

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 6107 OF 2014

Dhanraj Pannalal Jain,
age 59 years, occup. Business,
R/o Kunte Road, Amalner,
Tal. Amalner, Dist. Jalgaon

.. Petitioner

versus

1. The State of Maharashtra,
through the Secretary,
Food, Civil Supplies & Consumer
Protection Department, Mantralaya,
Mumbai-400 032
2. The Hon'ble Minister,
For Food, Civil Supplies & Consumer
Protection Department, Mantralaya,
Mumbai-32
3. The District Supply Officer,
Jalgaon, Taluka and District Jalgaon
4. The Tahsildar, Amalner,
Tal. Amalner, Dist. Jagaon
5. Surekhabai Suresh Patil,
Age 42 years, occup. Business,
R/of Sunderpatti, Tal. Amalner,
Dist. Jalgaon

.. Respondents

Mr. Girish S. Rane, Advocate for petitioners
Mrs. Y. M. Kshirsagar, Assistant Government
Pleader for Respondents No. 1 to 4
Respondent No. 5 absent, though served

CORAM : N.W. SAMBRE, J.
DATE : 4th March, 2015

ORAL JUDGMENT

1. Rule. By consent of parties, rule is made returnable forthwith and the matter is heard finally at the admission stage.

2. Order dated 25-06-2014 passed by Respondent No. 2- Hon'ble Minister for Food, Civil Supplies and Consumer Protection Department, State Government, Mumbai, allowing the revision preferred by present respondent No. 5 Surekhabai Suresh Patil under the provisions of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1976 against the order dated 29-01-2014 passed by Respondent No.3-District Supply Officer, Jalgaon, is the subject-matter of the writ petition.

3. The petitioner claims to be a fair price licence holder under the above referred provisions and was running fair price No. 12 at Amalner, District Jalgaon since last more than 25 years without any demur. According to him, in view of his ill-health and certain disturbances in the family, he tendered resignation on or about 30-07-2013, however, the same was sought to be withdrawn by communication dated 28-08-2013 addressed to Respondent No. 4 - Tahsildar. Petitioner submits, based on the same, respondent no. 4 on 28-08-2013 made report to

Respondent No.3 - District Supply Officer, Jalgaon that there is no objection to allow the request of the petitioner for withdrawal of resignation and pursuant to the said report, Respondent 3 passed consequential order on 29-01-2014 restoring licence of petitioner to run the said fair price shop.

4. According to Mr. Rane, learned counsel for the petitioner, during the period the petitioner had tendered his resignation and the same was withdrawn, the ration card holders attached to his shop were temporarily attached to fair price shop run by Respondent No.5- Surekhabai Patil which was merely a stop gap arrangement. Taking advantage of the same and pursuant to restoration of licence in favour of the petitioner, Respondent No. 5 had preferred revision, before the State Government (Respondent No.2 - Minister, Food, Civil Supplies and Consumer Protection) and by passing arbitrary order, the State Government has allowed the said revision under the order impugned in the present writ petition.

5. Mr. Rane would further urge that though petitioner was called for hearing in aforesaid revision, neither the memo of revision application nor any of the documents attached to the same were made available to him which, according to him, amounts to denial of fair and proper opportunity to petitioner.

6. Mr. Rane would further urge that right of revision was not available to Respondent No. 5 as she was, by *ad-hoc* order, directed to supply food grains from her shop to ration card holders under the above referred Order of 1975 on temporary basis as stop gap arrangement and no final right has been carved in her favour as, according to Mr. Rane, Respondents No. 3 and 4 (District Supply Officer and the Tahsildar) are the final authorities in relation to allotment and running of fair price shop.

7. Respondent No.5 though duly served, none appears on her behalf.

8. Learned Assistant Government Pleader has sought to urge that the order passed by the State Government is just and proper as, according to her, pending consideration of application by petitioner for withdrawal of resignation, ration card holders earlier attached to his fair price shop, though on temporary basis, were attached to the fair price shop of Respondent No. 5. Learned Assistant Government Pleader submits, there is no provision for withdrawal of resignation once tendered and, as such, prayed for dismissal of writ petition.

9. Having considered rival contentions of either side, it is required to be noted that the petitioner was running fair price shop since last twenty five years without any complaint.

Resignation tendered by him on 30-07-2013 was also not processed and was, in fact, permitted to be withdrawn by Respondents No. 3 and 4 under report of the former dated 28-08-2013 and order of the latter dated 29-01-2014.

10. It cannot be ignored that so as to take care of the ration card holders who were earlier getting food grains supply from the fair price shop of the petitioner, they were attached on temporary basis, to the fair price shop of Respondent No. 5 which was merely a stop gap arrangement pending decision on application of the petitioner for withdrawal of resignation he had tendered. There is no absolute or permanent right, and indeed there cannot be, created in favour of Respondent no. 5 to get attached to her fair price shop, the ration card holders originally attached to the petitioner's fair price shop. At least no such order has been passed by either of the authorities i.e. the State Government or the District Supply Officer.

11. In view of above, the order dated 25-06-2014 passed by Respondent No. 2 entertaining the revision at the behest of Respondent no. 5 who, in fact, does not have locus to file the same, in my opinion, is an act of exceeding the jurisdiction vested in the said authority.

12. As such, the impugned order dated 25-06-2014 passed by Respondent No.2-Honourable Minister, Food, Civil Supplies and Consumer Protection, State Government, quashing the order dated 29-01-2014 passed by Respondent No.3-District Supply Officer, Jalgaon, is hereby quashed and set aside. Consequently, order dated 29-01-2014 passed by Respondent No.3-District Supply Officer, Jalgaon, is restored to the file. Needless to say, relevant steps consequent thereto will follow.

13. Writ petition, as such stands allowed. Rule is made absolute in aforesaid terms.

N. W. SAMBRE, J.

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