

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4518 OF 2010

Baburao s/o Ramrao Phulzalke
Age : 64 years, Occ-Agril
R/o Village Shevadi (B), Tq. Loha,
Dist.Nanded

.. PETITIONER

Versus

- 1] The State of Maharashtra
through its Secretary, Department of
Food, Civil Supplies and Consumer
Protection, Mantralaya, Mumbai
- 2] Deputy Commissioner (Supply)
Office of Divisional Commissioner (Revenue)
Aurangabad Division, Aurangabad
Dist.Aurangabad.
- 3] The District Supply Officer,Nanded
Collector Office, Nanded
Dist.Nanded.
- 4] Shaikh Ahmed Ali Shaikh Ali Haider
Fair Price Shop No.110,
Shevdi (B) tq. Loha
Dist.Nanded.
- 5] Hon'ble Shri Anil Vasantrao Deshmukh
Minister, Department of Food,Civil Supplies
and Consumer Protection, Room No.602,
06th Floor, Mantralaya, Mumbai
- 6] Hon'ble Mr.Abdul Sattar,
Minister of State, Food, Civil Supplies and
Consumer Protection, Mantralaya,
Mumbai.

- 7] Hon'ble Mrs. Fauziya Khan
Minister of State, Women and Child
Development, Minority Affairs,
Room No.626 (Ext) 06th Floor,
Mantralaya, Mumbai
- 8] Mr.Omprakash Pokarna (MLA, Nanded-South)
Age 50 years, Occ-Business
R/o "Mitrakrupa" Building, New Mondha
Nanded, Dist.Nanded. .. RESPONDENTS

(Notices of Respondent(s) 1 to 3 to be served through office of
Government Pleader, High Court Bench at Aurangabad)

...
Shri B.L.Sagar Killarika, Adv. for petitioner
Shri A.V.Deshmukh, AGP for respondent State.
Shri N.T.Tribhuvan, Adv. For respondent no.4
...

CORAM : N.W.SAMBRE, J.
DATED : 19TH NOVEMBER, 2015

ORAL JUDGMENT :-

Heard Shri Killarika, learned counsel for petitioner-original
plaintiff.

2] The respondent no.4 was allotted fair price shop under the
provisions of Essential Commodities Act and Regulations framed
therein at village Shevali, Tq. Loha, Dist.Nanded which upon
complaint preferred by petitioner came to be cancelled by an order of
District Supply Officer passed on 31/12/2007.

3] Feeling aggrieved thereby, present respondent no.4 preferred appeal before State Government which came to be dismissed on 27/1/2009. Respondent no.4 then preferred review application before State Government under the provisions of the Maharashtra Essential Commodities Regulation and Dispute Order 1975. The review came to be allowed by order dated 5/5/2010 which is impugned in the present petition by original complainant.

4] Shri Killarika, learned counsel for petitioner while inviting my attention to the scope of review as is dealt with by the Apex Court in the matter of **Kamlesh Verma V/s Mayawati and others reported in 2013 (8) SCC 320** would urge that in review, jurisdiction can be exercised sparingly for correction of error of law apparent on the face of record. According to him, the quasi judicial authority i.e. the State Government while allowing the review has exceeded its limit and exercised jurisdiction of review vested in it by deciding the matter by re- appreciating the entire evidence and the facts. He submits authority has reached to a conclusion is nothing but reappreciation of record and merit of the matter. He would then urge that the order of the State government which is impugned in the petition is plausible and as such relied upon communication issued by respondent Minister and the M.L.A., in favour of respondent no.4. According to him, the order impugned is not sustainable.

5] He would then urge that the grounds on the basis of which review of the order is granted by the Minister, same is not pleaded in the review application. While opposing the claim as is canvassed by Shri Killarika, learned counsel Shri Tribhuvan would urge that powers of review are exercised by authority in view of express prescription of the same in the statute book. According to him the State Government while exercising powers of review cannot restrict

itself to the scope as is alleged. as according to him, the authority/State Government on humanitarian ground allowed review. He would then add that the petitioner is a troubleshooter for him and he is time and again facing complaints on incorrect information at the behest of petitioner who is a political rival and as such sought dismissal of the petition. In addition he has invited my attention to the stand taken by the District Supply Officer before State Government stating that the District Supply Officer has not conducted proper enquiry in the matter as petitioner has not cooperated with him. According to him, the matter can be remitted back to the District Supply Officer.

6] The learned A.G.P. appearing for the respondent authority has supported the order and submits that the order is within the scope of review jurisdiction vested in the authority and based on the material available on record and sought dismissal of the petition.

7] Having given my consideration to the submissions made before this Court, it is required to be noted that the respondent no.3 District Supply Officer by reasoned order has cancelled license of the fair price shop of the respondent no.4 pursuant to the complaint and the material that was available on record. Which order was upheld by the State Government in its order dated 27/1/2009.

8] It is not in dispute that statute provides that the powers of review are to be exercised by State Government in a given case and accordingly respondent no.4 was right in law in preferring the review. However, the power of review and exercise thereof is restricted to a narrow scope and cannot be expanded as if State Government is exercising an appellate power. Appropriate reliance is rightly placed by the learned counsel Shri Killarika for petitioner on the judgment of

Apex Court on the law laid down by Apex Court in the matter of **Kamlesh Verma** cited supra wherein the Court has laid down the criteria as regards the matter in which the review is permissible and the review is not permissible.

9] Upon bare perusal of the order impugned passed in review jurisdiction by the State Government it is noticed that the State Government while allowing the review has dealt with entire material brought before it and approached as if that the State Government is deciding the appeal. It is also required to be noted that State Government has allowed appeal on humanitarian ground which in my opinion has no identification or scope in the relevant order framed by the State Government so as to form a basis for allowing the review. In view thereof, in my opinion, Writ Petition is required to be allowed by quashing order impugned passed by the State Government on 5/5/2010 in File No.VAM-1010/Case No.128-10/N.P.21. However this Court is required to take into account that the respondent no.3 has fairly stated before State Government when the appeal of the respondent no.4 was dismissed that he has not conducted proper enquiry in the matter as he has not got proper cooperation from the petitioner. Shri Killarika, learned counsel for petitioner assures this Court that as and when petitioner will be put to notice by respondent no.3 District Supply Officer, the petitioner will be ready and willing to extend all such cooperation as shall be necessary for conduct of fresh enquiry on the said set of facts in the complaint preferred by petitioner against respondent no.4.

10] In view of above, it will be appropriate in my opinion to remit the matter back to respondent no.3 with direction to conduct fresh enquiry against respondent no.4 on the complaint preferred by petitioner. Petitioner and respondent no.4 undertakes to appear

before respondent no.3 on **7/12/2015**. As a sequel of above the order of District Supply Officer and State Government are also set aside. However this may not permit the respondent to operate his license of fair price shop. It is expected of the respondent no.3 to complete the enquiry after giving appropriate opportunity to the petitioner and respondent no.4, within ten weeks thereafter. Writ Petition stands partly allowed. Rule made absolute in above terms.

(N.W.SAMBRE,J.)

umg/