Supply Officer.

6. Learned advocate for the petitioner submits that a proper opportunity ought to be given to the petitioner to deal with the charges levelled against his running of shop and preliminary inquiry, as has been done, causes great prejudice to his interest in running the business and tantamounts to penalizing him, without hearing him in real sense. He submits that the charges are vague and non specific and no details are given at all. In such a case, explanation as had been tendered by the petitioner ought to have been accepted. In absence of specific charges, non satisfaction as is depicted under order dated 2nd June, 2014 is improper and cannot be relied on. In any case, in case any details regarding allegations are supplied to him, he would be dealing with the same on facts and on merits.

7. Learned advocate further submits that the appellate authority has already referred to a couple of government resolutions which play vital role in the matter and those should be scrupulously followed. He submits that the minister has not

referred to at all and has not taken into account implications of the government resolutions referred to hereinbefore and has simply relied on the allegations while directing stopping of supply to petitioner's shop. There is no basis for the same save and except the allegations. He, therefore, submits that said part of the order deserves to be set aside.

8. Mr. Khandare, learned advocate for respondent No.6 on the other hand submits that the objection to *locus standi* of respondent No.6 is baseless for the reason that the petitioner himself has arrayed respondent No.6 as respondent No.2 in the appeal filed before the deputy commissioner. Respondent No.6 is resident of village Dharur and irregular and faulty distribution of goods which are essential commodities being found in petitioner's shop, he had and he can espouse the cause of receivers of commodities. He submits that arguments with respect to decision annexed to the petition questioning *locus standi* have no foundation, for, the court in writ petition No. 1579 of 2010 had been dealing with different factual scenario.

9. According to learned advocate the Maharashtra Schedule Commodities Retail Dealers' Licensing Order, 1979 is not concerned in the present matter. According to him, it is

Maharashtra Schedule Commodities (Regulation of Distribution) Order, 1975, which would be relevant.

10. Additionally, he refers to clause 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975, which according to him does not restrict consideration of powers by the revisional authority only by aggrieved person. He, for said purpose, relies on the amended provision under clause 24 of the Order. He submits that before passing the order dated 2nd June, 2014, the petitioner was called upon to deal with the allegations made against his conduct in running of shop and that the petitioner had failed to produce relevant record and that since the allegations were correct, he could not disprove the same, by tendering any plausible explanation. Under the circumstances, the District Supply Officer, had passed the order based on material before him. Learned advocate further on submits that the appellate authority has committed an error in reinstating supply to petitioner's shop. He submits that looking at the serious nature of allegations, direction for expeditious conduct of inquiry would have been sufficient and resumption of supply was not really called for. He submits that said error has been corrected by the revisional authority by directing stopping of supply and maintaining rest of the appellate order. He submits

that having regard to facts and circumstances, the revisional order does not deserve to be interfered with.

11. Learned AGP submits that in any case, since inquiry has been ordered, the order may not be interfered with and the inquiring authority be directed to conduct the same expeditiously.

12. Perusal of order dated 2nd June, 2014, which is genesis of culmination of proceedings in the revision, apparently is a skeleton of the allegations and subsequent events. It does not refer to any specific instance as to where the irregularities alleged had been found and as to where the petitioner had failed to explain. Further, from the appellate order it appears that the situation called for adherence to procedure as referred pursuant to the government resolutions dated 12th November, 1991 and 11th January, 1996, however, order dated 2nd June, 2014 does not make any reference to such a procedure being followed while conducting inquiry before passing the order.

13. Under the circumstances, the appellate authority had considered that the petitioner deserved a proper opportunity. Perusal of the order in revision as well shows that it had been influenced by nature of allegations against the petitioner's

running of business rather than specific finding given by the authority of first instance with respect to specific instances. The revisional authority as well does not make reference to Government Resolutions of 1991 and 1996 and without taking the same into account, the order appears to have been passed. Although the revisional order does not purport to disturb the order passed at the appellate stage, yet the revisional authority has passed an order directing stoppage of supply to the petitioner's shop. Revisional authority also does not dispute that the matter requires enquiry. However, it will have to be considered that if the allegations are not specific and are vague, stoppage of supply would not be warranted.

14. Having regard to aforesaid scenario, a proper inquiry would really resolve the situation. Under the circumstances, portion appearing under clause "2" of the operative part of the impugned order dated 18th February, 2015, directing to stop supply to petitioner's fair price shop, in the absence of proper opportunity, deserves to be set aside and accordingly stands set aside. Rest of the impugned order dated 18th February, 2015 is, however, maintained. Rule is made absolute accordingly.

15. At this stage, learned advocate for the parties seek a

direction that the inquiry be completed within a stipulated period. The revisional order stipulates period of inquiry, however, is desirable that the same be completed even before expiry of said period.

[SUNIL P. DESHMUKH, J.]

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